

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

**Criminal Case No. HAC 27 of 2019**

**BETWEEN** : **THE STATE**

**AND** : **APISAI LOMANI JUNIOR and LEONE NAISAKE**

**Counsel** : Mr. Vosawale M. with Ms. Mishra P. for the State  
Mr. Rabuku J. with Mr. Cati L for the 1<sup>st</sup> Accused  
Mr. Vosarogo F. for the 2<sup>nd</sup> Accused

**Judgment** : 2 November 2022

**Sentence** : 16 November 2022

**SENTENCE**

1. Following a trial, the Accused persons were convicted of the murder of Filipe Loloma at Wailoaloa farm, Kadavu, on the 26<sup>th</sup> day of December 2018. Accused 1 was also convicted of giving false information to a Police officer.
2. The deceased was originally from Rewa in Viti Levu. At the time of this offence in 2018, he was staying and farming at Wailoaloa farm in Kadavu. A short distance away from his farmhouse was the 1<sup>st</sup> Accused's farmhouse.
3. On 26 December 2018 at Vacalea village, Kadavu, the two accused persons and a few others carried on a drinking party which started from after lunch on Christmas Day.

Alcohol was consumed and the party lasted throughout the night and up to sometime after midday on 26 December 2018 when the group, led by the 1<sup>st</sup> Accused, left for Wailoaloa farm. At the top of the hill overlooking the farm, the men were divided into two groups, descending on both sides of the deceased's farm house. Though Accused 1 had said for no one to assault the deceased, things changed when the group descended on the farm at Wailoaloa.

4. The deceased, upon seeing the men approaching, ran from his farm house. The 2<sup>nd</sup> Accused gave chase and immediately dealt heavy, forceful blows to the deceased's head, face and chest, swearing at the deceased while he was doing so. The group led by Accused 1 heard the deceased scream. When Accused 1 arrived where the 2<sup>nd</sup> Accused was assaulting the deceased, he too punched the deceased on the head and chest and hit the deceased's body with the flat surface of the cane knife he was holding. The 2<sup>nd</sup> Accused stomped and kicked the deceased on the chest and abdominal area.
5. The deceased was left at the farm injured and bleeding and the group returned to the village. It was the last time anyone would see the deceased alive.
6. A postmortem examination revealed the cause of death as being severe bleeding within and underneath the second covering of the brain, or brain injury due to severe blunt force trauma to the head. Bleeding and bruising between the last layers of the skin over the skull indicated severe force applied to the head.
7. I found that the accused person's conduct in punching the deceased's face and head caused his death and that they were reckless as to causing death.
8. The penalty for murder is a mandatory sentence of imprisonment for life with a judicial discretion to set a minimum term to be served before pardon may be considered.
9. The sentence is therefore one fixed by law. The length of a minimum term to be served before pardon may be considered, is a matter of judicial discretion.

10. Of the penalty for murder under section 237 of the Crimes Act, the Court of Appeal in *Aziz v State* [2015] FJCA 91; AAU112.2011 (13 July 2015) opined:

This is a particular sentencing enactment that applies specifically to an offender convicted of murder. Pardon is part of the prerogative of mercy exercised by the President on the recommendation of the Mercy Commission under section 119 of the Constitution. The pardon may be free or conditional (section 119 (3) (a)). The effect of a free pardon is to clear the person from all consequences of the offence for which it is granted and from all statutory or other disqualifications following upon conviction, but not to remove the conviction (8 (2) Halsburys 827).

And later:

...any person convicted of murder should be sentenced in compliance with section 237 of the Crimes Decree. For the same reason the discretion given to the High Court under section 19(2) of the Sentencing Decree, being an enactment of general application, does not apply to the specific sentencing provision for murder under section 237 of the Crimes Decree.

11. As to the fixing of a minimum term in murder cases, Goundar J in *State v Singh* [2009] FJHC 27; HAC072.2008 (4 February 2009) at [5] stated:

In my view, there are no hard and fast rules for minimum term in murder cases. Each case is to be assessed on its own facts. If the court finds aggravating features present in a case of murder, the court has discretion to fix minimum term, after weighing the aggravating circumstances against any mitigating factors.

12. In *State v Masicola* [2015] FJHC 411; HAC081.2014S (5 June 2015), Temo J stated:

The offence of "murder" (count no. 1) is often said to be at the top of the criminal calendar. To preserve human life is a fundamental objective in preserving and maintaining the wellbeing of our society. Our lawmakers had prescribed a mandatory penalty of life imprisonment for those found guilty of murder. The court is empowered "to set a minimum term to be served before a pardon may be considered" (Section 237 of the Crimes Decree 2009). A pardon

may only be granted by His Excellency The President of the Republic of Fiji (Section 119 of the 2013 Fiji Constitution). Minimum terms for murder had been set between 26 to 11 years imprisonment, depending on the mitigating and aggravating factors...

13. More recently in *Balekivuya v State* [2016] FJCA 16; AAU0081.2011 (26 February 2016), the Court of Appeal said of the mandatory penalty for murder:

It must be recalled that life imprisonment means imprisonment for life (Lord Parker CJ in *R v Foy* [1962] 2 All ER 246). The trial Judge when sentencing a person convicted of murder is required to exercise a discretion in two ways. The first is whether a minimum term should be set. The second is the length of the minimum term that should be served before a pardon may be considered. The use of the word "*pardon*" in the penalty provision is not the same as what is sometimes referred to as an "*early release*" provision. The word "*pardon*" is not defined in the Crimes Decree nor is it defined in the Sentencing Decree. The only reference to the word "*pardon*" that is relevant to sentencing is to be found in section 119 of the Constitution. Under section 119(3) the Prerogative of Mercy Commission (the Mercy Commission), on the petition of a convicted person, may recommend that the President exercise a power of mercy by, amongst others, granting a free or conditional pardon to a person convicted of an offence.

[37] In my judgment the effect of section 237 when read with section 119(3) of the Constitution is that a convicted murderer may not petition the Mercy Commission to recommend a pardon until that person has served the minimum term set by the trial Judge. The reference to minimum term in section 237 has nothing to do with early release. The Mercy Commission may or may not make the necessary recommendation to the President. Furthermore, the matters that the Mercy Commission takes into account in deciding whether to recommend a pardon may or may not be the same as the matters that are taken into account by the trial judge when he sets the minimum term.

14. Aluthge J in *State v Aminio Turagava* [2016] FJHC 165; HAC137.2014 (15 March 2016) stated:

An offender convicted of Murder will have demonstrated a high level of culpability. Even so, the precise level of culpability has to be decided in light of the circumstances of the offending and whether the offence was planned or spontaneous. Accused did not use a weapon. There is

no evidence of pre planning. Accused said he was angry and under the influence of liquor.

15. There is no requirement to consider a period spent in remand when imposing the mandatory sentence of life imprisonment for murder. (See *Balekivuya* (supra), at [41])
16. The maximum penalty for giving false information is 5 years imprisonment.

#### Accused 1

17. The 1<sup>st</sup> accused is 37 years old and is the youngest of seven children. He has three children with a married wife. He is currently in a de facto relationship and has two children. His partner is five months pregnant. This is his first offending.

#### Accused 2

18. The 2<sup>nd</sup> Accused is 30 years old. He is not married but has an 11 month old child. He was educated up to Class 8. It is submitted he has not had many opportunities in life and has been disadvantaged by his circumstances. It is submitted that he had cooperated with the Police and expressed remorse from the beginning and given that he was found to have been reckless, in the conduct which resulted in death, that this be reflected in his sentence.
19. In all, the only meaningful matter of any mitigating value is the accused persons' previous good character, and also that this appears to have been a spontaneous offending.
20. Any prior cooperation with the Police and expression of remorse in the course of investigations must be seen in the context of conduct throughout these proceedings which were vigorously defended. That they chose to exercise their right to a trial is not held against them. However, apart from counsel's plea for mercy, the accused persons showed no remorse for their crime. Any expression of remorse at this stage rings hollow and insincere.
21. The sustained violent attack on the deceased was brutal to say the least. Following the violent attack, he was left at the farm to die. The gratuitous violence and then abandoning

the deceased, injured and bleeding at a remote farm, showed blatant disregard for another person's right to life. These serious aggravating factors warrant the fixing of a minimum term.

22. The minimum term means the accused persons are not eligible to apply for pardon until they have served this term. An application for pardon will have to be made to the President who may, or may not grant a pardon, upon the advice of the Mercy Commission.
23. For the murder of Filipe Loloma, I sentence the accused persons, Apisai Lomani and Leone Naisake to life imprisonment, with a minimum term of 18 years imprisonment before pardon may be considered.
24. For giving false information to a Police officer, Accused 1 is sentenced to 8 months imprisonment, to be served concurrently with the sentence for murder.



  
Sivainu F. Bull  
**Acting Puisne Judge**

**Solicitors:**

Office of the Director of Public Prosecutions for the State

John Rabuku Lawyers for the 1<sup>st</sup> Accused

Vosarogo Lawyers for the 2<sup>nd</sup> Accused