

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 105 - 2019

STATE

-v-

**KINISIMERE DILIGO**

For Prosecution : WPC Chand A. [ Police Prosecution ]  
For the Defendant : Ms Henao G. [ Legal Aid Commission ]  
Date of Sentence : 14<sup>th</sup> May 2019

**SENTENCE**

**BACKGROUND**

1. **KINISIMERE DILIGO**, you are here to be sentenced upon pleading guilty to the following charge:

**Statement of Offence**

**ASSAULT OCASSIONING ACTUAL BODILY HARM**: Contrary to section 275 of the *Crimes Act* No: 44 of 2009.

**Particulars of Offence**

**KINISIMERE DILIGO** on the 10<sup>th</sup> day of April, 2019 at Tavua Town, Tavua in the Western Division assaulted **AMELE TULO** 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.
3. After having admitted the facts proposed by the prosecution and having heard you, I convict and find you guilty accordingly.
4. The victim is a 31 year old female. She was on her way to give her children's lunch and that is when you confronted her about why she was having an affair with your husband. The victim denied your allegation. You got angry and you punched her on the face and pulled her hair and you also bit her right forearm.

5. You were arrested and interviewed by police. You did not wish to say anything.
6. The victim was medically examined 4 hours later after your violence on her. There was a bite mark to her forearm and scrapes or abrasion to her knees.
7. I have no trouble accepting and I am sure that you caused those injuries. The injuries to her knees explain that the victim was pulled whilst she was on her knees and that you pulled her by the hair.
8. You have no previous conviction.
9. You have not spent any time in remand.
10. You are 37 years old. You have 5 children. The eldest is 15 years and the youngest is 3 years old. You have been married to your husband for 15 years and you all are staying together. You said that the victim was spreading rumours that your husband will leave you and that the victim called one of your children 'fatherless' or 'luveniyali'.

#### **LAW**

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

#### **TARIFF**

12. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [ see for example **Randipni Singh v The State** HAA 13 of 2016 ( 17<sup>th</sup> June 2016 ).

#### **STARTING POINT**

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

#### **AGGRAVATING FEATURE**

14. Although it was done in one setting, you punched her, you dragged her by the hair and you bit her. Your violence was barbaric.
15. I am sure that this was in public.

16. Your motivation was revenge.
17. Your sentence is increased to 9 months imprisonment because of these.

### **MITIGATION**

18. I don't accept that you are remorseful. You are stubborn and I am of the view that you feel vindicated with what you did.
19. You did not cooperate with police.
20. I accept though that you must have been upset at the time or some passion must have existed.
21. Some consideration must also be taken for your past good character as well.
22. You have a family to look after.
23. Your sentence is reduced to 5 months imprisonment.

### **GUILTY PLEA**

24. I will reduce your sentence further for pleading guilty early.
25. Your sentence is reduced to 3 months and 2 weeks imprisonment.

### **SUSPENSION**

26. I can suspend your 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. I am inclined to suspend your sentence but only in part.
29. Those who commit violence on others in retaliation or on the suspicion that a member of their family is committing infidelity, risk immediate custodial sentence.
30. Your sentence is aimed at deterrence and to punish you adequately.

**FINAL SENTENCE**

31. I order a Domestic Violence Restraining Order [DVRO] with standard non-molestation against you [ section 27 standard non-molestation conditions ] and it is for the protection of the victim in this case.
32. Breach any condition of this DVRO and you may be charged with a separate offence of breaching a DVRO.
- [ explained to the defendant ]
33. You are sentenced to 3 months and 2 weeks imprisonment.
34. 2 months will be suspended for the next 1 year.
35. Commit any other offence in the next 1 year and this suspended term may be activated.
- [suspended term explained to the defendant]
36. You will serve 1 month and 2 weeks imprisonment immediately.
37. 28 days to appeal.



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

Dated at Tavua this 14<sup>th</sup> day of May, 2019.