

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 168 of 2021**

**STATE**

vs.

**MELI DAUMEKE TOUTOU**

**Counsel:** Ms. W. Elo for the State  
Ms. P. Mataika for the Accused

**Date of Hearing:** 17<sup>th</sup> to 18<sup>th</sup> January 2023

**Date of Closing Submission:** 19<sup>th</sup> & 23<sup>rd</sup> January 2023

**Date of Judgment:** 25<sup>th</sup> January 2023

**Date of Sentence:** 27<sup>th</sup> January 2023

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**SENTENCE**

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*(The name of the victim is suppressed and will be referred to as "E.V")*

**Introduction**

1. Mr. Meli Daumeke Toutou, you were found guilty and convicted on the 16<sup>th</sup> of January 2023 of count No. 2 of Sexual Assault Contrary to Section 210 (1) (a) of the Crimes Act, 2009 by this Court after trial of which I presided. The prosecution and the defence tendered written submissions on sentencing and mitigation respectively. Accordingly you appear today to be sentenced for the said offence.

**Circumstances of the Offending**

2. The victim EV is your wife's niece. EV had come to stay with you due to the

convenience of travel to school from your house. From February 2021 up until she returned to her parents at Cunningham after the end of April. EV, born on 29<sup>th</sup> of August 2008, was 13 years when you abused her whilst she was so residing at your house.

3. Your house had only one bed room. When EV used to come to the room after her bath wrapped in a towel you lower it and lick and suck her breasts. This had happened several times especially when your wife was away at work. You had made subtle threats to keep her silent. However when she returned to her parents due to the COVID and the death of her grandmother, this matter reached the ears of her mother.
4. Despite your seniority in age and familial connection you have taken advantage of an extremely vulnerable girl who is young enough to be your daughter. As it was proved that you sucked and licked her breasts to satisfy your lustful desires you were convicted for committing Sexual Assault.
5. Rape as well as sexual assault are physical invasions committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.

#### Sentencing regime

6. The maximum penalty prescribed for Sexual Assault is 10 years imprisonment. Thus, Sexual Assault is considered to be a serious offence. The tariff is between 2 years and 8 years imprisonment. Determining this in **State v Laca** - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012), Justice Paul Madigan stated thus,

*“The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in **Abdul Kaiyum** HAC 160 of 2010 that the range of sentences should be between two to eight years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.*

*A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:*

**Category 1** *(the most serious)*

*Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.*

**Category 2**

*(i) Contact between the naked genitalia of the offender and another part of the victim's body;*

*(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*

*(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.*

**Category 3**

*Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)''.*

7. The act of sucking the breasts will come within category 3 as there is no contact with the genitalia.

**Objective seriousness, culpability and harm of the offending**

8. Sexual abuse and exploitation of children seems to be prevalent and appear to have reached alarming proportions in Fiji. I observe that, of the cases transferred to this court during the past 12 months or so, a large number of matters are of rape and sexual abuse of children. Amongst those I find that a significant number of accused are elder relatives in whose custody the victims have been at the time of the offending. Now we are of greater understanding of the long-term psychological and sociological effects of child sexual abuse. Thus, sexual abuse of children is a matter of grave concern to the community. The legislature has provided heavy penalties in respect of many such offences. The seriousness with which sexual offences against young children must be viewed is reflected in the heavy penalties so prescribed for such offences.
9. The abhorrence with which the community regards the sexual molestation of young children and the emphasis attached to general deterrence in sentencing offenders is

reflected in the judgment in *R v BJW* [2000] NSWCCA 60 at [20], where Sheller JA stated that;

*“The maximum penalties the legislature has set for [child sexual assault] offences reflect community abhorrence of and concern about adult sexual abuse of children. General deterrence is of great importance in sentencing such offenders and especially so when the offender is in a position of trust to the victim. See the remarks of Kirby ACJ in R v Skinner (1994) 72 A Crim R 151 at 154.”*

10. Our courts too have said time and time again reiterated that sexual assaults upon young children, especially by those who stand in a position of trust to them, must be severely punished and heavy custodial sentences are essential if the courts are to play their proper role in protecting children and young people from sexual attacks by adults.
11. You have been found guilty of a sexual crime which is serious. The offence involves the exploitation and abuse of a vulnerable child over a period of time. There are many features that aggravate the culpability and harm factors. You subjected her to repeated abuse. The victim was coerced and intimidated to facilitate the commission of the offence and to make the likelihood of her reporting remote. The complainant felt both fear and misguided loyalty to you. She was reluctant to tell others promptly, as to what you were doing to her. No doubt this encouraged you to carry on your depraved conduct for some time taking advantage of the opportunities you had whilst living in the same house.

#### Victim Impact Report

12. According to the Victim Impact Report EV she suffers from a loss of memory, difficulty to concentrate, poor sleep and is easily disturbed after this incident. She also states that her view of males has changed and she does not mingle with outsiders but mostly remains at home. Further when she accidentally happens to see the Accused her body ‘freezes and she feels lost’. It is now well established that minor child victims of sexual abuse suffer significant and long-lasting psychological trauma. This is relevant and will be considered.
13. The aggravating factors of your offending are as follows:
  - (i). There is a serious Breach of Trust. You are an elder relative old enough to be her father. You occupied a position of power and trust in relation the child.

Such a position of power over the other who is a minor render such sexual activity morally wrong and punishable within the realms of the criminal law. EV was vulnerable to your seniority in age. You were in a position of trust. The culture and the traditions of your society expects you to protect children in the family and the community and the elders enjoy the respect of the young. You taking advantage of this culture sexually exploited EV a minor child. She was sexually abused by you from whom she was entitled to expect protection and care. You have violated the trust which the complainant placed on you and abused that position of trust.

- (ii). There was a considerable disparity in age between you and the complainant. The complainant was 13 years old at the time you committed this offence on her and you were 54 years and 40 years her senior in age.
- (iii) You sexually abused her multiple times which required planning, scheming and there was premeditation.
- (v) You took advantage of the complainant's vulnerability, helplessness and of your offending.
- (vi) You have exposed the innocent mind of a child to sexual activity at such a tender age you had no regard to her rights as a child and a human being and her right to have a happy, unmolested and peaceful childhood.

14. The mitigating factors are as follows:

- (i). You are now around 56 years of age and with a family. You have eight children from your previous marriage. Unfortunately, these are all personal circumstances and cannot be considered as mitigating circumstances,
- (ii) you are employed as a security officer earning \$150-190 per week.
- (iii). you provided shelter and accommodation to the victim during that time,
- (iv). as per your Antecedent Report, there are no previous convictions and thus, this Court considers you as a person of previous good character.

15. I am satisfied that you are manipulative; you are somewhat of a sexual predator of a prepubescent child to some extent. On the one hand this is a case which would justify a long 'denunciatory' sentence. I bear in mind that, such a sentence is one of last resort

and in the circumstances of this offending in my judgment, justice and protection of the public can and should be achieved by such a long sentence.

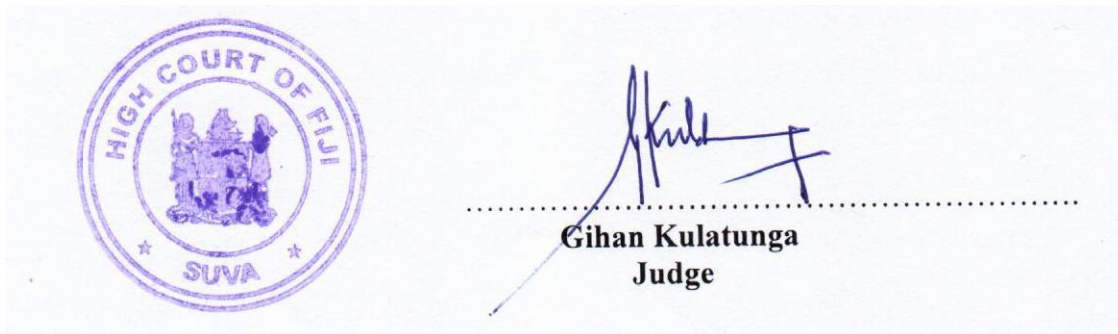
### Sentence

16. Your offending and the offence are serious, that only a custodial sentence can be justified. The least possible sentences I can impose for Count No 2, having regard to the aggravating and mitigating factors of the case is thus: As for count No. 2, of Sexual assault of sucking the breasts the applicable tariff will be category 3 the lower range of the tariff of 2 to 8 years. As such I pick a sentence of 3 years imprisonment as the starting point. I add 3 years for the aggravating factors, making a total of 6 years imprisonment for the said count of sexual assault. For the aforesaid mitigating factors I am inclined to deduct 2 years, leaving a balance of 4 years imprisonment.
17. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim the purpose of this sentence is to punish you in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to clearly manifest that the court and the community denounce what you did to the complainant.
18. Accordingly, I sentence you to four (4) years imprisonment for count No 2 of sexual assault for which you stand convicted.

### Non-Parole period

19. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a three (03) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for three (03) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.
20. You were arrested for this case on 24<sup>th</sup> of August 2021 and released on bail on 27<sup>th</sup> of August 2021. Hence you have been held in police custody for just 3 days only.
21. Accordingly, I sentence you to a period of four (04) years imprisonment for count No 2 of Sexual assault as charged and convicted. However, you are not entitled to parole for three (03) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

22. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Section 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competent Court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.
23. The complainant's name is permanently suppressed to protect her privacy.
24. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



**At Suva**

27<sup>th</sup> January, 2023.

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused