

**IN THE RESIDENT MAGISTRATES COURT
AT SIGATOKA - CRIMINAL JURISDICTION**

Criminal File No. 254 of 2017

BETWEEN : State

PROSECUTION

AND : Lemeki Bakewa

ACCUSED

For the State : Inspector Shamim

For the Accused : In-person

SENTENCE

1. The Accused has been found guilty for the offence of Indecent Assault contrary to Section 212 (1) of the ***Crimes Act 2009***.
2. The brief facts are that the accused on 15th April, 2016 had used his hand to poke the buttocks of the complainant.
3. The complainant was fully clothed when this occurred.
4. In mitigation the Accused stated that he was 46 years old, married with one child. He was self-employed and would earn \$35/day for two (2) days. He stated that he was the sole breadwinner.
5. Prosecution informed the court that the accused was a first offender.
6. This court remanded the accused to await his sentencing.
7. The complainant in her evidence had also stated that she had forgiven the accused.
8. The maximum sentence for the offence of Indecent Assault is 5 years imprisonment with courts accepting that the decision in **RT Penioni Rokota v**

State HAA 68/02S as the relevant tariff for this offending. In **RT Peniona Rakota's (supra)** case Shameem J (as she then was) held that:


"Sentence for indecent assault ranges from 12 months imprisonment to 4 years. The gravity of the offence would determine the starting point for the sentence. A non-custodial sentence will only be appropriate in cases where the ages of victim and the accused are similar and assault of a non-penetrative and fleeting type"

9. In reaching the appropriate sentence the court is mindful of Section 4(1) of the **Sentencing and Penalties Act 2009** which it regurgitates herein below as follows:

"Sentencing Guidelines

4. — (1) *The only purposes for which sentencing may be imposed by a court are —*
(a) to punish offenders to an extent and in a manner which is just in all the circumstances;
(b) to protect the community from offenders;
(c) to deter offenders or other persons from committing offences of the same or similar nature;
(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;
e) to signify that the court and the community denounce the commission of such offences; or
(f) any combination of these purposes...."

10. Considering the gravity of offending, the accused's culpability, time spent in remand and first offender status this Court sentences the accused to twelve (12) months imprisonment.
11. The court considers that the indecent assault was non-penetrative and was fleeting.
12. As such the twelve (12) month imprisonment sentence shall be suspended for a period of two (2) years pursuant to section 26(1)(2)(b) of the **Sentencing and Penalties Act 2009**.
13. If the accused is convicted within the next two (2) years pursuant to section 28 of the **Sentencing and Penalties Act 2009** this sentence may be activated.
14. The clerk of the court shall explain the sentence to the accused.
15. 28 days to appeal.


J.N.L. SAVOU
Resident Magistrate
2nd January 2019

