

IN THE RESIDENT MAGISTRATE'S COURT  
WESTERN DIVISION AT NADI

CRIMINAL CASE NO:940/22

S T A T E

v

MAOPA RAKOVI

BEFORE : Resident Magistrate, Mrs Nirosha Kannangara  
COUNSEL : Corporal 5449 Jovesa Saumaki for the Prosecution  
The Accused in Person  
DATE OF THE SENTENCE : Wednesday 5<sup>th</sup> April, 2023

SENTENCE

1. You, MAOPA RAKOVI were charged with for one count of **THEFT** contrary to section 291(1) of the Crimes Act of 2009 and one count of **BREACH OF SUSPENDED SENTENCE** contrary to Section 28 (1) of the Sentencing and Penalties Act 2009.
2. The maximum penalty for Theft is an imprisonment for Ten (10) years.

3. For the offence of **BREACH OF SUSPENDED SENTENCE** the maximum penalty as per Section 28(4) of the Sentencing and penalties Act of 2009 is a fine not exceeding \$10,000, in addition the court must restore the sentence or part of sentence held in suspense and order the Offender to serve it or in the case of a wholly suspended sentence extend the period of the order suspending the sentence to a date not later than 12 months after the date of the order under this subsection; make no order with respect to the suspended sentence.

4. The particulars of the offence of the two counts are:

(i) **FIRST COUNT**

**MAOPA RAKOVI** on the 17<sup>th</sup> day of November 2022 at Nadi in the Western Division dishonestly appropriated 1 x Black Samsung mobile phone valued at \$350.00, the property of **KRISHNA NAIDU** with intent to permanently deprive the said **KRISHNA NAIDU** of the property thereof.

(ii) **SECOND COUNT**

**MAOPA RAKOVI** on the 17<sup>th</sup> day of November 2022 at Nadi in the Western Division breached the suspended sentence of 5 months 23 days Imprisonment suspended for 18 months vide Nadi Magistrate Court Case File No. 664/22 dated 3<sup>rd</sup> November 2022 by committing an offence of Theft.

5. When the charges against you were read over to you, you pleaded guilty for both counts on your own free will and you admitted the summary of facts which were read and tendered by the Prosecution. I find your plea unequivocal. Therefore, I convict you for one count of **THEFT** under section 291(1) of the Crimes Act of 2009 and one count of **BREACH OF SUSPENDED SENTENCE** contrary to Section 28 (1) of the Sentencing and Penalties Act 2009.

6. As per the summary of facts of this matter “on the 17<sup>th</sup> day of November, 2022 at about 8.00 pm at Main Street, Nadi the (Victim) Krishna Naidu, 48 years, Catering Attendant of Korokawa, Navo being drunk had gone to the Westpac ATM (Auto Telecommunication Machine) located at Main Street, Nadi to withdraw money when he was confronted by the Accused Maopa Rokovi, 27 years, Unemployed of Nadi Town who had hassled him demanding money from victim. The Accused was then feeling the pockets of the victim and then suddenly picked the 1 x Black Samsung A11 mobile phone from the pocket of the victim. After which the Accused left the victim. Moments later the victim was making his way home when he had realised that his phone had gone stolen. The victim then returned to Nadi Town to report the matter at Nadi Police Station. The victim was then assisted by WPC 5955 Inise (wit 1) of Nadi Police Station to locate the Accused. The Accused was then seen standing along Main Street, Nadi whereby she was arrested by (wit 1) and was escorted to Nadi Police Station.

The Accused was interviewed under caution and admitted to the allegation (Ref to Q & A 88) and during the course of the investigation it was discovered that the Accused had breached her suspended sentence in reference to Nadi Magistrate Case File No. 664 of 2022 whereby she was sentenced on 03/11/2022 in Court No 2 case of Theft, sentenced to 5 months and 23 days imprisonment suspended for 18 months.

The Accused was then charged for one count of Theft.”

7. The Tariff for “Theft” was outlined in the case of Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012) where his lordship Justice Madigan said:
  - 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
8. With regard to the Second Count I wish draw my attention to **Navolo v State** [2015] FJHC 233; HAA09.2015 (31 March 2015) in which his lordship Sudarshan de Silva discussed the following which was highlighted by Hon. Mr. Justice Daniel Goundar in **Tamani v State** [2008] FJHC 328; HAA090.2008 (28 November 2008):

*“The proper approach, where a fresh offence has been committed during the period of the suspension of an earlier sentence and the accused is brought before the court was laid down in **R v Ithell** (1969) 2 AER 449 and followed by Pathik J in **Matai v the State** (1993) Criminal Appeal No 23 of 1993. The procedure is that the court should first sentence the offender in respect of the fresh offence by punishment appropriate to that offence, and thereafter address itself to the question of the suspended sentence. The court should then direct its mind to the issue of concurrency of sentences. In considering this issue the court should bear in mind that unless there are some quite exceptional circumstances, the suspended sentence should be ordered to run consecutively to the sentence given for the fresh offence.”*

9. In **Laisiasa Koroivuki v the State** [2013] FJCA 15; AAU0018.2010 (5 March 2013) his Lordship Justice Goundar discussed the guiding principles for determining the starting point in sentencing in the following manner:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the*

*tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".*

10. I considered the one count of Theft, the First Count, as the base sentence.
11. There are no aggravating factors in this case other than the facts embedded in the charge statement.
12. In your mitigation your stated the following and I consider those factors in favour of you:
  - i. 28 years old;
  - ii. Single,
  - iii. Market vendor,
  - iv. Earning \$100 per week,
  - v. Regret for what happened,
  - vi. Promising not to re-offend,
  - vii. You are willing to compensate the victim,
  - viii. Seeking for forgiveness from the Court.
13. I considered you early guilty plea and you were remanded in this matter for 5 months and 4 days.
14. Therefore, I consider the period you were in remand as sentence served for the offence of Theft, the first count, the base sentence under Section 24 of the Sentencing and Penalties Act of 2009.
15. You admitted to your Previous Conviction Report tendered by the Prosecution as Exhibit 4. As per the said sentence you were sentenced on 26<sup>th</sup> March 2019 by the Suva Magistrate Court in Criminal Case No. 2311 of 2018, for one count of absconding bail with an imprisonment for 7 months suspended for 4 years and on 3<sup>rd</sup> November 2022, by the Nadi Magistrate

Court in Criminal Case No. 664 of 2022, for one count of Theft with an imprisonment for 5 months and 23 days suspended for 18 months and one count of unlawful possession of Illicit Drugs, time spent in remand was considered as sentence served.

16. At your mitigation there was no exceptional circumstances informed to the Court, for the consideration of the court. Your act shows that you have not learnt any lesson from your previous actions. You show no remorse with regard to the property rights of the people. It is the duty of this Court to deter offenders or other persons from committing offences of the same or similar nature.
17. Considering the guidelines stated in the case authority of **Matai v the State** (1993) Criminal Appeal No 23 of 1993. Therefore, considering Section 28 (4) of the Sentencing and Penalties Act of 2009, for the Second Count, **I restore the 5 months and 23 days imprisonment period** being the sentence suspended in Criminal case No.664 of 2022 **to be served by the Accused.**
18. Appeal within 28 days.

Wednesday 5<sup>th</sup> April, 2023



**Nirosha Kannangara**  
**Resident Magistrate**