

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 64 of 2023

STATE

V

TIMOCI NAWARA

Counsel : Ms. Saini Naibe with Ms. Shreta Prakash for the State
Mr. Paula Gade for the Accused

Sentence Hearing : 2 November 2023

Sentence : 23 January 2024

SENTENCE

[1] Timoci Nawara, as per the Amended Information filed by the Director of Public Prosecutions (DPP) you were charged with the following offence:

COUNT ONE

Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

TIMOCI NAWARA, on the 15th day of April 2023, at Nasomo, Vatukoula, in the Western Division, with intent to cause some grievous harm to **JOSEVA NATAVELawe**, unlawfully wounded the said **JOSEVA NATAVELawe** with a kitchen knife by stabbing him.

[2] This matter was first called before the High Court on 10 May 2023, and the State sought time to file Information and Disclosures.

[3] Accordingly, on 20 July 2023, the State filed the Disclosures relevant to the case. On 1 September 2023, the State filed the Information (with an Amended Information formally filed on 15 September 2023).

[4] On 5 September 2023, you were ready to take your plea. You pleaded guilty to the one count in the Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charge against you and the consequences of your plea.

[5] Thereafter, on 4 October 2023, the State filed the Summary of Facts. The Summary of Facts were read out and explained to you and having understood you agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the charge in the Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the charge of Act Intended to Cause Grievous Harm.

[6] Timoci Nawara, I now proceed to pass sentence on you.

[7] The Summary of Facts filed by the State was as follows:

1. *The accused in this matter is Timoci Nawara (hereinafter referred to as "accused"), who was 36 years old, unemployed of Vunitavioka, Nasomo, Vatukoula at the time of the offence.*
2. *The complainant in this matter is Joseva Natavelawa (hereinafter referred to as "complainant"), who was 28 years old, farmer of Nasogovatu Settlement, Nasomo, Vatukoula at the material time.*
3. *On 15th April 2023, the accused and the complainant together with some other friends were having a drinking party at one Waisea's residence at Nasomo, Vatukoula.*
4. *Whilst the drinking party continued, the accused and the complainant had an argument and had challenged each other to fight.*
5. *However, prior to the fight, the accused had gone to the washroom and whilst returning from the washroom, the accused had picked up a kitchen knife from the kitchen and kept it with himself.*
6. *The accused and the complainant then went to the roadside to fight each other.*
7. *During the fight, the accused stabbed the complainant twice and punched his face causing injuries to the complainant.*

8. *The accused had brought the kitchen knife from the kitchen as he had intention to cause grievous harm to the complainant.*
9. *Attached herein and marked **Tab A** is a copy of the caution interview of the accused.*
10. *Also attached herein and marked **Tab B** is a copy of the Medical Examination Form of the complainant.*
11. *The accused was subsequently charged for one count of Act Intended to Cause Grievous Harm contrary to Section 255 (a) of Crimes Act 2009.*
12. *The accused pleaded guilty to the charge on 5th September 2023.”*

[8] Timoci Nawara you have admitted to the above Summary of Facts and taken full responsibility for you actions.

[9] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

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.

[10] Furthermore, Section 4(2) of the Sentencing and Penalties Act provides that in sentencing offenders a Court must have regard to the following factors—

(a) the maximum penalty prescribed for the offence;

(b) current sentencing practice and the terms of any applicable guideline judgment;

(c) the nature and gravity of the particular offence;

(d) the offender's culpability and degree of responsibility for the offence;

(e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;

(f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

(g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;

(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;

(i) the offender's previous character;

(j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and

(k) any matter stated in this Decree as being grounds for applying a particular sentencing option.

[11] Timoci Nawara I have duly considered the above factors in determining the sentence to be imposed on you.

[12] In terms of Section 255 (a) of the Crimes Act No. 44 of 2009 (Crimes Act) "A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

(a) Unlawfully wounds or does any grievous harm to any person by any means....."

The prescribed penalty for this offence is imprisonment for life.

[13] The offence of Act with Intent to Cause Grievous Harm also existed under the Penal Code (Section 224 of the Penal Code), with the same prescribed penalty of life imprisonment.

[14] In ***State v. Maba Mokubula*** [2003] FJHC 164; HAA 52J.2003S (23 December 2003); Her Ladyship Madam Justice N. Shameem said:

"On the basis of these authorities, the tariff for sentences under section 224 of the Penal Code, is between 6 months imprisonment to 5 years imprisonment. In a case of an attack by a weapon, the starting point should

range from 2 years imprisonment to 5 years, depending on the nature of the weapon.

Aggravating factors would be:

- 1. Seriousness of the injuries;*
- 2. Evidence of premeditation or planning;*
- 3. Length and nature of the attack;*
- 4. Special vulnerability of the victim;*

Mitigating factors would be:

- 1. Previous good character;*
- 2. Guilty plea;*
- 3. Provocation by the victim;*
- 4. Apology, reparation or compensation.*

In general terms, the more serious and permanent the injuries, the higher the sentence should be. As a matter of principle, a suspended sentence is not appropriate for a case of act with intent to cause grievous harm.....”

- [15] His Lordship Justice Madigan in ***State v. Emosi Taku Tuigulagula*** [2011] FJHC 163; HAC 31.2010 (15 March 2011); stated thus:

*“The maximum penalty for this offence is life imprisonment and the Court of Appeal has said in ***Shaukat Ali*** (1976) 22 FLR 87 that for this offence a custodial sentence is inevitable. The offence is akin to section 224 of the old Penal Code and so the authorities pertaining to that section are relevant. In the case of ***Mokubula*** (2003) FJHC 164, Shameem J set out several cases of assault intending to cause grievous bodily harm and came to the conclusion that the then prevailing "tariff" was between 6 months imprisonment to 5 years imprisonment, but stressing that where a weapon was used the starting point should be 2 years.”*

- [16] However, in the above case, Justice Madigan sentenced the accused, who pleaded guilty for striking his wife with a cane knife, severing her fingers in both hands, excluding the thumbs, and also injuring the head, to 6 years imprisonment.

- [17] In ***State v. Asesela Rabia*** [2012] FJHC 877; HAC074.2011 (22 February 2012); the Fiji High Court followed the tariff that had been adopted in ***Mokubula and Tuigulagula*** (*supra*).

- [18] In ***State v. Seremaia Nalulu & 4 others*** [2013] FJHC 358; HAC 155.2010 (23 July 2013); His Lordship Justice Paul Madigan, while adopting the above tariff held as follows:

“The maximum penalty for act with intent to cause grievous harm contrary to Section 255(a) of the Crimes Decree 2009 is life imprisonment. Despite the

*accepted tariff being between 6 months and 5 years (as set by Shameem J in **Mokubula** (2003) FJHC 164) much higher sentences have been passed when the circumstances dictate. In **Tuigulagula** HAC 81 of 2010 this Court passed a sentence of six years on a husband who did very serious harm to his wife. The penalty being life imprisonment, it is to be regarded as a very serious offence indeed and sentences of up to 8 years would not be out of order.”*

[19] In **State v. Taniela Vakalaca** [2018] FJHC 455; HAC027.2018 (31 May 2018); His Lordship Justice Goundar held:

*“The offence of Act with Intent to Cause Grievous Harm is punishable by discretionary life imprisonment. The tariff for this offence is between 6 months imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon (**State v Mokubula** [2003] FJHC 164; HAA0052J.2003S (23 December 2003)). Further, the offence may be aggravated by the seriousness of the injuries, premeditation or planning, length and nature of the attack and vulnerability of the victim.....”*

[20] In **Vosa v. State** [2019] FJCA 89; AAU0084.2015 (6 June 2019); the Fiji Court of Appeal while making reference to the tariff range and the sentences imposed in the above mentioned cases said that they provide some form of guidance in sentencing offenders for the offence of Act with Intent to Cause Grievous Harm, subject of course to the different aggravating and mitigating circumstances prevalent in those cases.

[21] This Court adopted the said tariff in the following cases:

1. **State v. Jese Mateavula Toma** [2019] FJHC 648; HAC79.2018 (28 June 2019);
2. **State v. Emosi Banuve** [2019] FJHC 1022; HAC88.2019 (24 October 2019);
3. **State v. Isoa Boseyaco** [2019] FJHC 1037; HAC48.2018 (30 October 2019);
4. **State v. Jonacani Salabula** [2020] FJHC 47; HAC406.2018 (6 February 2020);
5. **State v. Etasa Digo** [2020] FJHC 514; HAC107.2020 (7 July 2020);
6. **State v. Kiso Salawaqa** [2020] FJHC 921; HAC180.2020 (5 November 2020); and
7. **State v. Kaukiovalau** [2021] FJHC 170; HAC227.2020 (12 March 2021).
8. **State v. Saula Tuiqalau** [2022] HAC251.2021 (9 March 2022).

[22] Having regard to the above authorities, and since a weapon (a kitchen knife) had been used in the instant case to attack the complainant, I consider the tariff for the offence

of Act with Intent to Cause Grievous Harm in the instant case to be between 2 years to 5 years imprisonment.

[23] In determining the starting point within the said tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”

[24] Timoci Nawara, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 2 years imprisonment for the charge of Act Intended to Cause Grievous Harm.

[25] The aggravating factors in this case are as follows:

- (i) The frequent prevalence of offences of this nature in our society today.
- (ii) The nature and extent of the injuries caused to the complainant as a result of your actions. The Medical Examination Report of the complainant confirms that he sustained cut injuries on his right cheek and on his left lateral cervical region. He had also sustained acute soft tissue injuries on his neck and face.
- (iii) This Court is of the opinion that your actions were premeditated since you had picked up a kitchen knife just prior to the fight with the accused.

[26] The mitigating factors in this case are as follows:

- (i) That you fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (ii) You have submitted that you are truly remorseful of your actions and have undertaken to reform and not to re-offend.
- (iii) That you entered a guilty plea at the earliest given opportunity in these proceedings.

[27] Considering the aforementioned aggravating factors, I increase your sentence by a further 4 years. Now your sentence is 6 years imprisonment.

[28] I accept that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine and also the fact that you have undertaken to reform and not re-offend. Accordingly, considering these mitigating factors, I deduct 2 years from your sentence. Now your sentence is 4 years imprisonment.

[29] I accept that you entered a guilty plea at the earliest given opportunity in these proceedings. By doing so, you saved precious time and resources of this Court. For your guilty plea I grant you a further discount of 12 months. Now your sentence is 3 years imprisonment.

[30] Accordingly, I sentence you to a term of 3 years imprisonment for the charge of Act Intended to Cause Grievous Harm.

[31] The next issue for consideration is whether your sentence should be suspended.

[32] Section 26 of the Sentencing and Penalties Act provides as follows:

(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.

(2) A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate's Court.

[33] Timoci Nawara you are now 37 years of age (Your date of birth is 13 July 1986). You are said to be single. You are residing at Vunitavioka, Nasomo, Vatukoula. You are said to be a Farmer by occupation earning around \$120.00 per week. You are said to be the sole breadwinner of your family looking after your elderly parents.

[34] Timoci Nawara, I am conscious of the fact that first offenders and offenders who have pleaded guilty and expressed remorse, would usually be granted a non-custodial sentence.

[35] However, as per the previous convictions report filed by the State, I find that there are four previous convictions recorded against you. Two of the previous convictions are of recent origin – (i) On 11 May 2022, you had been imposed a fine of \$100.00 by the Tavua Magistrate's Court, For Failure to Comply with Orders (MC Tavua Case No. CF 130 of

2020); and (ii) On 11 April 2023, you had been sentenced to 4 months imprisonment, which term had been suspended for 36 months, by the Tavua Magistrate's Court, for the offence of Theft (MC Tavua Case No. CF 59 of 2023).

[36] Therefore, considering the nature and gravity of the offending and your culpability and degree of responsibility for the offending, and the above previous convictions recorded against you, I am not inclined to suspend the entirety of your sentence. I am of the opinion that a partial custodial sentence is appropriate in the given circumstances so as to deter you and other like persons from committing such criminal acts.

[37] Accordingly I order that you must serve in custody 1 year of the 3 years term of imprisonment this Court is imposing on you. The balance term of 2 years is suspended for a period of 5 years.

[38] Section 24 of the Sentencing and Penalties Act reads thus:

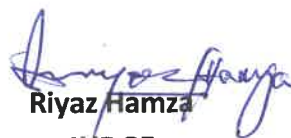
"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

[39] Timoci Nawara, you were arrested for this case on 17 April 2023 and granted bail on the next day. Accordingly, you have been in remand custody for a period of one day only. Thus no concession can be granted to you in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[40] In the result, you must serve in custody 1 year of the 3 years term of imprisonment this Court is imposing on you. The balance term of 2 years is suspended for a period of 5 years. You are advised of the effect of breaching a suspended sentence.

[41] You have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE

HIGH COURT OF FIJI

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