

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 47 of 2023**

**BETWEEN:**            **THE STATE**

**AND:**                    **ABOROSIO SENIVONO**

**Counsel:**        **Ms. M. Lomaloma for the State**  
                      **Ms. R. Raj for the Accused**

**Date of the Plea:**    **10<sup>th</sup> August 2023**

**Date of Sentence:**  **7<sup>th</sup> September 2023**

**SENTENCE**

1.        The Accused has pleaded guilty to the following offence on the Information: -

*First Count*

*Statement of Offence*

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM:** Contrary to section 255 (a) of the Crimes Act 2009

*Particulars of Offence*

**ABOROSIO SENIVONO** on the 5<sup>th</sup> day of June 2023 at Vunimokosoi Settlement, Cakaudrove, in the Northern Division, with intent to cause some grievous harm to **TOMASI TAWAKE** unlawfully wounded the said **TOMASI TAWAKE** by throwing a hot kettle of water at him.

*Second Count*  
*Statement of Offence*

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM:** Contrary to section 255 (a) of the Crimes Act 2009

*Particulars of Offence*

**ABOROSIO SENIVONO** on the 5<sup>th</sup> day of June 2023 at Vunimokosoi Settlement, Cakaudrove, in the Northern Division, with intent to cause some grievous harm to **TOMASI TAWAKE** unlawfully wounded the said **TOMASI TAWAKE** by hitting him with a 6 x 2 piece of timber.

2. The Accused Aborosio Senivono was first produced in the Savusavu Magistrate's Court on the 8<sup>th</sup> of June 2023 and the matter was sent up to the High Court as an indictable offence.
3. He was then arraigned in the High Court on the 27<sup>th</sup> of June 2023. On the 31<sup>st</sup> of July 2023 he advised the Court through his counsel that he wished to take a progressive approach. He then pleaded guilty to both counts on the 10<sup>th</sup> of August 2023 and the matter was adjourned to the 16<sup>th</sup> of August for the Summary of Facts to be outlined to the Accused.

**The Summary of Facts**

4. The victim in this matter is Tomasi Tawake, 55 years old, farmer of Vunimokosoi Settlement, Navonu.
5. The Accused is Aborosio Senivono, 30 years old, farmer of Vunimokosoi Settlement, Navonu.
6. The victim is the Accused's father.
7. The Accused was charged with the following offences:

- a) Count 1: Act with Intent to cause grievous harm contrary to section 255 (a) of the Crimes Act 2009.
  - b) Count 2: Act with intent to cause grievous harm contrary to section 255 (a) of the Crimes Act 2009.
8. On the 10<sup>th</sup> of August 2023, the Accused pleaded guilty to both counts.

**Facts:**

- (a) On the 5<sup>th</sup> of June 2023, at around 2pm, at Vunimokosoi Settlement, Cakaudrove, the victim was in his bedroom when he heard the Accused talking harshly to his wife who is also the Accused's mother. The Accused had told his mother for them to leave the house as it was his. The victim intervened and told off the Accused, telling him to "stop this wrong trip of marijuana." The victim then slapped the Accused's face and told him to leave his mother alone as she was sick. The victim then returned to his room.
- (b) Whilst in the bedroom, the Accused continued to talk harshly to his mother and the victim came out again to confront him. The victim picked up a war club and hit the Accused in the eye with it.
- (c) The Accused then took the kettle of boiling water and threw it at the victim. The victim tried to evade it however it was too late, and the kettle hit his stomach and the hot water spilled on him (waist down on to his right leg). The Accused was 3 metres away when he threw the kettle at the victim. The victim then ran after the Accused who had run out of the house.
- (d) The Accused then picked up a 6x2 piece of timber and struck the victim with it on the right side of his chest after the victim tried to evade it. The 6x2 piece of timber had a nail stuck to it and the same nail injured the victim when he was struck in the chest and as a result, he started bleeding. The victim fell to the ground. The Accused went and picked up another piece of timber and told the victim "Nikua sa na nomu siga" meaning "today will be your day." The victim then stood up and ran to the

road to ask for help from the other villagers where they took him to the Tukavesi Health Centre as he had sustained injuries from the assault. According to Dr. Robinson, who attended the victim at Tukavesi Health Centre, the victim sustained a penetrating injury 0.5 cm, clean, round hole, likely from a sharp object e.g., a nail.) He was given continuous supplemental oxygen via mask and was transferred to Savusavu Hospital, and all of this was noted in the medical report of Dr. Robinson tendered into evidence.

(e) At the Savusavu Hospital, the victim was attended to by Dr. Pratika Sharma who was also provided a letter detailing the injuries sustained by the victim where it was noted that there was decreased air entry into the right chest posteriorly. He was put on supportive oxygen therapy and was then referred to the Labasa Hospital for urgent surgical assessment and care. This was noted in the medical reported of Dr. Pratika Sharma tendered into evidence.

(f) After the incident, the Accused was arrested and escorted to the Tukavesi Police Station where he was interviewed under caution and made partial admissions. The Accused was then charged with two counts of Act with Intent to cause grievous harm contrary to section 255 (a) of the Crimes Act 2009.

(g) In his interview under caution, the Accused admitted to the offence in question-and-answer numbers 41 – 42, 52, 58 – 59, 64 – 65 and 71.

9. The Accused indicated that he understood and admits the summary of the facts. I am satisfied that the summary of the facts sets out all the elements of the two counts in the Information. I have also carefully examined the Accused and his demeanour in Court, and I find that he has fully understood the nature of his plea and the ramifications of the same. I find that the plea is unequivocal therefore Aborosio Senivono, you are convicted as charged on both counts in the Information.

10. According to the State, the Accused is a first offender, and he is a person of previous good conduct.

## **Mitigation**

11. In mitigation, counsel offers the following plea in mitigation: -
- (a) The Accused is 29 years of age, and he resides with his parents and siblings.
  - (b) Prior to being remanded, he was a farmer earning \$1, 000 per week.
  - (c) He is a first offender and a person of previous good conduct.
  - (d) He fully cooperated with the police officers, and he has admitted to the allegations during the caution interview.
  - (e) He has taken his early guilty plea and he has thus saved the Court's time.
  - (f) He is remorseful for his actions and seeks forgiveness.
  - (g) He has been in remand since the 8<sup>th</sup> of June 2023.
12. The maximum punishment for the offence of Act with intent to cause Grievous Harm is life imprisonment.
13. The tariff was set in the case of State -v- Maba Mokubula [2003] FJHC 164; HAA 52 of 2003 (23<sup>rd</sup> December 2003), where Justice Nazhat Shameem said as follows: -

“On the basis of these authorities, the tariff for the sentences under section 224 of the Penal Code is between 6 months imprisonment to 5 years imprisonment. In the case of an attack by a weapon, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon.

Aggravating factors would be:

1. Seriousness of the injuries;
2. Evidence of premeditation or planning;
3. Length and nature of the attack
4. Special vulnerability of the victim.

Mitigating factors would be:

1. Previous good character;
2. Guilty plea;
3. Provocation by the victim;
4. Apology, reparation or compensation.

In general terms, the more serious and permanent the injuries, the higher the sentence should be. As a matter of principle, a suspended sentence is not appropriate for a case of act with intent to cause grievous harm.”

14. Later in the case of State -v- Vakalaca HAC 027 of 2018 (31<sup>st</sup> May 2018); [2018] FJHC 455, Justice Goundar stated as follows: -

“The offence of Act with intent to cause Grievous Harm is punishable by discretionary life imprisonment. The tariff for this offence is between 6 months imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years depending on the nature of the weapon.

Thus Mokubula provides general sentencing guidance that tariff for cases under section 255 of the Crimes Act 2009, committed by any means other than a weapon, is between 6 months to 5 years imprisonment but if the attack is by a weapon the starting point should range from 2 to 5 years which means that the final sentence could be over 5 years depending on the nature of the weapon and the other aggravating circumstances. As stated by the Court of Appeal in Vosa - v- State [2019] FJCA 89; AAU 84 of 2015 (6<sup>th</sup> June 2019) the list of aggravating and mitigating circumstances set out in Mokubula is not exhaustive.”

15. Counsel submits that the Court takes the lower end of the tariff which is 2 years as the starting point of the sentence. The Court is also urged to take into consideration the Accused’s young age that he is remorseful and has saved the Court’s time by pleading guilty at the earliest opportunity. The Accused had also cooperated with the Police Officers during the investigation, and he has made admissions in his caution interview. He is a first offender and has been of previous good character until he was charged for this offence.

16. The Accused does accept that his actions may have resulted in more serious injuries if medical intervention was not done as quickly as in this case. The Accused has shown his remorse by pleading guilty thus saving the victim from taking the stand and going through the ordeal of reliving the moments of the attack.
17. Counsel also submits that the Accused was assaulted and he also sustained injuries therefore the Accused retaliated and committed the offences in this Information.
18. Counsel submits that looking at the facts and circumstances of the offending, that a suspended sentence is the most appropriate sanction bearing in mind the mitigating factors set out above.

### **Sentencing Submissions**

19. The State submits that the maximum penalty for this offence is life imprisonment and the same offence was also proscribed in the now repealed Penal Code at section 224 with the same penalty of life imprisonment.
20. The State also cites the authorities of Mokubula and Vakalaca as cited by the Accused and the State emphasises that the above authorities are very clear that “as a matter of principle, a suspended sentence is not appropriate for a case of act with intent to cause grievous harm...”
21. The State identifies the following aggravating factors in this case: -
  - (a) The victim is the father and there is a domestic relationship between them.
  - (b) The Accused had attacked and hit the victim with two different weapons, a kettle of hot water and a 6x2 piece of timber with a nail attached to it.
  - (c) The victim had sustained injuries to his waist due to the hot boiling water and to his chest due to the nail which was attached to the 6x2 piece of timber.
22. The Accused was remanded from the 5<sup>th</sup> of June 2023 therefore until today he has spent 4 months in remand.

23. The State also recommends that the interim DVRO that is in place be made a permanent order of the Court.
24. The State therefore recommends that the Court must consider all of the circumstances of this case and impose a sentence that is commensurate with the offending in this case. Condign punishment must be imposed on the Accused and the overall sentence must affect reflect the gravity of offending.
25. The State also submits that the Court adopt the tariff set out in State –v- Maba Mokubula [2003] FJHC 164; HAA 52/2003 (23<sup>rd</sup> December 2003).

### **Analysis**

26. The facts of this case indicate that this is a domestic violence offence, therefore section 4 (3) of the Sentencing and Penalties Act requires the Court to consider the following factors: -

“4 (3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —

(a) any special considerations relating to the physical, psychological, or other characteristics of a victim of the offence, including —

(i) the age of the victim;

(ii) whether the victim was pregnant; and

(iii) whether the victim suffered any disability;

(b) whether a child or children were present when the offence was committed, or were otherwise affected by it;

(c) the effect of the violence on the emotional, psychological and physical well being of a victim;

(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;

(e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —

(i) accepts responsibility for the offence and its consequences;



(ii) has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;

(iii) may pose any further threat to a victim;

(f) evidence revealing the offender's —

(i) attitude to the offence;

(ii) intention to address the offending behaviour; and

(iii) likelihood of continuing to pose a threat to a victim; and

(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance.

27. In this case the Accused's personal culpability is high as his initial verbal attacks on his mother led to the escalating actions between the victim and him.
28. The Court accepts that the victim's initial actions to protect his wife, incidentally, the Accused's own mother, exacerbated the altercation and resulted in the acts of violence that have led to the charge as it appears on the information.
29. The Court also accepts that the victim assaulted the Accused and caused him injuries although the extent of these injuries is not known as there was no medical report tendered on the Accused's behalf.
30. In sentencing the Accused, the Court adopts the tariff in State -v- Maba Mokubula [2003] FJHC 164; HAA 52 of 2003 (23<sup>rd</sup> December 2003), where Justice Nazhat Shameem said as follows: -

“On the basis of these authorities, the tariff for the sentences under section 224 of the Penal Code is between 6 months imprisonment to 5 years imprisonment. In the case of an attack by a weapon, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon.

31. This authority is still good law and applying the same to this case I find that the offending in this case lies at the lower to middle end of such offences and two separate

offensive weapons were used – the hot kettle containing boiling water and the piece of timber with the knife that punctured the victim’s chest.

32. I commence the sentence at 2 years imprisonment. The only aggravating factors for the offending is that this was a domestic violence offence committed by the Accused, 29 years, on his 55-year-old father.
33. I add 1 year for the aggravating factor identified above.
34. The major mitigating factors in this case is the guilty plea and his previous good conduct as a first offender. His guilty plea is an early plea which came after he secured legal representation.
35. I deduct 6 months for the guilty plea and 6 months for his previous good conduct as a first offender.
36. This leaves the interim sentence at 2 years imprisonment. The Accused has been in remand for 4 months therefore this period will be deducted as time already served leaving the final sentence at 20 months’ imprisonment.
37. This is a sentence under 3 years therefore it may be suspended pursuant to section 26 of the Sentencing and Penalties Act.
38. In considering whether to suspend the sentence, the Court notes the provisions of section 4 (3) and 26 of the Sentencing and Penalties Act as this is a domestic violence offence and the following factors are relevant: -
  - You are a young offender and you have pleaded guilty at an early stage of this case, saving your father from having to relive his ordeal at the trial.
  - You are a first offender and a person of previous good conduct.
  - Your personal culpability in the offending is high and at the time of the offending your actions were aggressive and escalated up to the two separate acts as set out in the charge.
  - You have taken responsibility for your actions, including your cooperation with the police in their investigations culminating in your guilty plea in Court.

- The Court finds that you are remorseful now and you have spent time in remand therefore this period has hopefully given you an opportunity to reassess your decision making and the consequences of your bad choices.

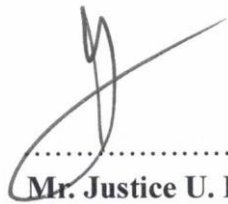
39. After considering the above factors, the Court finds that it will promote the sentencing principle of denouncing your violent actions that day however, as you have shown your remorse by your subsequent actions, the Court will also promote your rehabilitation. The Court therefore finds that the most appropriate sentence for you is a partially suspended sentence.

**Aborosio Senivono this is your sentence: -**

1. On each count of **Act with Intent to cause Grievous Harm I** sentence you to 20 months' imprisonment, to be served concurrently. Of this 20-month term of imprisonment you will serve 4 months in custody and the balance of 16 months is suspended for 3 years.
2. The interim Domestic Violence Restraining Order – Standard Non-Molestation Conditions for the protection of your father and mother, is hereby made a final order of this Court. You are hereby put on notice that any breach of this Order constitutes a criminal offence, and you may be subject to prosecution for the same.
3. The clerk will explain the suspended sentence and the final DVRO.

**30 days to appeal.**



  
.....  
**Mr. Justice U. Ratuveli**  
**Acting Puisne Judge**

**Solicitors:**

Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for the Accused