

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 72 of 2023

STATE

v

TIMOCI NAQETE

Counsel: Ms. K. Dugan for the State
Mr. I. Emasi for the Accused

Date of Mitigation/Sentence Submission: 20 May 2025

Date of Sentence: 6 June 2025

SENTENCE

Caveat – The victim shall herein be referred as **'KLUWA'** pursuant to the Name Suppression Order.

1. **Timoci Naqete**, the accused, was tried, found guilty and duly convicted on 22 April 2025 of Count 1: Sexual assault and Count 2: Rape, laid out as follows in the Information by the Director of Public Prosecutions dated 6 March 2023 and filed on 7 March 2023:

COUNT ONE

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210(1)(a) of the Crimes Act 2009.

Particulars of Offence

TIMOCI NAQETE, on the 3rd day of February 2023, at Reba Circle, Suva, in the Central Division, unlawfully and indecently assaulted **KLUWA**, by kissing her on the neck and lips.

COUNT TWO

Statement of Offence

RAPE: Contrary to section 207(1) and (2)(a) of the Crimes Act 2009.

Particulars of Offence

TIMOCI NAQETE, on the same occasion as Count 1, had carnal knowledge of **KLUWA**, without consent.

Brief facts of the Sexual assault and Rape

2. The **complainant KLUWA (PW1)** is 17 years old [D.O.B – 21/12/2006], a Form 6 student at Rishikul Sanatan College, and lives at Block 28, Flat 145, Reba Circle, Nadera, Nasinu, with her parents, siblings i.e. 2 brothers and 3 sisters, grandmother and uncle. On Friday 3 February 2023 between 11.00 am and 12.00 noon, PW1 had her bath and then went to her uncle's place situated

close to her house, to put her younger brother to sleep, as she was about to accompany her mother to go and buy school stationery and materials in preparation for the beginning of another school term. After putting her younger brother to sleep, PW1 then went to her cousin Enid's house situated about 5 meters away from her uncle's house, to visit and kiss her nephew Tufa who is 2 years old. The occupants of Enid's house at that time were Enid and her children, **Timoci Naqete (accused)** who is married to PW1's cousin Mereoni, and his father. After seeing her nephew Tufa, PW1 then washed the dishes as requested by Enid, and then went outside to get some fresh air. While outside Enid's house, Enid's daughter who is in class one approached PW1 and they began chatting, and PW1 gave her 50 cents to go and buy ice-block. As soon as Enid's daughter departed to go and buy ice-block, PW1 was then called by **Timoci Naqete (accused)** who was in the bathroom. Timoci Naqete then pulled PW1 into the bathroom using both hands, and kissed PW1's lips and neck. PW1 was scared and wanted to scream, however Timoci Naqete forcefully shoved a towel into her mouth to prevent her from screaming. After kissing PW1's lips and neck, Timoci Naqete then pulled down PW1's pants and his pants, and then sat naked on the toilet pan while PW1 remained standing. Timoci Naqete then told PW1 to sit on top of him, which she did and felt terrified at the same time. When PW1 sat on top of Timoci Naqete, he then stood up and began moving for some time while holding and carrying her up, and PW1 felt pain on her vagina being penetrated by Timoci Naqete's penis, and that was the first time for PW1 to have sexual intercourse with a man, which she did not consent to. Timoci Naqete only stopped penetrating PW1's vagina with his penis when he heard noise outside the bathroom, and told PW1 to wash herself. While PW1 was washing herself, Timoci Naqete peeped outside through the bathroom window to make sure that no one was outside the bathroom. After washing herself, PW1 then pulled up her undergarment, and Timoci Naqete told her not to tell anyone about what had just happened nor make any sound, and then pushed her outside. As soon as PW1 was outside the bathroom, she saw her mother Wati Jaoji (PW3) approaching her and also saw Timoci Naqete peeping via the bathroom window. PW3 had also seen her daughter PW1 being pushed out of the bathroom by a hand, and immediately approached PW1 and asked her as to who was inside the bathroom, to which PW1, being anxious, scared and sobbing, answered that Timoci Naqete was inside the bathroom, and he had kissed her on the lips and neck, and inserted his penis into her vagina without her consent. PW3 also saw Timoci Naqete peeping from the bathroom window and knocked on the bathroom door,

calling Timoci Naqete to come out of the bathroom, which he did after a few minutes looking surprised, scared and remained silent without uttering anything. After confronting Timoci Naqete outside the bathroom, PW3 then took PW1 and Timoci Naqete into Enid's house, and told Timoci Naqete's father in Enid's presence, that Timoci Naqete had sexually assaulted and raped her daughter PW1 inside the bathroom, and the matter will be reported to the police. PW3 then took PW1 to Valelevu Police Station and lodged the sexual assault and rape complaints on 3 February 2023. At 2.50 pm on 3 February 2023, PW1 was medically examined at Medical Services Pacific by Dr. Avelina Watisowai Rokoduru (PW2) who opined that PW1's hymen was not intact with fresh injuries suggestive of forceful penetration, and whose medical report was tendered by prosecution duly marked as prosecution exhibit 1 – [**PE1**]. Timoci Naqete was later arrested by the police, interviewed under caution on 4/02/2023, and formally charged on 5/02/2023 at Valelevu Police Station. Timoci Naqete first appeared in the Nasinu Magistrate's Court on 6 February 2023, and the matter i.e. CF 163 of 2023 was also transferred to the High Court by the learned magistrate.

Count 2: Rape sentence analysis

3. The maximum penalty for **Rape** contrary to section 207(1) & (2)(b) of the Crimes Act 2009 is life imprisonment.
4. The sentencing tariff for rape of a child including persons under 18 years is 11 to 20 years imprisonment according to Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018), and at paragraphs 24 – 25, the Supreme Court held:

[24] The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise discretion taking into account the age group of these child victims. I do not for myself believe that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.

*[25] **The tariff previously set in Raj v The State [2014] FJSC 12; CAV0003.2014 (20th 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.

5. The complainant **KLUWA** was 16 years old when she was raped by Timoci Naqete.
6. Given the sentencing tariff of 11 to 20 years imprisonment for rape of a person below 18 years, for this instant, I choose a **starting point** of 12 years imprisonment.
7. The starting point of 12 years is enhanced by 6 years due to the following **aggravating factors**:
 - a) The accused raped KLUWA who is his wife's cousin and 16 years old, by intentionally penetrating KLUWA's vagina with his penis without KLUWA's consent.
 - b) The accused had acted opportunistically and atrociously, in luring and forcefully pulling KLUWA into the bathroom and removed her clothing, kissed her lips and neck, and then raped her, knowing full well that the complainant did not consent to him inserting his penis into her vagina.
 - c) This is an incestuous and heinous rape of a vulnerable 16 year old girl and a Form 6 student at Rishikul Sanatan College, and blatant betrayal of trust by the accused who is a 25 year male adult, married to KLUWA's cousin, deemed and obliged to uphold good morals and values, protect and prevent vulnerable young girls like KLUWA from being raped and sexually abused.
 - d) The complainant KLUWA, being raped by her cousin-brother-in-law Timoci Naqete in a bathroom close to her dwelling house at Reba Circle, Nadera, Nasinu, has undoubtedly caused her emotional and psychological trauma, and Reba Circle is no longer a safe haven for her from sexual predators and exploiters. In the *Victim Impact Statement* dated 15 May 2025, the complainant KLUWA noted that her relationship with her cousin-sister has been spoiled by Timoci Naqete, the incident has affected her school work as she finds it difficult to concentrate on her school work, she is terrified of meeting new friends and share ideas with them, and hides and cry when she recalls what Timoci Naqete did to her. The Supreme Court in Aitcheson v State (supra) at paragraph 72 held, '[72] [u]ndoubtedly it has been accepted by the society that rape is the most serious offence that could be committed on a woman. Further it is said that; "A murderer destroys the

physical body of his victim; a rapist degrades the very soul of a helpless female.”

- e) Rape of young girls is becoming prevalent in Fiji, thus a scourge and menace to the entire society, compelling the need for holistic means to properly and effectively deter and prevent such societal bane. Deterrence is highly warranted weighed together with *inter alia* the sentencing objectives of punishment, retribution and rehabilitation.
8. The 18 years is reduced by 4 years due to the **mitigating factors** considering that the accused is 25 years old [D.O.B – 4/03/1998], married, reached Form 4, employed at Neels Hot Dog, and has no prior conviction, thus arriving at the interim custodial term of 14 years.

Time spent in custody

9. The 14 years imprisonment is further reduced by 2 months for **time spent in custody** pursuant to section 24 of the Sentencing and Penalties Act 2009, thus arriving at the custodial term of 13 years 10 months for Count 2 – Rape.

Count 1: Sexual assault sentence analysis

10. The maximum sentence for **Sexual assault** contrary to section 210(1)(a) of the Crimes Act 2009 is 10 years imprisonment.
11. The sentencing tariff for **Sexual assault** is 2 to 8 years imprisonment according to State v Vuli [2019] FJHC 1091; HAC205.2017 (12 November 2019) and at paragraphs 30 – 32, Justice Riyaz Hamza held:

[30] The offence of Sexual Assault in terms of section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[31] In the cases of State v Abdul Khaiyum [2012] FJHC 1274; Criminal Case HAC 160 of 2010 (10 August 2012) and State v Epeli Ratabacaca Laca [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of section 210(1) of the Crimes Act.

[32] It was held in State v Laca (supra), “The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom 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).”

12. The *Sexual assault* in Count 1 falls within Category 3 noted above, and I select a **starting point** of 2 years, enhance it by 4 years for the **aggravating factors**, reduce the 6 years by 1 year for the **mitigating factors**, and further reduce the 5 years by 2 months for **time spent in custody**, thus arriving at the head sentence of 4 years 10 months for Count 1: *Sexual assault*.

Totality principle of sentencing

13. Based on the *Totality principle* of sentencing, the custodial terms of 13 years 10 months for Count 2: *Rape* and 4 years 10 months for Count 1: *Sexual assault*, are hereby made **concurrent** to the effect that Timoci Naqete is sentenced to a concurrent custodial term of 13 years 10 months.

Non-parole period

14. Pursuant to section 18 of the Sentencing and Penalties Act 2009 and Timo v State [2019] FJSC 22; CAV0022.2018 (30 August 2019), I have decided to fix a non-parole period of 11 years 10 months imprisonment for the concurrent custodial term of 13 years 10 months.

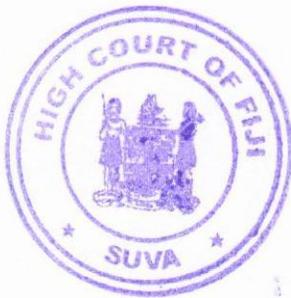
CONCLUSION

15. **Timoci Naqete** stands convicted of Count 1: Sexual assault and Count 2: Rape in the Information by the Director of Public Prosecutions, and hereby sentenced to **13 years 10 months imprisonment, with the non-parole period of 11 years 10 months imprisonment.**

Permanent DVRO, standard non-molestation, non-contact orders

16. In addition to the imprisonment sentence, pursuant to the Domestic Violence Act 2009, I hereby issue a ***Permanent Domestic Violence Restraining Order*** [s.22] with the standard non-molestation conditions [s.27] including a non-contact order [s.29] against **Timoci Naqete**, and the protected party being the complainant **KLUWA**.

17. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "Pita Bulamainivalu".

.....
Hon. Mr. Justice Pita Bulamainivalu
PUISNE JUDGE

At Suva

6 June 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused