

IN THE MAGISTRATE'S COURT AT LAUTOKA, FIJI

CRIMINAL CASE NO. 793/16

STATE

V.

ILISONI RATUSAI

SEREIMA MELI

Counsel : SGT Theodore for Prosecution

Accused in Person

Date : 30th July 2018

SENTENCE

01. You, Ilisoni Ratusai and Sereima Meli are charged with **Theft**; contrary to Section 291 (1) of the Crimes Act No 44 of 2009.

02. Read over to you the count and understanding it, you on your own free will pleaded guilty and admitted the summary of facts. Since summary of fact well enough to prove the elements of the count, you were convicted for the count of **Theft**.

03. As per the summary of facts you were employed as clerks at Rakiraki Court registry and as a part of your job supposed to collect revenue. Between 17/06/14 to 15/7/14 whereby you Ilisoni; the first accused, stole \$700.00 and used it for your personal use and you Sereima; the second accused, stole \$300.00 and used it for your personal use.

The matter was reported to the police and you were arrested and interviewed under caution where you admitted stealing the mentioned amount of money from Trust Fund: the property of the Judicial Department.

04. I would now endeavour to consider the appropriate penalty for this case with the view of considering section 04 and 15 of the Sentencing and Penalties Decree regarding sentencing guidelines and the range of sentencing order.

05. The maximum punishment for "Theft" is 10 years of imprisonment as of Crimes Act No 44 of 2009

However, tariff for the theft, range from 04 months to 03 years of imprisonment on a first conviction where it **was** 02 months to 09 months following the **Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012)**

In the case of **Waqv v State [2015] FJHC 729; HAA017.2015 (5 October 2015)**

Judge Vinsent S. Perera analyses it as follows:

- After considering a number of decisions of this court on tariff for the offence of Theft, I find that the court has opined the lower end to be 2 months imprisonment and the higher end to be 3 years imprisonment. (See *Navitalai Seru v State [2002] FJHC 183*, *State v Saukilagi [2005] FJHC 13*, *Chand v State [2007] FJHC 65*, *Kaloumaira v State [2008] FJHC 63*, *Chand v State [2010] FJHC 291*, *Ratusili v State [2012] FJHC 1249*, *State v Koroinavusa [2013] FJHC 243*, *Lal v State [2013] FJHC 602*, *State v Batimudramudra [2015] FJHC 495*).
- An imprisonment of 2 to 9 months has been the tariff recognised under the now repealed Penal Code for a first offender who commits the offence of Theft. Section 262 of the Penal Code specified three different penalties for the offence of Theft as follows;
 - a. First offence of Theft (simple larceny) – 5 years
 - b. Simple larceny committed after having been previously convicted of a felony – 10 years
 - c. Simple larceny committed after having been previously convicted of a misdemeanour – 07 years

- However, it is pertinent to note that the Crimes Decree 2009 does not specify different penalties for Theft based on previous convictions. The only penalty provided under section 291(1) of the Crimes Decree is an imprisonment for 10 years.
- In view of the fact that the Crimes Decree has increased the maximum penalty for Theft from 5 years as stipulated in the Penal Code to 10 years, it is logical that the tariff for Theft should also be increased. Further, it is no longer the law in Fiji to recognise a different sentence or a tariff for Theft for offenders with previous convictions.
- Considering all the above factors and the decisions of this court, I am inclined to hold the view that the **tariff for Theft is 4 months to 3 years imprisonment.**

06. Regarding the starting point of the imprisonment; their Lordships of the Court of Appeal in *Koroivuki v State* [2013] FJCA 15; AAU0018.2010 (5th March 2013), made the following remarks in paragraph 27.

"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 stage. 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."

07. Taking in to consideration the above established law and the circumstances of the case, relative seriousness of the offence and the positions you held in the department, I pick 24 months for each to be the starting point for your case.
08. As aggravating factors, I find that you both are held with trust which you have breached and there is more than one person involved in this incident which suggest it was carried out with premeditation. For those reasons I enhance your sentence by another 08 months to make it 32 months of imprisonment for each.

In mitigation, it was submitted for the 1st accused that:

- you are 30 years old single person
- you are currently employed with iTaukei Land Trust Board
- you are looking after your elderly mother
- you are the sole breadwinner of your family
- you have financial obligations
- you have paid the full amount of money involved in the alleged incident
- you apologise seek forgiveness of the court

- you are remorseful of your act and promise not to reoffend
- you are the first offender and have an unblemished service record

In mitigation for the 2nd accused it was submitted that:

- you are 36 years old
- you are married with 4 children
- you are unemployed
- you seek forgiveness of the court and promise not to reoffend
- you tendered an early guilty plea
- you cooperated with police and full restitution has been done

09. Considering the above mitigation factors, I discount 5 months from your sentencing bringing your sentencing down to 27 months, in **Ratubalavu v State [2009] FJHC 199; HAA063.2008 (10 September 2009)** Judge Daniel Goundar said "It has been the practice of the courts in Fiji to give a reduction of one third in the sentence for an early plea of guilty by an accused"; therefore, I further make a reduction of 1/3 bringing down your sentence to 18 months of imprisonment.

Accordingly, now your final imprisonment period is 18 months for each for the offence of Theft.

10. Setting my mind to the Sec. 26 of the Sentencing and Penalties decree, I now consider the power of this court to suspend your sentence since it is less than 02 years. As per the **Deo v The State [2005] FJCA 62** court shall require to look for special circumstances to justify a suspending of a sentence.

11. According the facts of this case you are the first offender, and you have promptly admitted the act and sought mercy of the court. Both have families to looked after. However, on the other hand you need personal knowledge of internal functions and prior planning is necessary. You were dishonest to the department which you were offered a source of living. On top of all you have breached the trust reposed on you by the department and has stigmatize the image of the Department.

12. These conflicting interests need to be balanced along with the interest of justice at large. In the case of **State v Nadolo; HAC143.10** (23 November 2012) Hon. Justice Priyantha Nawana J has stated that;

"Section 4 of the Decree on 'Sentencing Guidelines', has been founded on the jurisprudential principle of 'balancing competing interests' of the offender, the victim and the society at large. (State v Tilalevu [2010] FJHC 258 HAC 81 of 2010; 20.07.2010)

13. It is, therefore, of paramount importance for any sentence to reflect court's bounden duty of protecting the community and its unhesitant approach of denouncing the commission of the offence within the prescribed parameters under the law. This can be manifested only by deterring the offenders and others who tempt to commit crime."
14. I would like to refer to a very recent sentence by Chief Magistrate Usaia Ratuville on a similar situational case **State v. Miliana Rauvi** Cr1056/2017 dated 02nd November 2017 where his worship has emphasised the need of a deterrent sentence. I have not better words than reproducing the same portion;

"By the same token you offended as an employee of the Judicial Department. Your actions have attracted unwarranted adverse attention on the Department. A deterrent sentence is necessary in order to serve as a warning to other like-minded offenders."

15. In the light of above circumstances, I am of the view that partly suspension of the sentence would serve the both ends of justice and punish you achieving the purposes of sub-sections (a) (c) and (d) of section 04 of the sentencing and penalties act.

16. Accordingly, I suspend 12 months of your sentence for a period of 5 years. You shall serve the remaining 06 months of the sentence in custody.

17. If you commit any crime during the suspended period and found guilty by the court you are liable to be charged and prosecuted for an offence pursuant to section 28 of the Sentencing and Penalties Act.

18. 28 days to appeal

BANDULA GUNARATNE

Resident Magistrate

At Lautoka
30th July 2018