

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 239 - 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 [amended on 19th March 2019]:

Count 1

Statement of Offence

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

Particulars of Offence

MALAKAI VUANI on the 9th day of August, 2018 at Mataniwai, Tavua in the Western Division, dishonestly appropriated 70 litres of diesel valued at \$133 with the intention to permanently depriving the FIJI SUGAR CORPORATION.

Count 2

Statement of Offence

BREACHING BAIL CONDITION: Contrary to section 26 (1) of the Bail Act 2002.

Particulars of Offence

MALAKAI VUANI on the 9th day of August, 2018 at Tavua in the Western Division, being bailed by the Tavua Magistrate Court vide CF 48 – 18 breached by not complying with the condition imposed by the court.

2. I am satisfied that your guilty plea to both counts 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. Specifically for count 2, I have also taken judicial notice of the records in CF 48 – 18.
4. In CF 48 – 18 you are charged with theft or stealing fertilizer and was granted bail by the Court on the 12th of February 2018. One of your bail condition was not to reoffend. You breached that condition when you stole on the 9th of August 2018 which is the subject of count 1.
5. I convict you of both counts in the charge accordingly.
6. It was around 7.45pm and an employee was on patrol. You were seen filling fuel from the fuel depot. You were chased from there. You ran away with 20 litres of fuel. Altogether you drained 70 litres and the cost is \$133. Only the 20 litres of fuel has been recovered.
7. On the 19th of March 2019 I ordered for the return of this fuel to the owner pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009**.
8. You were arrested and interviewed by police. You said that you went to the FSC compound intending to steal. You wanted some money to buy drinks. You opened the diesel tank and some fuel spilled. You had a gallon with you.
9. You have paid \$230 to compensate the victim. Some of that money has gone to compensate the victim fully in your other theft case CF 222 – 18. The balance which would be approximately \$150 will go to the victim in this case as compensation.
10. I refuse to consider any time you have spent in remand as time served. You deserved to be remanded as you already had the other case of theft pending that is 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.

11. You are obviously not a first offender.
12. 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

13. The maximum punishment for theft is up to 10 years imprisonment.
14. The maximum for breaching bail is up to 1 year imprisonment and or a fine of up to \$2000.

SENTENCING RANGE or SENTENCING TARIFF

15. 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.
16. 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 the fuel.

17. The tariff for breaching a bail condition and absconding bail are the same. It is between a suspended sentence to 9 months imprisonment [see for example - Ulumatai v State [2019] FJHC 114; HAA90.2018 (22 February 2019)].
18. The High Court has said that 'wilful failure and disobedience of Court Orders and flagrant disregard of rule of law must be met with appropriate sentence.' [Namua v State [2008] FJHC 106; HAA025.2008 & HAA026.2008 (15 May 2008)].

STARTING POINT

19. Based on the objective seriousness of the case, I select the following starting points:

Theft – 4 months imprisonment

Breach of Bail – 2 months imprisonment

AGGRAVATING FEATURES

20. For theft, I find that it was planned. You entered the compound of the company. You wanted to sell the stolen fuel and I am sure that you would have if you were not apprehended. You were supposed to be behaving at the time as you had bail conditions to follow.
21. I increase your sentence to 12 months imprisonment.
22. For breaching bail, I do not see any reason why I should increase your sentence.
23. It remains at 2 months imprisonment.

MITIGATION

24. I accept that you are remorseful.
25. You have paid \$150 as compensation to the victim.
26. You have cooperated with police during your interview.
27. The 20 litres of fuel was recovered but I am sure that you did not volunteer that. It was recovered after you were discovered.
28. You have a family to look after though.

29. For theft, I reduce your sentence to 6 months imprisonment.

30. For breach of bail, I reduce your sentence to 1 month and 7 days.

GUILTY EARLY

31. I accept that your guilty plea is early and I will reduce your sentence further.

32. For theft, your sentence is now 4 months imprisonment

33. For breaching bail, your sentence is now 23 days.

SUSPENDED SENTENCE & OBJECTIVE OF SENTENCING

34. 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.

35. Your sentence is aimed at deterrence and to punish you adequately.

FINAL SENTENCE

36. Your sentence is as follows:

Count 1 – Theft : **4 months imprisonment**

Count 2 – Breach of Bail : **23 days imprisonment**

37. As I have explained earlier, I will not consider any time you spent in remand as time served.

38. I am not inclined to suspend your sentence in any of the counts whether in part or in whole. You have been given a suspended sentence in 2008 for larceny but that has not deterred you.

39. You will serve your imprisonment term immediately.

40. I have considered the totality principle and the one transaction rule and I order that the 3 months imprisonment for Count 1 - Theft is to be served concurrently with your other sentence passed on you today in Rakiraki CF 222 – 18.
41. I see no reason why I should change the default position that your sentence for Count 2 – breach of bail should be served consecutively. You will serve your sentence for Count 2 - breaching bail consecutively to your sentence for theft in Count 1 and consecutive to any other sentence.
42. 28 days to appeal.



A handwritten signature in blue ink, appearing to read "Lisiate T.V. Fotofili".

.....
Lisiate T.V. Fotofili

Resident Magistrate

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