

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

**Criminal Case No: HAC 219 of 2020**

**STATE**

vs.

**KAVENI MOCEICA**

**Counsel:** Ms. S. Tivao for the State  
Mr. T. Varinava for Accused

**Date of Hearing:** 02<sup>nd</sup> and 06<sup>th</sup> May 2022

**Date of Closing Submission:** 04<sup>th</sup> May 2022

**Date of Judgment:** 11<sup>th</sup> May 2022

**Date of Sentencing & Mitigation:** 12<sup>th</sup> May 2022

**Date of Sentence** : 16<sup>th</sup> May 2022

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**SENTENCE**

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*(The name of the victim is suppressed she will be referred to as "MT")*

**Introduction**

1. Kaveni Naitaqe Moceica, out of the 8 counts preferred against you this court found you guilty and convicted for 5 counts of Rape contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act and 2 counts of Attempted Rape, contrary to Section 208 of the Crimes Act, 2009. However, due to lack of evidence, you were acquitted of count No.6.

### Circumstances of the Offending

2. The complainant is M.T, born on 22 March 2009, was 8 years in 2017. M.T's mother is Litiana Ranadi. Kaveni the accused is the de facto partner of Miriama who is the sister of Litiana and the aunt of the victim M.T. As Litiana and her husband were unemployed M.T had been handed over to Marama to look after and to be brought up. M.T has gone to Marama when she was 7 years. Marama and Kaveni had been in this de facto relationship may be since 2004 for 19 years as at the date of this trial. Kaveni born on 28 October 1965 was 52 years old in 2017. It is admitted that M.T was looked after by Marama and Kaveni at Nadali, Nausori from 2017 to 2020. During this time M.T lived with Marama and her two daughters fathered by Kaveni. Except during the lockdown Kaveni lived with his wife and children at Sawani Village but used to visit Nadali and during the lockdown has lived at Nadali. During the said period of 3 ½ years Kaveni has sexually abused M.T.
3. The 7 charges you were convicted are in respect several acts of sexual abuse you have committed during the 3 ½ year perverse sexual escapade from 1<sup>st</sup> January 2017 to 30<sup>th</sup> June 2020. Now, if I may recap the said acts, you in 2017 asked M.T to undress and then lustfully observing her naked body caressed her right down to her thighs and licked her vagina penetrating her vagina with your tongue (count No.1). Then once again touched her breasts, buttocks and having got her to lie down you fondled and licked her vagina and the anus and have got her to touch your penis and made an unsuccessful attempt penetrate her anus with your penis (count No. 2). However, in 2018 you have applied oil on your penis and succeeded in penetrating her anus (count No. 3). You asked her to have sex with you but when she disagreed, you threatened to hit her with "Sasa" broom. You also threatened to hit her when she refused to touch your penis. You very artfully used to give the phone to your daughter who was in this house so she would be otherwise occupied and not come to the room when you were abusing M.T.
4. In 2019 you have continued to commit the said sordid perverted sexual acts and even tried to kiss her in her mouth. Then you touch her breasts, vagina and attempted to penetrate her anus

with the penis but has not succeeded (count No. 4). He also had made her suck your penis. You during this period too continued to licked her vagina and the anus as described before and penetrating the vagina with your tongue until she went to class 6 in 2019 (count No. 5). You also have made her watch phonographic videos and forced her to re-enact and perform those sexual acts. You have artfully and cunningly continued to satisfy your perverted desire of licking the prepubescent vagina of M.T in to 2020 and also you have then inserted your penis into her vagina (count No. 7) and you put your penis into her mouth got her to suck your penis and ejaculated (count No.8). These are the sordid acts I was reluctantly compelled to reproduce to lay the bare facts of this offending which necessary.

### Sentencing regime

5. The maximum penalty prescribed for Rape contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act is life imprisonment as this is undoubtedly is considered to be a very serious offence. The tariff is between 11 years and 20 years imprisonment. Determining the said applicable tariff Gates C.J., in **Aitcheson v. State** (**[2018] FJSC 29; CAV0012.2018 (2 November 2018)**) held that,  
  
*“The tariff previously set in Raj v The State [2014] FJSC 12 CAV0003.2014 (20<sup>th</sup> August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome. The increased tariff represents the denunciation of the courts in the strongest terms.”*
6. As for Attempted Rape, contrary to Section 208 of the Crimes Ac the sentence prescribed is a maximum of 10 years’ imprisonment and the tariff as determined in Anumia v. The State [2001] FJHC 105 HAC003J.2001S (27<sup>th</sup> June 2001) is between 12 months and 5 years imprisonment.
7. In the case of **State v. Tauvoli** [2011] FJHC 216; HAC 27 of 2011 (18 April 2011); His Lordship Justice Paul Madigan stated:

*“Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.”*

8. Rape is a physical invasion committed on the victim under a coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.
9. You have been found guilty of a series of sexual crimes of utmost gravity. The offences involved the exploitation and abuse of a vulnerable child over a long period. There are many features that aggravate the culpability and harm factors. The depravity was extreme. You subjected her to repeated abuse in every imaginable form. The victim was threatened, coerced and intimidated to facilitate the commission of the offences and to make the likelihood of her ever reporting them remote. You had power over the child. If the child showed reluctance, you would enforce compliance with threats and force. You may not have been in, day-to-day control, but you were in a position to enforce your power over her when you wanted to do so as you were in a de facto relationship with her aunt who was the virtual adopted mother and guardian of M.T. The complainant felt both fear and misguided loyalty to you. She was reluctant to tell others what you were doing to her. No doubt this encouraged you to carry on your depraved conduct for almost 3 ½ years.
10. The victim impact report states that this crime has adversely affected the Complainant emotionally and psychologically. According to the Victim Impact Report, M.T has said that the offence has made her feel sick most of the time and she suffers body pains which affect her studies and chores. She distances herself from people as she is ashamed of what Kaveni had done to her. M.T says that she hardly goes out to play or mix around with friends because of the bad thing which was done to her. She finds it hard to socialize with others because of

Kaveni's actions and that the incident keeps coming into her mind from time to time when she is at home. It is clear from the victim impact statement that your offending has had a very significant and long-lasting psychological impact on the minor a vulnerable complainant which must be considered in sentencing.

11. The aggravating factors are as follows:

- (i) Serious Breach of de facto Parental Trust. You, acknowledged that your role was one of de facto parent to a child *vis-à-vis* the victim and now it is proved that you raped her. You occupied a position of power and trust in relation to your virtual stepdaughter. Such a position of power over the other who is a minor renders such sexual activity morally wrong and punishable within the realms of the criminal law. M.T was vulnerable to your seniority in age and the de facto familial standing due to your affinity with her aunt Marama who was the only other adult in the house. You were in a position of trust. The culture and the rich traditions of the Fijian society expects you to protect little children in the community and the elders enjoy the respect and veneration of the young. You taking advantage of this rich culture sexually exploited TM a minor child. As echoed in many a Judicial pronouncement, sexual exploitation of children within their own home by known elders has become a social menace. Therefore, I find this offending is a severe crime. The rape of a child is an appalling and perverse use of male power exploiting to the full the position of power which you held over her. She was raped in the safety of her own home so to say, by a person from whom she was entitled to expect protection. The accused has violated the trust which the complainant and her mother placed in him and abused that position of trust
- (ii) There was a considerable disparity in age between you and the complainant. The complainant was between 8 and 11 years old at the time you committed these offences on her and you were between 52 and 55 years and so you were 42 year her senior in age.
- (iii) You sexually abused her and raped her multiple times during 2017 and 2020
- (iv) This involved planning, long term scheming and premeditation.

- (v) You took advantage of the complainant's vulnerability, helplessness and naivety.
- (vi) You have exposed the innocent mind of a child to sexual activity at such a tender age you had no regards to her right as a child, her right as a human being and her right to live a happy unmolested and peaceful life.
- (vii) You had caused untold misery to her family.

12. The mitigating factors are as follows:

- (i). Kaveni, you are now 56 years of age and married with 3 children all are over 22 years and 3 children from Marama between the ages of 2 and 19 years. You have been a farmer by profession. Unfortunately, these are all personal circumstances and cannot be considered as mitigating circumstances.
- (ii). As per the Antecedent Report filed, it is noted that there is one previous conviction in 2004 which will be disregarded. You have no pending cases either. Therefore, Court considers you as a person of previous good character.

### Sentence

13. Your offences are so serious that only a custodial sentence can be justified. The least possible sentences I can impose, having regard to the aggravating and mitigating factors of the case, will be as follows:

- (i) We will start with the serious offences of rape. For counts 1, 3, 5, 7 and 8, I pick and start with a sentence of 15 years imprisonment. I add a modest 3 years for the aggravating factors, making a total of each sentence 18 years imprisonment. For the mitigating factors I deduct 2 years, leaving a balance of 16 years imprisonment. Thus, on counts 1, 3, 5, 7 and 8 (rape), I sentence you to 16 years imprisonment for each of the said counts separately.
- (ii) Now, let's consider the counts of Attempted Rape. For Counts 2 and 4, I pick and start with a sentence of 4 years imprisonment. I add a modest 3 years for the aggravating factors, making a total of 7 years imprisonment for each count separately. For the

mitigating factors, I deduct 2 years, leaving a balance of 5 years imprisonment. Thus on counts 2 and 4 (Attempted rape), I sentence you to 5 years imprisonment for each of the said counts separately.

14. I am satisfied that you are manipulative; you are somewhat of a sexual predator of prepubescent children to some extent; you are dangerous. The public and in particular young females and prepubescent children need protection from you. On the one hand this is a case which would justify a long 'denunciatory' sentence. I bear in mind that, such a sentence is one of last resort. However, in the circumstances of this offending in my judgment, justice and protection of the public can and should be achieved by such a very long sentence.
15. Thus, to in my thinking the sentences on your offences must be consecutive. However, I have to bear in mind totality. To that end and to meet the a just compromise between the competing factors and interest of the society and that of the accused, the sentences of Rape counts 1, 3, 5, 7 and 8 will run concurrently.
16. In the same vein sentences of Attempted Rape counts 2 and 4 too will run concurrently. But these concurrent sentences will run consecutively to the concurrent sentences of Rape counts 1, 3, 5, 7 and 8.
17. Total sentence therefore is 21 year's imprisonment.
18. In view of the reasons discussed above, I sentence you to a total period of twenty one (21) year's imprisonment for the counts of Rape and Attempted rape for which you stand convicted.

#### Non-Parole period

19. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a Fifteen (15) year non-parole period would serve

the purpose of this sentence. Hence, you are not eligible for parole for Fifteen (15) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

20. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed on the victim who was the your virtual step-daughter aged between 8-11 years compels me to state that the purpose of this sentence is to punish you in a manner that is just in all the circumstances, protect the community, deter like-minded offenders and to clearly manifest that the court and the community denounce what you did to the complainant between for 3 ½ years and in a manner which is just in all the circumstances of the case.

#### Head Sentence

21. Accordingly, I sentence you to a period of twenty-one (21) years imprisonment for the counts of Rape and attempted rape as charged and convicted. However, you are not entitled to parole for Fifteen (15) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.


#### Actual Period of the Sentence

22. You were in arrested remanded for this case on 25 July 2020 and had been in remand up to date. You have been in custody for a period of nearly 21 months. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 21 months be considered as imprisonment that you have already served.
23. Accordingly, the actual sentencing period is nineteen (19) years and three (03) months imprisonment with a non-parole period of thirteen (13) years and three (03) months
24. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Section 24 and 28 of the Domestic Violence



Act. The above Domestic Violence Restraining Order will be in force until this Court or any other competent Court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.

25. The complainant's name is permanently suppressed to protect her privacy.
26. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



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**Justice K.M.G.H.Kulatunga**

**At Suva**  
16 April 2022

**Solicitors**  
Office of the Director of Public Prosecutions for the State.  
Legal Aid Commission for the Accused