

**IN THE HIGH COURT OF FIJI AT SUVA**  
**[CRIMINAL JURISDICTION]**

**CASE NO: HAC. 03 of 2019**

**BETWEEN** :

**STATE**

**AND** :

**MITIELI NAMUKA**

*Counsel* : *Ms. Wakesa Elo for State*  
: *Ms. Lavinia David for the Accused*

*Hearing on* : *27<sup>th</sup> of March 2019*  
*Sentence on* : *02<sup>nd</sup> of April 2019*

**SENTENCE**

1. When your plea is taken on the 04<sup>th</sup> of March 2019, you Mr. Mitieli Namuka, the accused, in the presence of your counsel, pleaded guilty to the following count:

**COUNT ONE**

*Statement of Offence*

UNLAWFUL WOUNDING: Contrary to Section 261 of the Crimes Act 2009.

*Particulars of Offence*

Mitieli Namuka, on the 26<sup>th</sup> day of December 2018 at Nakasi in the Central Division unlawfully wounded Bulou Aseiri Tikinimasei by throwing a glass at her head.

2. Thereafter when your plea was retaken before me on the 11<sup>th</sup> of March 2019, you confirmed your previous guilty plea. Therefore, I am convinced you pleaded so unequivocally and having properly understood the consequences of such.
  
3. The summary of facts presented by the prosecution was as follows.
  - i) The complainant is Bulou Aseiri Tikinimasei ("PW1") 30 years, Domestic Duties of Salua Road, Nakasi.
  - ii) The Accused is Mitieli Namuka ("Accused") 28 years, Unemployed also of Salua Road, Nakasi.
  - iii) The accused is PW1's husband.
  - iv) In the morning of 26/12/18, PW1 and the Accused were still drinking at their home with friends when the incident happened. Around this time, he lot had been drinking about 5 cartons of Fiji Bitter beer when all of a sudden this Accused threw a glass at PW1.
  - v) She then questioned him as to why he had done that but he told her to go and sleep.
  - vi) PW1 then went and called out to their neighbor but he was at their shed and could not hear her.
  - vii) The Accused then followed PW1 to the said shed.
  - viii) This was witnessed by their landlord namely Chandra Dutt Sharma ("PW2") 58 years, Cecil – Manager of Salua Farm Road, Nakasi who had then called for police assistance after witnessing the commotion.
  - ix) The police arrived and the two were taken to Police custody where PW1 was then taken for medical examination.
  - x) The following injury was noted in her medical report dated the same day.
    - Multiple lacerations on her front forehead area and swelling.
  
4. The above facts were read over to you and explained. You having understood the same and admitted them to be true and correct, in presence of your counsel.
  
5. Section 261 of the crimes Act of 2009 reads thus;  
261. A person commits a summary offence if he or she unlawfully wounds another person.

6. I find that prosecution has adduced sufficient evidence, by way of summary of facts in proof of the alleged offence of Unlawful Wounding.
7. Therefore, I convict the accused for the offence of Unlawful Wounding contrary to section 261 of the Crimes Act of 2009.
8. The maximum punishment prescribed for the said offence of Unlawful wounding is 5 years imprisonment.
9. In **Matai v State** [2018] FJHC 25; Criminal Appeal 108.2017Ltk (26 January 2018) Justice Madigan said that the tariff for assault causing actual bodily harm where domestic violence is involved is from 6 to 18 months imprisonment.
10. Though various sentences averaging from 6-24 months are given in numerous cases, I could not find a set tariff for the offence of unlawful wounding.
11. In adopting the sentencing guidelines set out by the Court of Appeal in **Koroivuki v State** [2013] FJCA 15; AAU0018.2010 (5 March 2013), I pick 12 months as the starting point of your sentence.
9. The aggravating factors to be considered are;
  - (i) The complainant suffered an injury as a result of the your offending.
  - (ii) Breach of trust. The accused was the husband of the complainant. Although marital disputes are common, violence as exhibited by the accused in this case, must be discouraged. Instead of treating the complainant with respect, the accused treated her as if she was his property.
  - (iii) Inability to control his anger.
10. The mitigating factors to be considered are;
  - (i) The Accused is remorseful
  - (ii) He pleaded guilty at the first opportunity
  - (iii) Was co-operative with the police

11. In consideration of above aggravating factors I enhance the above sentence of 12 months imprisonment by further 3 months, and in consideration of above mitigating factors I reduce it by 6 months to come to 09 months of imprisonment.
12. As for the material available before the Court, the Accused has been in remand from 27<sup>th</sup> of December 2018 to this date for a period of about 04 months. That period should be considered as period served and rightfully be deducted from the 09 months stated above and the remainder would be 05 months.
13. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.
  26. — (1) On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.
14. In consideration of whether it is appropriate to do so, Court should consider the provisions of section 4 of the sentencing and penalties Act.
  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.
15. Next, it should be considered whether a custodial sentence or a non-custodial sentence together with non-molestation DVRO would serve the above said purposes best. Considering all the facts and circumstances of this case, including

the fact that you have been in remand for more than four months already, my view is the latter would serve best.

16. Therefore, the remainder of the Accused's sentence, the 05 months of imprisonment, would be suspended for a period of 3 years and in addition a permanent domestic violence restraining order with standard non-molestation conditions is issued for the safety and wellbeing of the PW1. This order will remain in place until vacated by this Court on an application by the PW1.
17. The effects of suspended term and the non-molestation DVRO are explained to the Accused.



**Solicitors** : ***Office of the Director of Public Prosecutions for the State  
Legal Aid Commission, Suva for the Accused***