

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**

**CRIMINAL JURISDICTION**

**Miscellaneous Case No. 003 of 2009**

**BETWEEN:**

**USAIA SOVAKALIA**

***Appellant***

**AND:**

**THE STATE**

***Respondent***

**Counsel:** Appellant in person  
Mr. M. Korovou for State

**Date of Hearing:** 11 June 2009

**Date of Judgment:** 12 June 2009

**JUDGMENT**

[1] The appellant was convicted on his own pleas of guilty to two charges of house breaking, entering and larceny, and one charge of criminal trespass. For house

breaking offences, he was sentenced to 18 months imprisonment on each charge, and for criminal trespass, to 3 months imprisonment. The sentences for house breaking offences were ordered to be served concurrently while the sentence for criminal trespass was ordered to be served consecutively. The total overall sentence was 21 months imprisonment.

[2] The appellant appeals against conviction and sentence but his grounds of appeal are confined to sentence. The appeal is out of time by a few days.

[3] At the hearing of the appeal, the appellant pressed on with the sentence appeal only.

[4] In summary the appellant's grounds of appeal are:

- i) The sentence is harsh and excessive.
- ii) The trial Magistrate placed undue weight to the appellant's previous convictions.
- iii) The trial Magistrate did not give sufficient weight to the appellant's early guilty pleas, co-operation with the police, remorse, previous good character and to the fact that stolen items have been recovered.

[5] In his sentencing remarks, the learned Magistrate noted that the appellant has entered into the homes of two elderly women and stole tapa valued \$200.00 and \$180.00, respectively.

[6] Four days after committing the house breaking offences the appellant entered into his Turaga-ni-Koro's compound without a lawful excuse. The appellant in his caution interview said he entered the compound with an intention to break into the house of Turaga-ni-Koro.

[7] The appellant had one previous conviction for larceny for which he was sentenced to 2 months imprisonment on 4 February 2008.

[8] As regards to the appellant's previous conviction, the learned Magistrate said:-

***"You are a repeat offender and had just recently completed a sentence for a similar offence. I take this into account not to punish you again for your previous convictions – but as an indication that you have propensity to commit such crimes."***

[9] Pointing to the aggravating factors, the learned Magistrate said:

- i) You targeted the house of an elderly lady from your same village so there is an element of breach of trust involved.
- ii) The piece of tapa was not recovered as you had sold it off to an unknown person and benefited from the crime.
- iii) The great value of tapa to an elderly lady in a Fijian Village must be taken into account – because of the ceremonial and traditional significance usually attached to these things.

[10] After citing the tariff for the offence of house breaking, the learned Magistrate picked 2 years as his starting point. He identified the early guilty plea, co-operation with the police and remorse as the mitigating factors.

- [11] After adjusting for the mitigating and aggravating factors, the learned Magistrate arrived at a term of 18 months imprisonment.
- [12] For the offence of criminal trespass, the learned Magistrate after noting the maximum penalty of 1 year for that offence, imposed 3 months imprisonment.
- [13] The learned Magistrate considered that consecutives sentences would be too harsh for the appellant. Bearing in mind the totality principle the sentences were made partially consecutive and partially concurrent, with an effect that the appellant serve 21 months imprisonment.
- [14] I find the appellant's grounds of appeal are without merits. The learned Magistrate properly considered all the relevant mitigating and aggravating factors in imposing the sentence of 21 months imprisonment. The sentence is within the tariff. No error of fact or law has been shown.
- [15] Leave to appeal is refused. The appeal is dismissed.

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[Daniel Goundar]  
**JUDGE**

At Labasa  
12<sup>th</sup> June 2009