



housebreaking. Mr Valele pleaded guilty also to one count of theft of a mobile phone (worth \$600.00) and Mr Kaufusi guilty to one count of sodomy.

- [3] I will not set out the agreed summary of facts to which both prisoners admitted, but summarise the offending. On the 8<sup>th</sup> July 2018 at Holonga, after drinking with others until the early morning of 8<sup>th</sup> July 2018, the two prisoners left and went to the complainant's home with the purpose of committing theft. They removed the bolt of the door. There was a confrontation between the complainant in which she knocked down Mr Valele after he had tried to punch her and missed. He rushed out of the house as did the other offender, Mr Kaufusi. The complainant discovered that a watch phone and various food stuffs had been stolen. Both prisoners admitted to the offending.
- [4] The same night the prisoners were involved in far more serious offending. They broke into victim B's house in Holonga in the early morning. B is a 53 year old female. They had removed a light bulb outside and to gain entry had smashed three louvers. At least one of the prisoners was known to the victim.
- [5] The victim heard her dogs barking and had turned on the lights inside. She saw the two prisoners still outside. They broke the louvers and she tried to escape through the front door. She was grabbed by Mr Kaufusi who pulled her back inside with his hand over her mouth. Mr Valele then dragged her to a bed inside the living room whilst Mr Kaufusi smashed the living room light.

- [6] Both men were then involved in serious sexual offending. Valele took off her tights and had intercourse with her whilst Kaufusi stood by and covered her mouth with his hands.
- [7] The victim felt pain and started moving and Valele slipped out of her. He then then dragged the victim down to the floor and laid her on her back. Both accused took off her clothes.
- [8] Mr Valele then penetrated her whilst Mr Kaufusi held her mouth to stop her calling out.
- [9] Mr Kaufusi told him not to do it twice but Mr Valele said do you want me to stop it or shoot you with the gun? Kaufusi said you do what you want boss. Valele then continued intercourse.
- [10] After that, the victim asked Mr Valele to stop because it hurt. He got off whilst Mr Kaufusi sucked her breast and then lifted up her legs and penetrated her vagina. He then proceeded to penetrate her anus several times.
- [11] The victim then kept moving around. Mr Kaufusi got off her and Mr Valele proceeded to have intercourse with her again.
- [12] The victim then commenced to cry and pray. Kaufusi pulled her into a bedroom again and had intercourse with her.
- [13] The victim then managed to escape naked and called out for help. Both offenders were arrested a few days later and admitted to the offending.

[14] This offending involving two youths may be described quite simply as dreadful. The starting point which has been applied for rape offending since about 1996 in Tonga is five years. In my view, revision of this starting point upwards is required to adequately reflect the seriousness of rape in the modern age. Rape in Tonga carries a maximum sentence of 15 years. The victim was cruelly treated by these youths who had no respect or regard for her at all. The Victim Impact report indicates that the ordeal lasted between one and two hours. The report evidences how the incident has understandably affected her. She lived on her own at the time of the home invasion which she said happened at about 5 am in the morning at the time she normally gets up to go to Church. She has had support from within Tonga and from family outside and with counselling and has returned home, but it is plan that an attack of this kind will affect her indefinitely, and possibly forever. She suffered a terrible ordeal at the hands of these youths.

[15] Both have probation reports which suggest they did not progress well at school or afterwards. Mr Valele is the second child of ten. He was said not to accept parental discipline. He sniffed glue and has according to the report engaged in drugs and alcohol. He dropped out of secondary school. He was hospitalized for leukaemia in 2015 but was discharged after several months. He did not attend checkups which were to be weekly. At the time of sentencing, there was no suggestion that he was ill. He worked in the bush for income and prior to this incident and had been working with others on a village project near the victim's home. She had spoken with him about a relative that used to live with her before the incident when engaged in work near her premises. Mr Valele's father reported to probation that his son is safer when he was in prison than living in the

community. Valele has several previous convictions for drunkenness, common assault, theft and housebreaking committed since 2016. He admitted to drinking heavily the weekend of the incidents. His most recent offending involved housebreaking and theft for which he was sentenced to one year imprisonment fully suspended with probation.

[16] Mr Kaufusi is the second of six children. Although brought up in a good family when adopted, it is said he has led a different life wasted on alcohol and bad company. He has no formal qualifications and left school in form 4 as a consequence of poor attendance and discipline. He is unemployed. He has a more serious list of offending including three housebreakings and 6 thefts. He has received several sentences of imprisonment all of which have been suspended.

[17] Both youths express remorse in the probation report, although the complainant will not, understandably in my view, accept a formal apology. Both indicated remorse for what they had done before me. Mr Valele had, he said, taken a combination of alcohol and cannabis. In my experience of criminal offending this can be a very dangerous combination and those advocating the liberalisation of cannabis should consider this. Mr Kaufusi who was represented by Mr Tatila suggested that as well as alcohol, his client may have been involved in taking methamphetamine known as "ice" which is sadly becoming increasingly prevalent in Tonga and more commonly featuring in these courts.

[18] I consider that in relation to both offenders, there must be a considerable uplift in the starting point to reflect the seriousness of their offending. In relation to Mr Valele, I consider that the starting point on the head sentence which is count one of rape should be

doubled from five years to 10 years imprisonment to reflect the fact that the victim was raped twice by the prisoner in company with Kaufusi, in the early hours of the morning after breaking in to her home, that is a home invasion plainly with intent to commit a sexual offence. Valele also abetted Kaufusi to have intercourse with her. Valele also, at one point, threatened Kaufusi after the later had said do not do it twice, responded do you want me to stop it or shoot you with a gun. This must have increased the frightening nature of the ordeal to which the victim was subjected. The offending involved considerable violence as she was forced to engage in multiple sexual acts, eventually ending when she ran naked from the house.

[19] Humiliating, wanton and degrading offending such as this against women must be denounced as reprehensible by this Court, and sentences must reflect the seriousness of this offending as a deterrent and as protection for woman against predatory sexual home invasions of this kind. The Crown was unable to produce any sentence which is comparable and in nearly 7 years as a Judge here, nor can I recall any case of a comparable kind involving two youthful offenders, acting in company and with violence, with a home invasion and multiple sexual offending to this degree. Neither counsel disputed the starting points which, as I have said must sensibly reflect the seriousness of the offending in its totality.

[20] I, however, mitigate the sentence of Mr Valele by three years to reflect the early guilty plea which for sexual offending must be a significant discount, his age, and his expression of remorse, the sincerity of which may I feel be doubtful. The sentence I impose on count one after his conviction for rape is 7 years imprisonment backdated to his date of remand in custody.

[21] I order that the final 15 months of his sentence on CR 163/2018 be suspended on the following conditions;

- a) He is not to commit any offences punishable by imprisonment for the period of his suspension;
- b) He is placed on probation to live where directed ;
- c) He is not to consume drugs or alcohol during the period of his suspension;
- d) He is to undergo courses for alcohol and drug abuse, and the sexual abuse of women under the direction of probation with the appropriate agency.
- e) On count 2, rape he is convicted and sentenced to 5 years imprisonment to be served concurrently with count 1.
- f) On count 3 abetment to rape, he is convicted and sentenced to 4 years imprisonment to be served concurrently with count1.
- g) On serious housebreaking, he is convicted and sentenced to 4 years imprisonment to be served concurrently with count 1.
- h) For theft of the phone valued at \$600.00 he is convicted and sentenced to 8 months imprisonment to be served concurrently with count 1.

[22] On the additional offences of serious house breaking and theft that evening, CR 164/2018 he is sentenced to two years imprisonment on the offence of housebreaking which involved some violence and two months imprisonment on the theft. I make these sentences, however, concurrent with the sentences imposed on CR 163/2018 applying the totality principle.

[23] In so far as Mr Kaufusi is concerned, I similarly uplift the starting point, on count one rape, in his case to 11 years. This reflects the fact that he was in company with Mr Valele, when they committed the home invasion at night and subsequent sexual offending, raped the complainant more than once, abetted Valele to commit rape by holding her mouth and assisting to remove clothes, and further he committed sodomy upon her. He also was the one who first grabbed the complainant and prevented her from leaving and smashed out the living room light before the sexual offending commenced.

[24] In his case, I grant him also mitigation of three years imprisonment, for his guilty plea, youth and expression of remorse. He is sentenced to 8 years imprisonment also backdated to the date of his remand in custody, the last 15 months being suspended on the following conditions.

a) He is not to commit any offences punishable by imprisonment for the period of his suspension;

b) He is placed on probation to live where directed;

c) He is not to consume drugs or alcohol during the period of his suspension;



- d) He is to undergo courses for alcohol and drug abuse, and the sexual abuse of women under the direction of probation with the appropriate agency.
- e) On count 2 rape, he is sentenced to 5 years imprisonment to be served concurrently with count 1.
- f) On count 3 sodomy, he is convicted and sentenced to four years imprisonment to be served concurrently with count 1.
- g) On count 4 abetment to rape, he is convicted and sentenced to four years imprisonment concurrent with count 1.
- h) On count 5 serious housebreaking, he is convicted and sentenced to 4 years imprisonment concurrent with count 1.

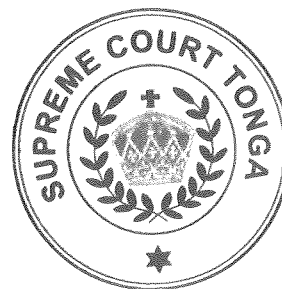
[25] On the additional offences of serious house breaking and theft that evening, CR 165/2018 for which he also pleaded guilty, I sentence him to two years imprisonment on the serious housebreaking which involved some violence and two months imprisonment on the theft. I make these sentences, however, concurrent with the sentences imposed on CR 166/2018 applying again the totality principle.


[26] I have granted both men some partial suspension with diffidence because their background does not suggest they are strong candidates to rehabilitate both having sentences of imprisonment suspended in the past, but I do so given they have pleaded guilty and also because of their youth. Further, because it is very important that they receive some supervision after release on a lengthy

sentence and are given the opportunity to attend courses as ordered as part of their suspended sentences. Both prisoners are warned that they must complete the terms of their suspension satisfactorily or they may be returned to prison to complete the balance of their term of imprisonment.

[27] I add that the sentences passed in this case reflect the sentences imposed on youthful offenders. Mature adult offenders who engage in this kind of predatory offending against women in their own homes after breaking in could expect higher sentences of imprisonment, and this judgement serves as a warning.

[28] I also ask that the Commissioner of Prisons take whatever steps are required to ensure that Mr Valele receive appropriate treatment for leukaemia (as mentioned by his probation officer) should an examination of him by a doctor suggests that is necessary or desirable.



  
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**J U D G E**

**NUKU'ALOFA: 13 February 2019**