

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 220 - 2018

STATE

-v-

MOSESE TUISORISORI

For Prosecution: IP Lenaitasi S. [ Police Prosecution ]  
Accused: Mr Samy A. as duty solicitor [ Legal Aid Commission ]  
Date of Sentence: 2<sup>nd</sup> April 2019

**SENTENCE**

**BACKGROUND**

1. **MOSESE TUISORISORI**, you have pleaded guilty to the following charge:

**Statement of Offence**

**ASSAULT OCASSIONING ACTUAL BODILY HARM:** Contrary to section 275 of the *Crimes Act of 2009*.

**Particulars of Offence**

**MOSESE TUISORISORI** on the 9<sup>th</sup> day of July, 2018 at Nasomo, Vatukoula in the Western Division assaulted **ELENI ROKOBU** thereby causing her actual bodily harm.

2. I am satisfied that your guilty plea to the charge is voluntary and that you understand the consequence of your plea. The evidence also supports your guilty plea. I have found you guilty accordingly.
3. The victim here is your 29 year old wife. You had an argument with her about clothes and that is when you punched her forehead 3 times causing her injuries.
4. Your wife was in court on the day you pleaded guilty. She says that you have sought forgiveness from her. Both of you two are still together. Both of you have 2 children to look after.

5. Your wife was medically examined about 2 hours later after you hit her. The medical officer observed amongst other things that there was a cut to her forehead and it was still bleeding.
6. Later after a police report was lodged, you were interviewed by police. You said that your wife was informed that you had been calling another girl. An argument ensued between you and your wife. You went to your friend's place. While you were at your friend's place, your wife took your clothes and some other items and burnt them. You returned home to find that you didn't have any clothes left. She told you to buy your clothes from town. You got angry and slapped your wife on the cheek. She ran to you and pulled your t-shirt. You told her to stop. She continued. You then punched her on her forehead. You said that you punched her only once. You admit causing an injury to her forehead.
7. You are not a first offender. You have previous conviction dating back to 2007 and as recent as recent as 2012 for larceny, robbery and possession of explosives.
8. You are 37 years old. You are a farmer. You have apologized to your wife. You have 2 children to look after.
9. You were granted bail on the 25<sup>th</sup> of July 2018, which is the first day you appeared in court in answer to the charge. Your bail was cancelled on the 28<sup>th</sup> of January 2019 as you were remanded for another subsequent aggravated robbery allegation. You have been in remand ever since.
10. Section 24 of the **Sentencing and Penalties Act 2009** allows the court to consider the time you have spent in remand as time served, if you are sentenced to a term of imprisonment.
11. Assuming you are sentenced to an imprisonment term, I will not consider the time you have spent in remand as time served. You were remanded largely because of of the alleged subsequent offending by you which is for aggravated robbery.

### **LAW**

12. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

### **TARIFF**

13. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence and for more serious cases to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [ see for example **State v Kalouteretere** - Sentence [ 2018 ] FJHC 845; HAC 270. 2018 ( 12 September 2018 ).

### **STARTING POINT**

14. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

### **AGGRAVATING FEATURES**

15. There is a domestic relationship in existence. This was your wife.
16. You punched her on the forehead. You accept punching her 3 times. This is in the facts proposed by prosecution and admitted by you.
17. Your sentence is increased to 8 months imprisonment.

### **MITIGATION**

18. I accept that you are remorseful.
19. You have cooperated with police.
20. You have a family to support.
21. I accept that you wife's actions at the time when burning your clothes did not help. This by no means frees you of any guilt. It simply means that I take into account the passion that must have existed at the time and what led up to your actions.
22. Your sentence is reduced to 5 months imprisonment.

### **GUILTY PLEA**


23. Your guilty plea is not early. You initially pleaded not guilty on the 8<sup>th</sup> of October 2018. You changed your plea on the 15<sup>th</sup> of March 2019.
24. I will still reduce your sentence for pleading guilty nonetheless.
25. Your sentence is reduced to 4 months imprisonment.

### **SUSPENSION**

26. I can suspend your 4 months imprisonment term either in whole or in part pursuant to section 26 (1 ) and ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009**.
27. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.
28. Your sentence will be aimed at deterrence and to punish you adequately.

### **SENTENCE**

29. You are sentenced to 4 months imprisonment.
30. You have not spent any time in remand in relation to this case and so your sentence will not be deducted any further.
31. I am inclined to suspend 3 months of your sentence for the next 2 years.
32. Commit any other offence in the next 2 years and this term held in waiting maybe activated.
33. You will serve 1 month imprisonment immediately.
34. The DVRO [ section 27 standard non-molestation conditions ] which was imposed on you and explained to you earlier on the 25<sup>th</sup> of July 2018 is made final. This is to protect your wife.
35. 28 days to appeal.

  
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Lisiate T.V. Fotofili  
**Resident Magistrate**

Dated at Tavua this 2<sup>nd</sup> day of April 2019

