

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 155 of 2018

STATE

v

1. VENASIO SAKETA CAWI

2. SEFANAIA BALE

3. ULUTEA ROGASIO

Counsel : Ms. Mehzabeen Khan for the State
Mr. Lisiate Qetaki for the 1st Accused
Ms. Litiana Ratidara for the 2nd Accused
Ms. Talei Kean for the 3rd Accused

Sentence Hearing : 29 May 2018

Sentence : 1 June 2018

SENTENCE

[1] Venasio Saketa Cawi, Sefanaia Bale and Ulutea Rogasio the three of you were charged with the following offences:

COUNT ONE

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313(1) (a) of the Crimes Act 2009.

Particulars of Offence

VENASIO SAKETA CAWI, SEFANAIA BALE & ULUTEA ROGASIO between the 9th day of April 2018 and the 10th day of April 2018, at Pacific Harbour in the Central Division, entered into the Apartment of **ANNIEMARIE DEVOS** as trespassers with intent to steal therein.

COUNT TWO

Statement of Offence

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

Particulars of Offence

VENASIO SAKETA CAWI, SEFANAIA BALE & ULUTEA ROGASIO between the 9th day of April 2018 and the 10th day of April 2018, at Pacific Harbour in the Central Division, dishonestly appropriated properties as listed in Annexure 1 (**attached herewith**), all to the total of \$13,583.00, all properties of **ANNIEMARIE DEVOS**, with the intention to permanently deprive the said **ANNIEMARIE DEVOS** of the said properties.

ANNEXURE 1

1. Brown Handbag valued at \$250.00;
2. Brown wallet valued at \$60.00;
3. \$300.00 cash;
4. Driving license;
5. 3 Lipsticks valued at \$150.00;
6. 1 rose gold bracelet in a blue & white coloured box valued at \$700.00;
7. Scanner pen valued at \$170.00;
8. Prescription glasses with a brown case valued at \$2,800.00;
9. Medication valued at \$150.00;
10. Back pack pink and black in colour valued at \$95.00;
11. 4 dresses valued at \$358.00;
12. 2 towels valued at \$60.00;
13. Blue Child's dress valued at \$30.00;
14. Laptop bag valued at \$60.00;
15. Lenovo Brand Laptop valued at \$6400.00;
16. Oilee Brand Laptop Tablet with the charger valued at \$1000.00;

17. Pink coloured diary with documents;
18. Maroon bag valued at \$50.00;
19. Undergarments valued at \$200.00;
20. Black Make-up purse valued at \$400.00;
21. Black diary;
22. A copy of the Constitution of Fiji;
23. Certificate of Citizenship;
24. Fiji Chamber of Commerce documents;
25. Gold coloured hand mirror valued \$100.00;
26. Pussy cat brand Jewellery container valued at \$200.00; and
27. Brown Pair of flip flops valued at \$50.00.

All to the total value of \$13,583.00 worth of properties.

- [2] This matter was first called before the High Court on 26 April 2018. The State was granted 21 days to file Information and Disclosures, relevant to the case, and the matter was adjourned for 17 May 2018.
- [3] When this matter was called next, on 17 May 2018, before His Lordship Justice Daniel Goundar, the Director of Public Prosecutions (DPP) filed Information and Disclosures. Your pleas were also taken on that day. Accordingly, you pleaded guilty to both counts in the Information, and the matter was fixed for sentencing hearing.
- [4] When the matter came up before me on 29 May 2018, your pleas were taken once again. You pleaded guilty to both counts in the Information. Court was satisfied that you fully understood the nature of the charges against you and the consequences of your pleas. Court found that you pleaded guilty on your own free will and free from any influence.
- [5] Thereafter, the State filed the Summary of Facts. The Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty pleas to be unequivocal. I found that the facts support all elements of the two counts in the Information, and found both counts proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own pleas and I convicted the three of you of both counts as charged.
- [6] I now proceed to sentence the three of you.
- [7] The Summary of Facts filed by the State was that:

"The Complainant is Anniemarie Devos ("PW1") 56 years, a NZ Nationality, businesswoman/hotelier temporarily residing at Apartment 7, Arts Village at Pacific Harbour. The Accused are:

1. *Venasia Saketa Cawi ("A1") 21 years, PSB Nanunuku Resort, residing at Galoa Village, Serua;*
2. *Sefanaia Bale ("A2") 21 years, Unemployed, residing at Galoa Village, Serua; and*
3. *Ulutea Rogasio Toutou ("A3") 19 years, Unemployed also residing at Galoa Village, Serua.*

On the night of 09/04/18 PW1 left her apartment to go watch the Hong Kong 7s. She had securely locked her apartment before she left. At about 11.30 p.m. PW1 headed back to her apartment. And she did so twice after that.

At around 2 a.m. the next morning, while at her apartment PW1 began searching for her handbag but could not find it. She then began searching for the other properties of hers in her apartment but found the following items missing from her apartment:

1. *Brown Handbag valued at \$250.00;*
2. *Brown wallet valued at \$60.00;*
3. *\$300.00 cash;*
4. *Driving license;*
5. *3 Lipsticks valued at \$150.00;*
6. *1 rose gold bracelet in a blue & white coloured box valued at \$700.00;*
7. *Scanner pen valued at \$170.00;*
8. *Prescription glasses with a brown case valued at \$2,800.00;*
9. *Medication valued at \$150.00;*
10. *Back pack pink and black in colour valued at \$95.00;*
11. *4 dresses valued at \$358.00;*
12. *2 towels valued at \$60.00;*
13. *Blue Child's dress valued at \$30.00;*
14. *Laptop bag valued at \$60.00;*
15. *Lenovo Brand Laptop valued at \$6400.00;*
16. *Oilee Brand Laptop Tablet with the charger valued at \$1000.00;*
17. *Pink coloured diary with documents;*
18. *Maroon bag valued at \$50.00;*
19. *Undergarments valued at \$200.00;*
20. *Black Make-up purse valued at \$400.00;*
21. *Black diary;*
22. *A copy of the Constitution of Fiji;*
23. *Certificate of Citizenship;*

24. *Fiji Chamber of Commerce documents;*
25. *Gold coloured hand mirror valued \$100.00;*
26. *Pussy cat brand Jewellery container valued at \$200.00; and*
27. *Brown Pair of flip flops valued at \$50.00.*

All to the total value of \$13,583.00 worth of properties.

The matter was reported to the Police and the three Accused were arrested. The three were caution interviewed whereby they all admitted to having participated in the alleged offence put to them during their caution interviews (A1 Q/A 43–70; A2 Q/A 36–52; A3 Q/A 34-59 – copies of their respective caution interviews is attached herewith).

All 3 Accused are charged with 1 Count of Aggravated Burglary contrary to Section 313(1) (a) of the Crimes Act 2009 and 1 Count of Theft contrary to Section 291(1) of the Crimes Act 2009.

All 3 Accused are first offenders (Criminal Records Office Minute of confirmation attached with)".

- [8] You have admitted to the above Summary of Facts and taken full responsibility for your actions.

Venasio you have submitted that on the day of the offending it was you who saw that there was no security around the area and pushed the door of the complainant's apartment open and went inside.

Sefanaia you have submitted that on the day of the offending you were called by Venasio to take the suitcase he had brought out from the complainant's apartment. Thereafter, Venasio had asked you to keep watch at the door as he went again into the apartment.

Ulutea you have submitted that on the day of the offending Venasio had asked you to go with him. You had stood guard at the door, while Venasio went into the apartment. You submit that Venasio had gone into the said property three times, the first time by himself, the second time with Sefanaia and the third time with you.

- [9] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.

- [10] In terms of Section 313 (1) of the Crimes Act No. 44 of 2009 (Crimes Act), "A person commits an indictable offence (of Aggravated Burglary) if he or she-

- (a) *Commits a burglary in company with one or more other persons; or*
- (b) *.....”*

The offence of ‘Burglary’ is defined at Section 312 (1) of the Crimes Act as follows: “A person commits an indictable offence (which is triable summarily) if he or she enters or remains in a building as a trespasser, with intent to commit theft of a particular item of property in the building”.

The offence of Aggravated Burglary in terms of Section 313 (1) of the Crimes Act carries a maximum penalty of 17 years imprisonment.

- [11] The tariff for the offence of Aggravated Burglary is between 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: ***State v. Mikaele Buliruarua*** [2010] FJHC 384; HAC 157.2010 (6 September 2010); ***State v. Nasara*** [2011] FJHC 677; HAC 143.2010 (31 October 2011); ***State v. Tavualevu*** [2013] FJHC 246; HAC 43.2013 (16 May 2013); ***State v. Seninawanawa*** [2015] FJHC 261; HAC 138.2012 (22 April 2015); ***State v. Seru*** [2015] FJHC 528; HAC 426.2012 (6 July 2015); ***State v. Drose*** [2017] FJHC 205; HAC 325.2015 (28 February 2017); and ***State v. Rasegadi & Another*** [2018] FJHC 364; HAC 101.2018 (7 May 2018).
- [12] This tariff of 18 months to 3 years for Aggravated Burglary has also been approved by the Court of Appeal in ***Leqavuni v. State*** [2016] FJCA 31; AAU 106.2014 (26 February 2016).
- [13] In terms of Section 291 (1) of the Crimes Act “A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property”. The offence of Theft in terms of Section 291 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.
- [14] In ***Ratusili v. State*** [2012] FJHC 1249; HAA011.2012 (1 August 2012); His Lordship Justice Madigan proposed the following tariff for the offence of Theft:
 - (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.*"

[15] Considering the fact that the theft in this case involved property valued at \$13,583, it is my opinion that the appropriate tariff in this case should be in the range of 2 months to 3 years imprisonment.

[16] In determining the starting point within a tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

"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."

[17] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Sefanaia and Ulutea, I commence your sentences at 18 months for the first count of Aggravated Burglary. As for you Venasio, since you have admitted that your culpability and degree of responsibility for this offence is more, I commence your sentence at 24 months for the first count of Aggravated Burglary.

[18] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Sefanaia and Ulutea, I commence your sentences at 6 months for the second count of Theft. As for you Venasio, since you have admitted that your culpability and degree of responsibility for this offence is more, I commence your sentence at 12 months for the second count of Theft.

[19] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) You paid no regard to the privacy of a foreign national's apartment.
- (iii) You trespassed on this property in the dead of the night.
- (iv) There was some degree of pre-meditation in committing these offences.
- (v) You are now convicted of multiple offending.

[20] The Prosecution submits that since the total value of items stolen is a large sum, this factor should also be considered as an aggravating factor. However, since I have already considered this fact in determining that the appropriate tariff in this case

should be in the range of 2 months to 3 years imprisonment for the offence of Theft, I refrain from considering this fact once again as an aggravating factor.

[21] In mitigation you have submitted as follows:

- (i) That you are first offenders and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you.
- (ii) That you fully cooperated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (iii) You have sought forgiveness from this court and have assured that you will not re-offend. You have submitted that you are truly remorseful of your actions.
- (vi) A large proportion of the stolen property has been recovered.
- (iv) That you entered a guilty plea at the first available opportunity.

[22] Considering the aforementioned aggravating factors, I increase your sentence by a further 2 years. Now your sentences for count one are as follows: Venasio- 4 years; Sefanaia and Ulutea- 3 years and six months. Your sentences for count two are as follows: Venasio- 3 years; Sefanaia and Ulutea- 2 years and six months.

[23] I accept that you are all persons of previous good character and that you have cooperated with the Police in this matter. I also accept your remorse as genuine. Accordingly, considering these mitigating factors, I deduct 2 years from your sentences. Now your sentences for count one are as follows: Venasio- 2 years; Sefanaia and Ulutea- 1 year and six months. Your sentences for count two are as follows: Venasio- 1 year; Sefanaia and Ulutea- six months.

[24] I accept that you entered a guilty plea at the first available opportunity. In doing so, you saved precious time and resources of this Court. For your early guilty pleas I grant you each a further discount of 6 months for count one. Since I propose to make your sentences concurrent I do not deem it necessary to grant you any further discount for count two in lieu of this factor.

[25] In the circumstances, your sentences are as follows:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act –

Venasio- 1 year and 6 months' imprisonment.

Sefanaia- 12 months' imprisonment.

Ulutea- 12 months' imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act –

Venasio- 1 year imprisonment.

Sefanaia- 6 months' imprisonment.

Ulutea- 6 months' imprisonment.

I order that both sentences of imprisonment to run concurrently. Therefore, your final total term of imprisonment will be:

Venasio- 1 year and 6 months' imprisonment.

Sefanaia- 12 months' imprisonment.

Ulutea- 12 months' imprisonment.

[26] The next issue for consideration is whether your sentences should be suspended.

[27] Section 26 of the Sentencing and Penalties Act provides as follows:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate's Court.

[28] Venasio you are 20 years of age (DOB: 18 June 1997). You are said to be residing with your parents and 3 other siblings at Galoa Village, Serua. Before being remanded for this case, you have been working at Pacific Building Solutions (PBS) in the Nanuku Site where you were earning \$230.00.

[29] Sefanaia you are 21 years of age (DOB: 10 March 1997). You are said to be residing with your parents and 6 younger siblings at Galoa Village, Serua. You have studied up to Form 5 at Lomary Secondary School. Prior to being remanded for this case, you are assisting your parents in farming.

- [30] Ulutea you are celebrating your 20th birthday today (DOB: 1 June 1998). You are living with your parents and younger siblings at Galoa Village, Serua. You studied up to Form 5 at Lomary Secondary School. You attended Ratu Navula College and completed a one year course in Hospitality Operations (You have provided to Court the relevant Certificate). Prior to being remanded for this case, you were involved in subsistence farming.
- [31] All three of you have admitted that what you did was wrong, and taken full responsibility for your actions. You have also admitted that the offences were committed due to lack of good judgment on your part. You have also promised that you would lead a crime free life if you are granted a non-custodial sentence.
- [32] All three of you have been in remand since 10 April 2018, the day you were arrested for this case. Accordingly, you have been in remand custody for nearly 50 days.
- [33] In *Nariva v. The State* [2006] FJHC 6; HAA 148J.2005S (9 February 2006); Her Ladyship Madam Justice Shameem held:

"The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment."

- [34] I have considered the following circumstances:

- All three of you are young offenders;
- You have been of previous good character;
- You have fully cooperated with the Police;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions and have sought forgiveness from this Court;
- You have assured Court that you will not re-offend.
- You entered guilty pleas at the first available opportunity;
- You have already spent nearly 50 days in remand custody.

Accordingly, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your sentences for a period of 3 years. All three Accused are advised of the effect of breaching a suspended sentence.

[35] In the result, your final sentences, stated below, is suspended for a period of 3 years.

Venasio - 1 year and 6 months' imprisonment.

Sefanaia - 12 months' imprisonment.

Ulutea - 12 months' imprisonment.

[36] You have 30 days to appeal to the Court of Appeal if you so wish.



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



Dated this 1st Day of June 2018

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.
Solicitors for the Accused : Office of the Legal Aid Commission, Suva.