

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 158 of 2018

STATE

V

1. NETANI KOTO RIGAMOTO

2. AMINIASI KURUYAWA COLATI

Counsel : Ms. Unaisi Tamanikaiyaroi for the State  
Mr. Isireli Romanu for the 1<sup>st</sup> & 2<sup>nd</sup> Accused

Sentence Hearing : 12 June 2018

Sentence : 18 June 2018

### SENTENCE

[1] Netani Koto Rigamoto and Aminiasi Kuruyawa Colati the two of you were charged with the following offence:

#### FIRST COUNT

##### *Statement of Offence*

RECEIVING: Contrary to Section 306 (1) and (3) (c) and 8 (a) of the Crimes Act 2009.

### *Particulars of Offence*

**NETANI KOTO RIGAMOTO and AMINIASI KURUYAWA COLATI** on the 3<sup>rd</sup> day of April 2018, at Suva, in the Central Division, dishonestly received, proceeds in the sum of \$40.00 each from the sale of the original stolen property namely 1 x black LG brand 32 inch TV.

- [2] This matter was first called before the High Court on 4 May 2018. The State was granted time to file Information and Disclosures, relevant to the case, and the matter was adjourned for 1 June 2018.
- [3] When this matter was called next, before His Lordship Justice Daniel Goundar, on 1 June 2018, the Director of Public Prosecutions (DPP) filed Information and Disclosures. Your pleas were also taken on that day. Accordingly, you both pleaded guilty to the charge in the Information, and the matter was fixed for 11 June 2018 for sentencing.
- [4] When the matter came up before me on 12 June 2018, your pleas were taken once again. You both pleaded guilty to the one count in the Information. Court was satisfied that you fully understood the nature of the charge 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 charge in the Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own pleas and I convicted the two of you of the one count as charged.
- [6] I now proceed to sentence the two of you.
- [7] The Summary of Facts filed by the State was that:

<i>"Complainant</i>	-	<i>Navitalai Sorovi (age 82) (hereafter PW1)</i>
<i>Accused</i>	-	<i>Netani Koto Rigamoto (age 19) (hereafter "A1")</i>
<i>Accused</i>	-	<i>Aminiasi Kuruyawa Colati (age 18) hereafter "A2")</i>
<i>Location of Offence</i>	-	<i>Taqeirua Settlement, Colo-i-Suva.</i>

*On 3<sup>rd</sup> April 2018, Netani Koto Rigamoto (hereafter "A1") (age 19) and Aminiasi Kuruyawa Colati (hereafter "A2") (age 18), at Suva in the Central Division, dishonestly received, proceeds in the sum of \$40.00 each, from the sale of the original stolen property namely, 1 Black LG brand 32 inch TV.*

*On 3<sup>rd</sup> April 2018 at about 5.00 p.m., PW1 arrived home which was located in Taqueirua Settlement, Suva and discovered that his black LG 34 inch TV valued at \$700 was missing. The complainant informed his son Sakiusa Sorovi (hereafter PW2) about it.*

*The matter was reported to the police and upon enquiry, Taravini Tinou (hereafter PW3) informed the police that she had seen an unknown person at 10.40 a.m. on the said day, carrying the TV at the bus stand and passing it onto 2 boys who were also at the bus stand. She identified one of them as A2, Aminiasi Kuruyawa Colati.*

*Another witness, Jale Karalo (hereafter PW4) also saw A1 and A2 accompanied by an unknown person holding the TV. He said that A1 and A2 told him that they were going to town when he asked them where they were going. He said that the unknown person was trying to stop the bus and he was also carrying the TV.*

*Upon receiving the above information, the police arrested both accused persons and caution interviewed them.*

*A1 in his caution interview says that it was the unknown person who brought the TV from PW1's house. He knew this because this unknown person told him. A1 said that he boarded the bus with this person and A1. He said that they sold the TV to a security guard at Pender Court for \$200 and he received \$40 as his share.*

***(Refer to Q & A 23-47 annexed as "AX 1")***

*A2 in his caution interview says that this unknown person, he and A1 were hanging out at the unknown person's house, when they saw the TV inside PW1's house. He says that it was the unknown person who brought the TV from PW1's house, and then they decided to sell the TV. They boarded the bus and got off at Suva. They were told by a street kid to sell the TV at Pender Court. They sold the TV and got \$200. A2 received \$40 as his share. The rest of the money was spent on food and some money was given to the street kid.*

***(Refer to Q & A 14-33 annexed as "AX 2")***

*The police were able to trace and recover the 32 inch TV.*

*Both the accused persons are charged with 1 Count of Receiving contrary to Section 306 (1) and 3(c) and 8(a) of the Crimes Act 2009".*

- [8] You have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [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 306 (1) of the Crimes Act No. 44 of 2009 (Crimes Act), "A person commits a summary offence if he or she dishonestly receives stolen property, knowing or believing the property to be stolen".

Section 306 (3) of the Crimes Act provides:

"(3) for the purposes of this section, property is stolen property if, and only if —

(a) it is original stolen property (as defined by sub-section(5)); or

(b) it is previously received property (as defined by sub-section (6)); or

(c) it is tainted property (as defined by sub-section (8))."

[Emphasis is mine].

Section 306 (8) (a) of the Crimes Act states:

"(8) for the purposes of this section, tainted property is property that —

(a) is (in whole or in part) the proceeds of sale of, or property exchanged for

(i) original stolen property; or

(ii) previously received property;...."

The offence of Receiving in terms of Section 306 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

- [11] His Lordship Justice Temo in *State v. Josai Usumaki* [2015] FJHC 259; HAC 338 of 2012S (20 April 2015); held:

".....receiving stolen property", contrary to section 306(1) of the Crimes Decree 2009, is also viewed seriously by the law makers of this country. It carries a maximum sentence of 10 years imprisonment. For a similar offence in the repealed Penal Code, I said the following in *State v. Josua Raitamata*, Criminal Case No. HAC 012A of 2010S: "...The offence of "receiving stolen property", is also a serious offence and carries a maximum penalty of 14 years imprisonment. (Section 313(1) (a) of the Penal Code). The tariff for this offence appears to be a sentence between 12 months to 4 years imprisonment: *Tukai Taura v. State* [2003] HAA 103 and 104 of 2002; *Ilaitia Tuwere Turaga v. The State* [2002] HAA 082/02S; *Jesoni Tabakau v. State* [2003] HAA 19/03S and *R v Webbe* [2002] 1 Cr. App. R. 22. The sentence will depend on the aggravating and mitigating factors..." The above tariff is also applicable to "receiving stolen property" under section 306 (1) of the Crimes Decree 2009.

- [12] However, in **State v. Qarasaumaki** [2011] FJHC 283; HAC 96 of 2009S (23 May 2011); His Lordship Justice Temo held:

*"For "receiving stolen property", the maximum sentence is 14 years imprisonment (under the Penal Code). However, case precedent seemed to put the tariff between a sentence of 1 year to 3 years imprisonment. If the value of the properties received is low, the sentence is often lower. It is otherwise, if the value of properties received is high: see **Jesoni Tabakau v The State**, Criminal Appeal No. HAA 0019 of 2003S, High Court, Suva; **Ilaitia Tuwere Turaga v The State**, Criminal Appeal No. HAA 082 of 2002S, High Court, Suva; **Timaleti Utovou v The State**, Criminal Appeal No. HAA 0010 of 2002S, High Court, Suva. The actual sentence on the above offences will depend on the mitigating and aggravating factors".*

- [13] Considering all the above, I adopt the tariff for the offence of Receiving under the Crimes Act, as between 1 to 3 years imprisonment.

- [14] 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."*

- [15] The State has submitted that there are no aggravating factors against you.

- [16] 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 and that you have offered your apologies to the complainant

in this case. You are also said to have paid the complainant the sum of money each of you received from the sale of the original stolen property.

- (iv) The police were able to trace and recover the stolen property.
- (v) That you entered a guilty plea at the first available opportunity.

[17] I accept that you are all persons of previous good character and that you have co-operated with the Police in this matter. I also accept your remorse as genuine. 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.

[18] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, and considering all the afore mentioned mitigating factors, I impose a sentence of 12 months imprisonment on each of you for the charge of Receiving of stolen property.

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

[20] 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.*

[21] Netani you are 19 years of age (DOB: 7 July 1998). Aminiasi you are 18 years of age (DOB: 27 March 2000). You have both studied up to Form 4.

[22] Both of you have admitted that what you did was wrong, and taken full responsibility for your actions. You have also promised that you would lead a crime free life if you are granted a non-custodial sentence.

[23] Both of you have been in custody since 13 April 2018, the day you were arrested for this case. Accordingly, you have been in custody for over two months.

[24] 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."*

[25] I have considered the following circumstances:

- Both 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 you have offered your apologies to the complainant in this case;
- You have sought forgiveness from this Court and have assured that you will not re-offend;
- You entered guilty pleas at the first available opportunity;
- You have already spent over two months in custody.

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

[26] In the result, your sentences of 12 months imprisonment are suspended for a period of 3 years.

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



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



Solicitors for the State  
Solicitors for the Accused

: Office of the Director of Public Prosecutions, Suva.  
: MIQ Lawyers, Barristers and Solicitors, Suva.