

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 191 of 2018

STATE

v

ASENA RAIVOLI

Appearance : **Inspector Naidu** for the prosecution
Mr Buakula. J for the accused

Sentence : **1 November 2019**

SENTENCE

1. The accused, Asena Raivoli, today is for sentencing for one count of *Child Stealing* where you contravened section 284(1)(b) of the *Crimes Act*.
2. You were found guilty after trial and convicted as charged.
3. The Court in its judgment, find that on 15 April 2018, by force or fraud you take away a child under the age of 14 years from the mother at the children's ward at the Labasa Hospital.
4. The prescribed penalty for the offence is 7 years imprisonment. I am not aware of any tariff set for this offence. The Counsel for the defence was not able to draw the court attention to any case authority in our

jurisdiction or any tariff at all. The mitigation submission referred to a Papua New Guinea case authority with similar prescribe penalty of 7 years.

5. In trying to be consistent and be reasonable, I find the offence of *Kidnapping or Abducting with Intent to Confine a Person* under section 281 of the *Crimes Act* has a similar prescribed penalty of 7 years. The tariff for the offence under section 281 is between 18 months to 4 years imprisonment depending on the violence used, length of detention, use of weapon etc. In absence of any tariff for section 284, I will adopt the tariff in section 281 as guidance in reaching a reasonable and consistent sentence for this case.

6. The aggravating factors are;-

- a. *The child involved is a new born baby,*
- b. *You left the child at the cassava patch when you realise that the police is coming after you,*
- c. *You subjected the child to hunger and serious health risk during the number of hours you took the child away from his mother from the hospital.*

7. The compelling mitigating factors are;-

- a. *First offender,*
- b. *Seeking court forgiveness,*
- c. *Promise not to re-offend.*

8. For your sentence, I pick 2 years as my starting point. I add 1 year for the aggravating factors. That increase your sentence to 3 years imprisonment. I reduce 8 months for your mitigation. That reduce your sentence to 2 years and 4 months imprisonment.

9. You pleaded guilty but it was not an early guilty plea, so you are not entitle for one third reduction. However, I give some concession for your guilty plea.

I reduce 6 months for your guilty plea. That reduce your sentence to 1 year and 10 months imprisonment.

10. Your final sentence is 1 year and 10 months imprisonment.

11. I now consider section 4 of the *Sentencing and Penalties Act*. I also consider the principle of rehabilitation and deterrence. Since you have regretted your action and learnt a lesson from this case. I will give you another chance to rehabilitate yourself.

12. Asena Ravoli, I now sentence you to 1 year and 10 months imprisonment and I suspended your sentence for 2 years.

28 days to appeal.



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", is written over a horizontal line.

C. M. Tuberi
RESIDENT MAGISTRATE