

Statement of Offence

ATTEMPTED LARCENY: Contrary to Section 381 and 259 (1) and 262 (1) of the Penal Code Act 17

Particulars of Offence

SEREMAIA SAQA, TEVITA VOIVOI, JONE RABUKAWAQA, JOELI VARO AND ISOA QELENI, on the 17th day of February, 2008 at Suva in the Central Division, attempted to steal MILITARY MONUMENT valued at \$100,000.00, the property of REPUBLIC OF THE FIJI MILITARY FORCE.

SECOND COUNT

Statement Offence

DAMAGING PROPERTY: Contrary to Section 324(1) of Penal Code Act 17.

Particulars of Offence

SEREMAIA SAQA, TEVITA VOIVOI, JONE RABUKAWAQA, JOELI VARO and ISOA QELENI, on the 17th day of February, 2008 at Suva in the Central division, willfully and unlawfully damaged the **MILITARY MONUMENT** valued at \$100,000.00, the property of **REPUBLIC OF THE FIJI MILITARY FORCE.**

2. The prosecution then read out their summary of facts. It said that, on 17th February 2008, after 2pm, the first and second appellant, with 3 others were seen walking along the military cemetery at Reservoir Road. They were seen by Police Officer Josese Bale. Officer Bale and others later went to the cemetery to investigate. They found out that the appellants and his friends, were damaging the military monument at the cemetery, with the intention of selling it at Lami. The military monument was worth approximately \$100,000 and it belonged to the Republic of Fiji Military Force. The appellants were later charged for "attempted larceny" and "damaging property"

3. When the above facts were put to the first and second appellants on 13th November 2008, they admitted it. The first appellant then admitted four previous convictions of larceny, obstructing a police officer and damaging property. The second appellant admitted one previous conviction of "house breaking, entering and larceny". After submitting their plea in mitigation, both were sentenced on 29th December 2008. On count no. 1, they were each sentenced to 16 months imprisonment. On count no.2, they were each sentenced to 8 months imprisonment, consecutive to the sentence in count no.1. So, in total, both appellants were sentenced to 2 years imprisonment each.

4. They are now appealing their conviction and sentence. In their petition of appeal dated 16th January 2009, they each advanced five grounds of appeal. Then they filed further grounds, in various letters. I have read them all. On conviction, their grounds could be distilled into one, that is:
 - (i) They only pleaded guilty, because "their case was dragging on for so long".
5. On sentence, the appellant's grounds could be distilled into one, that is :
 - (i) The 2 years prison sentence was "harsh and excessive".
6. I have carefully perused the court record, and the parties written submissions. I have also listened to their verbal submissions.
7. On the appellants' first complaint that, "they only pleaded guilty because their case was dragging on for so long", I have carefully scrutinized the record. Both were first called in court on 19th February 2008. The charge was read and explained to them. They said they understood them. At the time, both were represented by Mr Tinivata of the Legal Aid Commission. By 9th April 2008, both appellant had received full disclosures. Two hearing dates were set for 20th June 2008 and 5th September 2008, but they went off because the prosecution wasn't ready.

8. Another hearing date was set for 13th November 2008. On that date, both appellants "wish to change their plea". The charge was put to them. They said they understood it, and they each admitted the charge. They had the disclosures for 7 months, and will know the strength or otherwise, of the case against them. They volunteered to change their plea on 13th November 2008. They pleaded guilty to the charges and admitted the prosecutions summary of facts. In my view, on the face of the record, their guilty pleas were unequivocal. The appellant's complaint on conviction, therefore fails.
9. On the 2 years prison sentence, the appellants complained "it was harsh and excessive. "Attempted larceny", contrary to sections 381, 259(1) and 262(1) of the Penal Code, Chapter 17, carries a maximum sentence of 2 years prison. "Damaging property", contrary to section 324(1) of the Penal Code, carries a maximum of 2 years imprisonment. So, potentially, both appellants could get a total of 4 years imprisonment, on the two counts, if they were made consecutive.
10. The reasoning, given by the Learned Resident Magistrate, in imposing the total 2 years imprisonment, in my view, cannot be faulted. Military monuments placed in military cemeteries has special significance for various families and the nation, to commemorate the personal sacrifices our people have done in previous wars. It reminds us of the sacrifices of

the past, whose benefits, we now enjoy. For the appellants to have damaged it, and attempted to steal and sell it, is the ultimate act of cowardice. It is shameful and a disgrace. To complain that the 2 years imprisonment is "harsh and excessive", is to risk tempting the Court to increase it. In my view, the sentence the Learned Resident Magistrate passed on 29th December 2008 is not harsh and excessive. If anything, it was lenient. Both deserve more as deterrence to other would be offenders. They must learnt to respect the dead.

11. The appellants' appeal against conviction and sentence are therefore dismissed.

[Salesi Temo]

ACTING JUDGE

AT Suva
14th August 2009

