

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 222 - 2018

STATE

-v-

MALAKAI VUANI

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Ms Henao G. and Mr Samy A. [Legal Aid Commission]
Date of Sentence : 30th July 2019

SENTENCE

1. **MALAKAI VUANI**, you have pleaded guilty to the following charge:

Statement of Offence

THEFT: Contrary to section 291 (1) of the *Crimes Act of 2009*.

Particulars of Offence

MALAKAI VUANI on the 7th day of July, 2018 at Tavua in the Western Division stole 45 litres of diesel valued at \$79.20 the property of FIJI SUGAR CORPORATION with intent to permanently deprive the said FIJI SUGAR CORPORATION of its property.

2. I am satisfied that your guilty plea is voluntary, it is supported by the evidence tendered in support of your guilty plea and your admission in court. I am also satisfied that you understand the consequence of your plea.
3. I convict you of the charge accordingly.
4. There was a locomotive parked inside the compound of the company. You entered the compound in the night and you took out the fuel from the vehicle and sold it the same day to 2 carrier drivers for about \$40. It was without the company's permission.

5. You were arrested and interviewed by police. You said that you found 2 filled gallons of fuel in the sugarcane field. You took them home and you sold them the following day for \$40.
6. I raised your caution interview with you in court on the day you pleaded guilty and you said that it was not true and that you took the fuel from the locomotive. Even if it were to be accepted you found the fuel in the sugarcane field, it is still stealing if you did not take reasonable steps to find the owner.
7. There has been no recovery of the item.
8. You have paid \$230 to compensate the victim. Some of that money which I deem to be \$80 has gone to this case to compensate the victim fully and the balance is for your other theft case CF 239 – 18 which is also for sentence today.
9. I refuse to consider any time you have spent in remand as time served. You deserved to be remanded as you had another pending case for a similar offence of theft in Rakiraki CF 48 - 18 and you had committed this offence whilst bailed in that other case. You also have several previous convictions for larceny, breaking and entering, assault causing bodily harm, drunk and disorderly, possession of illicit drugs, resisting arrest dating back to 2003. Your last 3 previous convictions were for larceny and possession of illicit drugs in 2009 and being drunk and disorderly in 2013.
10. You are obviously not a first offender.
11. You are 36 years old. You have 5 children. You do casual work and you are the sole breadwinner. You seek forgiveness and you have paid back the full sum stolen.

MAXIMUM SENTENCE

12. The maximum punishment for theft is up to 10 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

13. The sentencing tariff for theft is as follows [Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012)] :
 - (i) for a first offence of simple theft, the sentencing range should be between 2 and 9 months.

(ii) any subsequent offence should attract a penalty of at least 9 months.

(iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.

(iv) regard should be had to the nature of the relationship between offender and victim.

(v) planned thefts will attract greater sentences than opportunistic thefts.

14. I have no trouble accepting that your theft was planned. You went at night and you would have the means such as the gallons ready to remove and take out the fuel.

STARTING POINT

15. Based on the objective seriousness of the case, I select a starting point of 4 months imprisonment.

AGGRAVATING FEATURES

16. This was planned.
17. You sold the fuel.
18. You entered the compound of the company.
19. I increase your sentence to 11 months imprisonment.

MITIGATION

20. You have not cooperated with police during your interview.
21. I accept that you are remorseful though.
22. You have paid back the amount you stole.

23. You have a family to look after.
24. Your sentence is reduced to 6 months imprisonment.

GUILTY EARLY

25. I accept that your guilty plea is early and I reduce your sentence to 4 months imprisonment.

SUSPENDED SENTENCE & OBJECTIVE OF SENTENCING

26. I can suspend your sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009** as long as your sentence is below 2 years imprisonment.
27. Your sentence is aimed at deterrence and to punish you adequately.

FINAL SENTENCE

28. Your sentence is 4 months imprisonment.
29. As I have explained earlier, I will not consider any time you spent in remand as time served.
30. I am not inclined to suspend your sentence whether in part or in whole. For example, you have been given a suspended sentence before in 2008 for your larceny case. You are here again for the same offence.
31. You will serve your 4 months imprisonment immediately.
32. Pursuant to section 153 (1) (b) of the **Criminal Procedure Act 2009** and the **Sentencing and Penalties Act 2009**, I order that the money paid by the defendant into court amounting to \$80, be given to the company or victim. Prosecution is to advise the victim accordingly.
33. 28 days to appeal.



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Lisiata T.V. Fotofili

Resident Magistrate

Dated at TAVUA this 30th day of July, 2019.