

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 117 of 2017

STATE

v

NEMANI CEVALOA

Counsels : **CPL Monish**
In Person

Sentence : **16 May 2018**

SENTENCE

1. Nemani Cevaloa, today is for sentencing on five counts of *Theft* contrary to *section 291(1)* of the *Crimes Act*.
2. On 17 March 2017, you waived your rights to counsel. On 31 March 2017, you pleaded guilty to all the charges on your own free will. I find your plea to be unequivocal.
3. The brief summary of facts are;-
"Between 1 August 2016 to 31 December 2016, the accused Nemani Cevaloa of Nawa Settlement, Dreketi, stole 2 nanny goats valued \$200.00, 2 billy goat valued \$400.00, 1 sheep valued \$200.00, all to the total value of \$800.00 from the farm of Shaukat Ali of Nawa Settlement, Dreketi. You stole the first nanny

goat in August, the second nanny goat in September, the first billy goat in October, the second billy goat in November, and a sheep in December. "

4. You admitted to have the above summary of facts on 31 March 2017, and convicted as charged for all the five counts. You submitted oral mitigation on the same day.
5. The maximum penalty for *Theft* is 10 years imprisonment. In the case of ***Ratusili v State*** [2012] FJHC 1249; HAA011.2012 (1 August 2012), the High Court set the tariff as follows:-
 - a) *First offence of simple theft, sentence range between 2 and 9 months;*
 - b) *Any subsequent offence, attracts penalty at least 9 months;*
 - c) *Theft of large sum of money and theft in breach of trust, whether first offence or not attract sentences of up to 3 years;*
 - d) *Planned thefts attract greater sentence than opportunistic thefts.*
6. The aggravating factor is that this is a continues stealing on five occasion in a period of 5 months at one month per stealing. In doing so you deprive the victim to enjoy the fruit of his hard work and sweat.
7. The compelling mitigating factors are:-
 - a. *First Offender,*
 - b. *Seeking the court forgiveness,*
8. This is a planned theft and not a simple theft. For your sentence, I pick 1 year as my starting point. I add 1 year for the aggravating factors and that increase your sentence to 2 years imprisonment. I reduce 6 months for your mitigation and that reduce your sentence to 1 year and 6 months imprisonment.
9. You entered and early guilty plea and you are entitle for a one third reduction, which is 6 months. I reduce 6 months for your early guilty plea and that reduce your sentence to 12 months imprisonment.
10. There was no information provided to the court by the prosecution or the Accused on the remand period. In perusing the court record, I noted that you

were in remand for a period of about 2 weeks. I deduct 2 weeks from your sentence. That reduce your sentence to 11 months and 2 weeks imprisonment

11. In this sentence I have considered and take note of *section 4* of the *Sentence and Penalties Act*. In doing so, I also reminded myself of *Goundar, J*, decision in ***State v Filipe Ratusuka & Others***, *High Court, Criminal Appeal No. HAA 001 of 2013 (7 March 2013)*, where his Lordship stated that animal and farm theft are considered as a serious offence and immediate custodial sentence should be imposed.
12. This Court is bound by the decision in ***Ratusuka*** (*supra*); therefore, suspended sentence is not an option in this case.
13. In this sentence, I have considered the principle of rehabilitation, however, animal theft is very frequent in the Northern Division and deterrent sentence both specific and general need to be issued to denounce such conduct in Vanua Levu.
14. Nemani Cevaloa, your final sentence are as follows:-
 - a. Count 1 Theft 11 months and 2 weeks imprisonment.
 - b. Count 2 Theft 11 Months and 2 weeks imprisonment.
 - c. Count 3 Theft 11 Months and 2 weeks imprisonment.
 - d. Count 4 Theft 11 Months and 2 weeks imprisonment.
 - e. Count 5 Theft 11 Months and 2 weeks imprisonment.
 - f. Sentence for all the counts to be served concurrently with immediate effects.

28 days to appeal.

C. M. Tuberi
RESIDENT MAGISTRATE

