

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

**Criminal Case No. HAC 130 of 2024**

**BETWEEN** : **THE STATE**

**AND** : **Waisea Narema**

**Counsel** : **Ms S Bibi for the State**  
**Ms K Boseiwaqa for the Accused**

**Hearing** : **7 August 2024**

**Sentence** : **19 August 2024**

**SENTENCE**

**(the name of the victim is suppressed and she is referred to as 'MK')**

- [1] Waisea Narema, you appear today for sentence.
- [2] You are charged with the following two counts:

**Count 1**

**Statement of Offence**

**Sexual Assault** – Contrary to Section 210(1)(a) of the Crimes Act 2009

**Waisea Narema** on the 13<sup>th</sup> day of April 2018 at Rotuma, in the Eastern Division, unlawfully and indecently assaulted **MK** by fondling her breasts from inside her t-shirt.

**Count 2**

**Statement of Offence**

**Rape**: Contrary to Section 207(1) & (2)(b) & (3) of the Crimes Act 2009

**WAISEA NAREMA** on the 13<sup>th</sup> day of April 2018 at Rotuma, in the Eastern Division, penetrated the vulva of **MK**, a child under the age of 13 years, with his fingers.

[3] You have pleaded guilty to both counts. The summary of facts and mitigation were heard on 7 August 2024.

### **Summary of facts**

[4] The summary of facts is brief. On 13 April 2018, MK was living at home with her mother, her siblings and you. You were then married to MK's mother. MK was 10 years old and you were 55 years old. After everybody had gone to sleep that night you went into MK's bedroom and fondled her breasts and the upper part of her vulva. You then rubbed her clitoris up and down, massaging it with your fingers.

[5] On 14 and 15 April 2024, you were interviewed by the police in respect to the offending. You admitted to the offending, and you were charged by the police on 18 April 2024. You have been in remand since 14 April 2024. The total period you have spent on remand up to today is 4 months and 5 days.

[6] As I have stated, you have pleaded guilty to the two counts. I am satisfied that you pleaded guilty of your own free will. You have been legally represented by the Legal Aid Commission. You understood the consequences of the guilty plea. Your guilty pleas were informed, unequivocal and freely and voluntarily given.

[7] I have considered the facts as admitted by you. I am satisfied that the elements of the offences of sexual assault and rape are established on the admitted facts. Accordingly, I accept your plea of guilty and I convict you.

### **Mitigation**

[8] Your lawyer has offered the following mitigation on your behalf:

- You are now 61 years old and before this offending had no previous convictions.

- You are a retired civil servant, previously employed as a Field Officer with the Ministry of Agriculture. You have invested your retirement money on farming and were looking after your family up to the time of your arrest.
- You have a 7 year old daughter and a family to support.
- You have health problems. You have an old back and an eye injury.
- Your offending is a one-off incident and you are remorseful for your actions.
- You cooperated fully with the police and pleaded guilty early.

### **Sentencing Regime**

[9] The maximum penalty prescribed for rape contrary to s 207(1) and (2)(b) and (3) of the Crimes Act is life imprisonment. The tariff is between 11 years and 20 years imprisonment. As Gates CJ stated in *Aitcheson v the State* [2018] FJHC 29 (2 November 2018):

*The tariff previously set in Raj v The State [ 2014] FJSC 12 CAV 0003 of 2014 [20 August 2014] should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms.*

[10] With respect to the offence of sexual assault, Madigan J stated in *State v Laca* [2012] FJHC 1414 (14 November 2012):

*[6] 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 IIAC 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.

[7] 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)."

[11] The facts of this case fall within category 2 in respect to your offending for count one.

[12] Pursuant to s 17 of the Sentencing and Penalties Act 2009, where *'an offender is convicted of more than one offense, founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each'*. The two counts for which you have pleaded guilty arise from the same incident and, therefore, I am satisfied that it is appropriate to impose an aggregate sentence of imprisonment on you in respect to the two counts.

[13] Before doing so, it is appropriate to emphasize the following passage from Madigan J in *State v Tauvoli* [2011] FJHC 216 (18 April 2011) at [5]:

*Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.*

### **Head Sentence**

[14] In assessing the objective seriousness of your offending in this matter, I have considered the maximum sentence prescribed for the two offences, the degree of culpability, the manner in which you committed the offences and the harm caused to MK. I give due cognizance to the sentencing guidelines stipulated in s 4 of the Sentencing and Penalties Act. In my view, the appropriate starting point for your offending is 11 years.

[15] The aggravating factors that are present here are:

- i. **Breach of trust:** You are MK's stepfather. A stepfather stands in the shoes of a child's biological father occupying a significantly important role, and responsibility, in the development of a child.

- ii. **Age disparity:** There is a substantial age disparity between you and MK. You were 55 years old at the time of the offending whilst MK was only 10 years.
- iii. **Vulnerable victim:** MK was in a particularly vulnerable position not only given her young age, but because of the trust she will have placed in you.
- iv. **Exposed victim to sexual activity:** MK should not have been exposed to sexual activity at such a tender age. You have robbed her of her innocence and her childhood.
- v. **Long term consequences:** The impact of the offending will be long standing as well as significant for MK. In her Victim Impact Statement, MK states: *'When it happened to me, I felt scared and the thoughts that were running on my mind was I think my family don't like me that's why he did it to me', 'I'm scared to go out with boys, as before boys were my friends', 'People thought I was lying and they got angry at me and I felt left out', my relationship with my family was good but my friends I had to leave them', 'I felt weird amongst boys'*. I have no doubt that the offending will have other long term psychological consequences on MK, not least on her ability to trust male figures in her life.

[16] In considering a tariff for these aggravating factors I also take into account that your offending occurred on one occasion and did not involve a series of offending over a period of time. I add 4 years for these aggravating factors, taking your sentence to 15 years.

[17] The mitigating factors present is that you are a first offender. Up until this offending, you were of previous good character. You addressed the Court. You said that you were truly remorseful, and that you understand that what you have done is unacceptable. You have said that will not reoffend and you also said that when you are released back into your community you will be a spokesperson telling the community to follow the law. You also asked for forgiveness for your offending. I also note that you are 61 years old. While you are not young, nor are you yet in your advanced years. Hence, I make no deduction for your age. Nor do I make any deduction for your alleged poor health in the absence of any independent cogent medical evidence of this. I deduct 2 years for mitigating factors, leaving a balance of 13 years.

[18] In *Quray v State* [2015] FJSC 15 (20 August 2015) the Supreme Court stated:

*[54] There is no pronouncement of this Court on the question of the discount to be given for a guilty plea made at a very early stage, although this aspect of the matter was discussed by Madigan JA in his concurring opinion in Rainima v The State [2015] FJCA 17: AAU0022.2012 (27 February 2015) at paragraph [46] where his Lordship was constrained to observe as follows:-*

*"[46] Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the "high water mark" of discount is one third for a plea willingly made at the earliest opportunity. **This Court now adopts that principle to be valid and to be applied in all future proceedings at first instance.**"(Emphasis added)*

[19] You have pleaded guilty to the offences at the first opportunity as well as fully cooperated with the police. In doing so, you have spared the victim from having to provide evidence at trial and saved precious judicial and police resources. As such, you are entitled to a one third deduction. The result is a deduction of 4 years and 4 months resulting in a head sentence of 8 years and 8 months.

[20] I have considered the sentencing decisions provided by both parties in order to ensure a measure of consistency in the present case.<sup>1</sup> With the exception of one decision, I was not greatly assisted by the decisions as their facts were materially different. While all involved sexual offending by a stepfather where the victim was young, the offending was generally in the more serious category of penile rape and/or offending over a period of time. The only decision which assisted the Court, where the facts were similar to the present case, is *State v Bulicokocoko* [2024] FJHC (2 July 2024). The offender in that case committed 3

---

<sup>1</sup> *State v Bola* [2020] FJHC 750 (14 September 2020), *State v Dau* [2024] FJHC 319 (23 May 2024), *State v Nawawanalagi* [2022] FJHC 371 (15 July 2022), *State v Moroci* [2024] FJHC 285 (3 May 2024) & *State v Baleiono* [2022] FJHC 490 (18 August 2022).

counts of rape (digital and tongue) and 1 count of sexual assault all on the same date. He was found guilty following a defended trial. The accused was 58 years and the victim was 11 years. The Court imposed a head sentence of 13 years and a non-parole period of 11 years. That sentence is consistent with your sentence, the only difference being the deduction for your guilty plea.

### **Non-Parole Period**

[21] Pursuant to s 18 of the Sentencing and Penalties Act, where an offender has received a sentence of two years or more this Court must impose a non-parole period, unless the Court considers that the nature of your offenses or your past history make the fixing of a non-parole period inappropriate.<sup>2</sup> While you were of previous good character, the prevalence of sexual offending on children in Fiji, and the need for deterrence, in my view require that a non-parole period is imposed in your case.

[22] That said, the authorities make it clear that the courts must strike a balance between deterrence on the one hand and not discouraging rehabilitation on the other. As was stated by Calanchini P in *Tora v The State*:

*...the non-parole period should not be so close to the head sentence as to delay or discourage the possibility of rehabilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent.*

[23] The following remarks by Chandra JA in the Court of Appeal decision of *Naitini & Others v The State* Criminal Appeal Number AA 102 of 2010 [3 December 2015] are also relevant:

*[18] This brings about the issue of what should be the minimum limit of the non-parole period in relation to the head sentence when imposing a sentence. A useful indication is found in Maturino Raogo [supra] where it was stated that the minimum term of imprisonment should not be less than two thirds of the primary sentence. This should however, not be considered as a general rule as a*

---

<sup>2</sup> Section 18(2).



*circumstances relating to the particular case and the nature and seriousness of the crime committed and the manner in which it has been committed may require the imposition of a longer non-parole period than two thirds of the head sentence.*

*[19] It will also be necessary to consider the personal circumstances of the offender when deciding on the minimum non-parole period, as to whether he/she was a first offender or a person with a history of having committed crimes of a similar or serious nature which may have already been considered when imposing the head sentence. It would be natural for the sentencing court to be influenced by the aggravating and mitigating circumstances, which may already have been considered in imposing the sentence.*

[24] In all the circumstances, in my view a reasonable non-parole period for you is 7 years.

#### **Actual Sentence**

[25] Pursuant to s 24 of the Sentencing and Penalties Act, the period that an offender spends in remand awaiting trial shall be considered as time already served, unless the court otherwise orders.

[26] The time that you have spent on remand up to the time of this sentence is 4 months and 5 days. Pursuant to s 24, I reduce your sentence by the time already spent on remand. The result is that the actual sentence for you is 8 years 3 months and 25 days with a non-parole period of 6 years 7 months and 25 days.

#### **Sentence**

[27] Mr. Narema, you have committed the serious offences of rape and sexual assault. You breached the trust of your stepdaughter, committing offenses against a child who should have had your protection and the safety of your home. You have instead stolen her innocence leaving her with the permanent psychological scars of your selfish criminal acts.

You have ruined your own life, you have ruined the happiness of your family but worst of all you have ruined the life of your stepdaughter.

[28] Mr Narema, would you please stand.

[29] I make the following orders:

- (i) You are sentenced to a period of 8 years 3 months and 25 days imprisonment with a non-parole period of 6 years 7 months and 25 days.
- (ii) The victim, MK, will have permanent name suppression.
- (iii) I issue a permanent Domestic Violence Restraining Order against you to protect MK. The order is for a standard non molestation and non-contact conditions pursuant to ss 27 and 29 (1),(2)(a),(b) & (c) of the Domestic Violence Act 2009.
- (iv) You have 30 days to appeal to the Court of Appeal.

.....  
**D.K.L Tuiqereqere**  
**JUDGE**

**Solicitors:**

**Office of Director of Public Prosecutions for the State**

**Office of Legal Aid Commission for the Accused**