

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 72 of 2023

STATE

v

TIMOCI NAQETE

Counsel: Ms. K. Dugan & Mr. V. Koroinivalu for the State
Mr. I. Emasi & Mr. S. Rehman for the Accused

Date of Hearing: 1 – 7 & 31 October 2024

Date of Closing Submission: 12 March 2025

Date of Judgment: 22 April 2025

JUDGMENT

Caveat – The alleged victim shall herein be referred as '**KLUWA**' pursuant to the name suppression order.

1. **Timoci Naqete**, the accused, is indicted with the following two counts laid out in the Information by the Director of Public Prosecutions dated 6 March 2023 and filed on 7 March 2023:

COUNT ONE

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210(1)(a) of the Crimes Act, 2009.

Particulars of Offence

TIMOCI NAQETE, on the 3rd day of February 2023, at Reba Circle, Suva in the Central Division unlawfully and indecently assaulted **LOSANA SERUVATU**, by kissing her on the neck and lips.

COUNT TWO

Statement of Offence

RAPE: Contrary to section 207(1) and (2)(a) of the Crimes Act 2009.

Particulars of Offence

TIMOCI NAQETE on the same occasion as in Count 1, had carnal knowledge of **LOSANA SERUVATU**, without her consent.

2. Timoci Naqete pleaded *not guilty* and tried accordingly for the aforesaid offences in Counts 1 & 2 of the indictment on 1 – 7 & 31 October 2024; closing submissions by both counsels was held on 12 March 2025; and this is the Court’s judgment.
3. At trial, prosecution called 3 witnesses namely, PW1 – KLUWA (complainant); PW2 – Dr. Avelina Watisowai Rokoduru; and PW3 – Wati Jaoji, and tendered prosecution exhibit **PE1** – Medical report of KLUWA by Dr. Avelina Watisowai Rokoduru dated 3/2/23.
4. Defence, on the other hand, opted that the accused Timoci Naqete remain silent, and not call

other independent witness.

5. Pursuant to sections 57 and 58 of the Crimes Act 2009 including Woolmington v DPP [1935] AC 462 at 481 (HL), the prosecution bears the burden to prove all elements of *Sexual assault* (Count 1) and *Rape* (Count 2) *beyond reasonable doubt*.

Physical and fault elements of Sexual assault

6. *Sexual assault* is contrary to section 210(1)(a) of the Crimes Act 2009 which state:

210.-(1) A person commits an indictable offence (which is triable summarily) if he or she - (a) unlawfully and indecently assaults another person.

7. The physical and fault elements for the offence of *Sexual assault* in this instant are:

- i) A person i.e. the accused Timoci Naqete;
- ii) Unlawfully and indecently assaulted KLUWA the complainant; and
- iii) Did so intentionally.

Physical and fault elements of Rape

8. *Rape* is contrary to section 207(1) - (2)(a) of the Crimes Act 2009 which state:

207.-(1) Any person who rapes another person commits an indictable offence.

(2) A person rapes another person if –

(a) the person has carnal knowledge with or of the other person without the other person's consent; ...

Section 206(4) of the Crimes Act 2009 state, '[i]f "carnal knowledge" is used in defining an offence, the offence, so far as regards that element of it, is complete on penetration to any extent'.

9. The physical and fault elements for the offence of *Rape* in this instant are:

- i) A person i.e. the accused Timoci Naqete;
- ii) Penetrated the complainant KLUWA's vagina with his penis;

- iii) Without complainant KLUWA's consent; and
- iv) Did so intentionally.

Admitted facts between prosecution and defence

10. The ***Admitted facts*** between the prosecution and defence filed on 23 August 2023 are:

- i) The name of the person charged is Timoci Naqete ["Timoci"].
- ii) Timoci was born on 4th March, 1998 and is currently 25 years old.
- iii) Timoci shares a domestic relationship with KLUWA ["KLUWA"].
- iv) KLUWA is Timoci's sister-in-law i.e. Timoci's wife Mereoni's younger sister.
- v) On 3rd February 2023, KLUWA had visited Timoci's place of residence at Reba Circle, Nadera.
- vi) On 3rd February 2023, Timoci and KLUWA were in the washroom at Timoci's residence.
- vii) The washroom includes a bathroom and toilet into one.
- viii) Timoci and KLUWA were naked in the bathroom, when Timoci made her sit on him whilst he sat on the toilet pan.
- ix) On the same occasion as above, Timoci penetrated the vagina of KLUWA with his penis.
- x) KLUWA had disclosed about the alleged incident to her mother in Timoci's presence and he admitted to the same to KLUWA's mother.
- xi) As per Timoci's Record of Interview dated 4th February 2023, he admitted to having sexual intercourse with KLUWA by penetrating her vagina with his penis [page 16 of 32].

Prosecution case via PW1, PW2 and PW3

PW1 – KLUWA (complainant)

11. **PW1 KLUWA (complainant)** testified in **examination-in-chief** that she is 17 years old and her date of birth is 21 December 2006, and live in Reba Circle since she was small. PW1 stated that she lives in Reba Circle with her parents, siblings, grandmother and uncle. PW1 stated that

her father's name is Ratu Meli Vaturaraba, and mother's name is Wati Jaoji. PW1 stated that she has 4 sisters and 2 brothers. PW1 stated that she is still schooling and currently in Form 6 at Rishikul Sanatan School. PW1 stated that her home is not close to her school, and she travels to school by bus. PW1 stated that she goes to school with her sister. PW1 stated that she has friends in school and love schooling. PW1 stated that she knows why she is in Court today because she was raped. PW1 stated that she was 16 years old on 3 February 2023, and was staying at home at that time. PW1 stated that on 3 February 2023 at around 11 o'clock during the day, she was told to go and have her bath because the school is about to start and for them to go and buy some school stuff. PW1 stated that her mother told her to go and have a bath. PW1 stated that after taking a bath, she went up and put her younger brother to sleep. PW1 stated that her younger brother was staying at her uncle's place situated on the same flat area. PW1 stated that when she arrived at her uncle's place, she saw her younger sister with friends who told PW1 to go and put her younger brother to sleep. PW1 stated that at that time those staying at her uncle's place were herself, her younger brother, and her sister and friends. PW1 stated that after putting her younger brother to sleep, she then went down to her cousin's house situated down below, 5 meters away from her uncle's house. PW1 stated that when she arrived at her cousin's house, she just went to kiss her nephew who is maybe 2 years old. PW1 stated that she went to her cousin's house whose name is Enid. PW1 stated that at that time those staying at her cousin Enid's house were Enid, Timoci's dad, Timoci and Enid's kids. PW1 stated that the Timoci she mentioned is her cousin's husband. PW1 stated that the name of her cousin married to Timoci is Mereoni. PW1 stated that she has known Timoci for not long, about 2 years. PW1 stated that she went to her cousin Enid's house to kiss her nephew named Tufa. PW1 stated that after seeing Tufa, her cousin Enid asked her if she could go and wash the dishes. PW1 stated that after washing the dishes, she went to catch some fresh air outside. PW1 stated that after she went outside to catch some fresh air, her niece who is Enid's daughter and in class one came, and they were talking and she asked PW1 for 50 cents, and PW1 gave her the 50 cents to go and buy ice block. PW1 stated that at the time her cousin Enid asked her to wash the dishes, her cousin Mereoni had gone to babysit the elder sister. PW1 stated that after she gave her niece i.e. Enid's daughter 50 cents, Timoci was at the bathroom and calling her. PW1 stated that at that time, she was outside. PW1 stated that when Timoci use to call her, he use to send her to the shop to buy snack for Tufa. PW1 stated that after Timoci called her, he pulled her inside the

bathroom with both of his hand. PW1 stated that after Timoci pulled her inside the bathroom, he then kissed her lips and neck. PW1 stated that Timoci was not far, they stood close to each other inside the bathroom. PW1 stated that she wanted to scream out, and then he pushed the towel inside her mouth. PW1 stated that when he pushed the towel inside her mouth, he was trying to let go of her hand, he was holding on to it. PW1 stated that in terms of lighting, it was bright inside the bathroom. PW1 stated that after Timoci kissed her lips and neck, he pulled her pants down, and he pulled his pants down too and sat on the toilet sit while PW1 was standing. PW1 stated that after he sat on the toilet sit, he told her to sit on top of him, and PW1 was scared and did what he told her to do. PW1 stated that he then stood up and moving meaning that he carried her up, holding her, and moved, and there was noise outside. PW1 stated that when she sat on top of him, she can feel that her female private part is painful. PW1 stated that it was painful because it was the first time for her to do it meaning first time for her to have sexual intercourse. PW1 stated that she did not agree to sit on his lap, and that her private part was painful because it was the first time for her to do it with a man. PW1 stated that after Timoci pulled her pants down and made her sit on his lap, she felt that her private part was painful because Timoci had penetrated her vagina with his penis. PW1 stated that she did not agree for Timoci to penetrate her vagina with his penis. PW1 stated that after Timoci had penetrated her vagina with his penis, he then told her not to make any sound and pushed the towel inside her mouth forcefully. PW1 stated that when Timoci pushed the towel inside her mouth, she got scared and did what he told her to do. PW1 stated that after he penetrated her vagina with his penis, he started moving, carried her into his arm and didn't stop moving, and only stopped when he heard noises outside. PW1 stated that after he stopped after hearing noises from outside, she didn't do anything because she was scared because it was the first time that it happened to her. PW1 stated that after he stopped, he then told her to wash herself. PW1 stated that she washed herself because he told her. PW1 stated that at the time she was washing herself, Timoci was peeping outside to make sure no one was there. PW1 stated that after washing herself, she pulled up her undergarments, and he told her not to make any sound, and then pushed her outside. PW1 stated that when Timoci pushed her outside, she saw her mum coming and got scared. PW1 stated that when she saw her mum coming, she was so scared and saw someone peeping through the glasses. PW1 stated that she was scared because she didn't want to tell her mum anything about what had just happened. PW1 stated that after meeting her mum outside the bathroom, she told

her everything meaning what Timoci did to her. PW1 stated that she told her mum of what Timoci did to her outside of the washroom. PW1 stated that after telling her mum outside the washroom of what had happened to her, they went straight to the Nadera police station. PW1 stated that just her mum and herself who had gone to the Nadera police station. PW1 stated that at the Nadera police station, they told them to go to Valelevu police station to solve the matter. PW1 stated that they then went to Valelevu police station. PW1 stated that at the Valelevu police station, they asked her few questions and she told them everything that had just happened. PW1 stated that the police then asked her to get a medical checkup. PW1 stated that after being asked to get a medical checkup, she wanted to freshen up. PW1 stated that she went for medical checkup, but doesn't recall where she had the medical checkup. PW1 stated that she remembers that someone had medically examined her, and it was a female doctor. PW1 stated that when she was examined by the female doctor, she told her that she was not feeling well. PW1 stated that after being medically examined by the doctor, they gave her some pills and told her that they also do counselling. PW1 stated that thereafter they went to the counsellor to do her counselling.

In **cross-examination** by Mr. Emasi, PW1 stated that on 3 February 2023 she was to go with her mother to go and buy stationery for school. PW1 stated that when her mother was lifting freight boxes, she had gone out to take a shower. PW1 stated that when she went to take her shower, she was well aware that she was going stationery shopping with her mother. PW1 stated that she left the house knowing very well that she was going stationery shopping with her mum because her other siblings were staying home alone at her uncle's place and there was no one looking after them. PW1 stated that she went to her uncle's place to see her siblings and to look after them. PW1 stated that after looking after her siblings, and knowing full well that she was going for school stationery shopping, she left for her cousin's house. PW1 stated that her cousin's name is Enid. PW1 stated that when she arrived at Enid's house, Enid was washing and drying the clothes. PW1 stated that at Enid's house at that time were Enid, Timoci's father, Tufa who is Timoci's son, and Timoci. PW1 stated that she went inside Enid's house when she got there, and was inside for not that long. PW1 stated that Timoci's father and her nephew Tufa saw her entering Enid's house. PW1 stated that during this time, Timoci was lying down in the room. PW1 stated that she knew that Timoci was lying down in the room because her cousin

informed her. PW1 stated that at that time, her nephew Tufa was running around inside the house. PW1 stated that she met Libby who is Enid's daughter when PW1 was just taking some fresh air outside. PW1 stated that her cousin Enid told her that Timoci was lying in the room. PW1 stated that she was not aware that Timoci was about to take a shower to get ready to go to work that day. PW1 stated that she wasn't aware that Timoci was going to take a shower that day. PW1 stated that she did not see Timoci go into the bathroom that day. PW1 stated that she was outside chatting with her small niece Libby when Timoci went into the shower. PW1 agreed that she had given 50 cents to Libby to go and buy ice block. PW1 stated that Libby and her sat close to the bathroom at Enid's house. PW1 stated 'no' to the proposition that where they were sitting near the bathroom, she could hear anyone moving inside the bathroom. PW1 stated that she came to know that Timoci was having a shower inside that bathroom was when Timoci called her, and he then went to turn on the shower. PW1 stated that she was pulled inside the bathroom. PW1 stated that she was outside when she was pulled by Timoci into the bathroom. PW1 stated that she tried to cry out for help but he pushed the towel inside her mouth. PW1 stated that as soon as he pulled her in, she tried to scream and then he pushed the towel into her mouth. PW1 stated that once she was inside the bathroom with the towel stuffed inside her mouth, he then pulled down her pants and then he pulled down his. PW1 stated that he then sat on the toilet seat pan and asked her to sit on top of him, and she complied. PW1 stated that when she sat on top of Timoci with the towel on her mouth, he then started moving in that his male private part in her female private part. PW1 stated that she was facing him. PW1 stated that how can she gesture to get people's attention when he was restraining her. PW1 stated that she tried everything including trying to get people's attention. PW1 stated that she recalls giving her statement to the police. PW1 agreed that when she gave her statement to the police, all of this was still clear in her memory. PW1 agreed that the information shared to the police on 3 February 2023 were all true and correct. PW1 agreed that she signed that statement to confirm that it is her statement. Leave was then granted by the Court for PW1 to be shown her statement to the police. PW1 agreed that her earlier statement to the police stating her cousin Enid told her that Timoci was lying down in the room is different from her testimony in Court stating that she saw Timoci lying down in the room. PW1 agreed that she had earlier stated in her testimony in Court that she did not know that Timoci was going to take a shower, which testimony is not recorded in her statement to the police. PW1 agreed that in her statement to the police, she had

stated that she had known that Timoci was going to take a bath. PW1 stated that at that point, she gave 50 cents to Libby to go and buy ice block. PW1 agreed that she had earlier testified that she couldn't scream because Timoci had shoved a towel into her mouth, and that is why she couldn't scream throughout this ordeal. PW1 did not agree with the proposition that after washing herself and getting dressed inside the toilet then she walked out of the toilet. PW1 agreed that when she exited the toilet, the first person she saw was her mother who also saw her, and that was when her mother approached her outside Enid's bathroom. PW1 agreed that she was scared of her mum when she saw her mother outside the toilet or bathroom. PW1 agreed that she lied to her mother when her mother questioned her as to what she was doing inside the bathroom. PW1 stated that she lied to her mother stating that she was washing her feet inside the bathroom when questioned by her mother. PW1 agreed that it was at that point in time that she was told by her mother that her and Timoci to go inside Enid's house for them to have a conversation. PW1 agreed that inside Enid's house at that moment were herself, her mother, Timoci, Timoci's father, Enid and her children. PW1 did not agree with the proposition that when she was asked as to what she was doing in Enid's house, she had said that she was there to wash dishes, that is when Enid told her that she didn't ask PW1 to come and wash dishes at the house. PW1 stated 'yes' that when she asked by her mother at that point, then she finally told them of the allegation of what Timoci did to her. PW1 did not agree with the proposition that she had gone to Enid's house that morning to smoke cigarettes with Enid, Timoci and their neighbour Eseta. PW1 did not agree with the proposition that it was after having cigarette then Timoci went to have his shower, and she was talking to Libby. PW1 did not agree with the proposition that after giving 50 cents to Libby to go buy ice block, she saw Timoci walk out of the bathroom to get his toothbrush out of the fridge. PW1 did not agree with the proposition that it was at this point that when Timoci went to get his toothbrush out of the fridge, this is when she voluntarily got up and went inside the bathroom. PW1 did not agree with the proposition that when Timoci returned to the bathroom, that is when he saw her, and she told him to close the bathroom door, and then said in the I-Taukei language [English translation], "*I want you to fuck me*". PW1 did not agree with the proposition that it was at that point when she had sexual intercourse with Timoci, when he asked her to sit on his lap, and she followed through his instruction and sat on his lap. PW1 stated that she can recall having earlier testified in Court of what Timoci had allegedly done to her, when she stated that Timoci told her to sit on his lap.

PW1 stated that she did not consent to having sexual intercourse with Timoci. PW1 did not agree with the proposition that she did not verbally say 'no' to Timoci when she was having sexual intercourse that afternoon. PW1 stated that she couldn't do anything because he was big and she was just small. PW1 stated that how could she have told Timoci that she was not consenting to the sex given that he had shoved a towel in her mouth. PW1 agreed that she had stated that he was big and she was small, and that she sat on his lap during the sexual intercourse. PW1 agreed that there is no mention in her statement to the police of her being pulled inside the bathroom, and Timoci putting a towel inside her mouth after pulling her into the bathroom. PW1 stated that Timoci was on the lookout outside before he told her to leave the bathroom. PW1 stated that he was on the lookout so that no one is there and for the two of them not to be caught. PW1 agreed that when she exited the bathroom, the first person to meet her outside the bathroom was her mother. PW1 stated that this is the first time that she had sexual intercourse with Timoci. PW1 did not agree with the proposition that this was the third time she had had sexual intercourse with Timoci in the same bathroom. PW1 did not agree with the proposition that after having sexual intercourse with Timoci, she only made the allegation of rape when she saw her mother coming towards her. PW1 agreed that seeing her mother when she came out of the bathroom, she knew that she and Timoci were caught. PW1 agreed that at that point when her mother questioned her as to what she was doing in the bathroom, she lied in order to save herself and Timoci.

In **re-examination** by the prosecutor, PW1 stated that the correct statement is that she saw Timoci lying on the bed rather than Enid telling her that Timoci was lying on the bed. PW1 stated that it was in the afternoon when she told her mother what Timoci had done to her. PW1 stated that this was the first time she had sexual intercourse with Timoci. PW1 stated that the reason she lied to her mother when she came out of the bathroom is because she was shocked and scared at the same time.

PW2 – Dr. Avelina Watisowai Rokoduru

12. **PW2 Dr. Avelina Watisowai Rokoduru** testified in **examination-in-chief** that she graduated from the Fiji School of Medicine with MBBS in 2011 and Postgraduate Diploma in Obstetrics & Gynaecology in 2016. PW2 stated that she worked as an Obstetrics & Gynaecology Registrar

from 2014 till February 2022, after which she joined the Medical Services Pacific as their medical officer. PW2 stated that she is currently a lecturer at the Fiji National University in Basic Clinical Medicine which is in the medical programme for years 1, 2 and 3. PW2 stated that she has been practicing as a medical officer for 10 years. PW2 stated that in terms of specialized area of practice in medicine, she attained her Postgraduate Diploma in Obstetrics & Gynaecology in 2016. PW2 stated that on 3 February 2023, she was employed by Medical Services Pacific as their medical officer. PW2 stated that she can recall that on 3 February 2023, she was working on that date. PW2 stated that she can recall carrying out medical examination on a patient by the complainant's name. PW2 stated that the patient was brought in by the Sexual Offence Unit of the police for a medical examination. PW2 stated that she prepared a medical examination form for the patient. PW2 stated that she recorded her findings in the police medical examination form. PW2 stated that signed the medical report. PW2 stated that she can recognize the medical report if shown to her. Leave was then granted by the Court for PW2 to be shown a document. Upon being shown the document, PW2 stated that it is the police medical examination form for the complainant. PW2 confirmed that she had signed the form, and have initialed on pages 1, 2, 3 and 5; and signed on page 4 in sections D(16) and E(19). PW2 stated that when she first examined the complainant, she was emotional, teary eyed at times, but calm. PW2 then read and explained section D(12)(a), (b) and (c) on page 3 of the medical examination report as follows: D(12)(a) 'Hymen not intact – fresh injury @ 3 o'clock + 9 o'clock, lower half of hymen bruised + swollen + tender'. For D(12)(a), PW2 explained that in non-sexually active females, the hymen is a ring of tissue within the vagina. When it is not intact, we deem penetration to have occurred. The injury is noted at 3 and 9 o'clock, which means that there are tears in these areas and there is also bruising, swelling and tenderness at the bottom half of the hymen. D(12)(b) 'Abrasion at posterior *forchette* + *fossa navicularis*'. PW2 explained that the skin has been rubbed away by blunt trauma at these two areas, which is outside of the hymen at 6 o'clock. D(12)(c) 'Blood – stained mucoid discharge noted covering *labia minora*'. PW2 explained that there was mucoid blood stain fluid on the *labia minora* i.e. smaller flap bilateral flap of flesh that covers the vagina. PW2 opined that the patient had sustained these injuries noted in section D(12), within the last 12 to 24 hours. PW2 then read out section D(14) 'Injuries noted fresh suggestive of forceful penetration as given by the client'. The prosecution then tendered via PW2 the Medical report of KLUWA by Dr. Avelina Watisowai

Rokoduru dated 3/2/23 duly marked as prosecution exhibit 1 [**PE1**].

In **cross-examination** by Mr. Emasi, PW2 stated that the patient's hymen was not intact. PW2 agreed that some girls are born with perforated hymen. PW2 agreed that a non-intact hymen is a poor scientific method to determine whether a girl is sexually active or not, or still a virgin. PW2 stated that it has been proven to be a myth the notion that a non-intact hymen could be caused by physical activities such as horseback riding or gymnastics. PW2 stated that it is possible that vigorous sport activities can cause the hymen not to be intact. PW2 stated that the injuries could be sustained from rough sex. PW2 stated that her findings are suggestive of use of force in the sexual intercourse. PW2 agreed that rough sex could be suggestive of her finding. PW2 did not agree with the proposition that she reached her conclusion based only from what the patient told her. PW2 stated that her conclusion was guided by the medical examination findings, which were supportive of what was conveyed to her. PW2 stated that it is correct to state that her findings were supportive of what was relayed to her by the patient.

PW2 was not **re-examined** by the prosecutor.

PW3 – Wati Jaoji

13. **PW3 Wati Jaoji** testified in **examination-in-chief** that she is 36 years old, has resided in Nadera for 16 years, and working as pump attendant at Total Service Station. PW3 stated that she is married with 6 children, the eldest KLUWA is 17 years old; second is Filomena Sulia is 16 years old; third is Mereoni Aditonawa is 12 years old; fourth is Ratu Isoa Vaturaraba is 10 years old; fifth is Adi Leleasiga Rositalei is 4 years old; and youngest is Ratu Meli Vaturaraba is 2 years old. PW3 stated that on 3 February 2023 she was at home and they were doing house chores and waiting for a call in regards to their stuff sent from overseas. PW3 stated that while they were at home, she told her daughter to get ready for them to go and buy the school stuff. PW3 stated that while they were inside the house, her daughter went to take her bath. PW3 stated that not long a call came in regards to their stuff and they were delivering it at the same time. PW3 stated that after that they were getting ready and lifted 6 cartons inside the house. PW3 stated that while they were opening the box, she called out for her other daughter named KLUWA. PW3 stated that KLUWA answered her call saying that she is still bathing. PW3

stated that after they were rearranging the stuff, and after 10 minutes she called KLUWA again, and KLUWA answered PW3 that she is still in the bathroom getting ready. PW3 stated that they kept on rearranging their stuff, and the third time she called KLUWA, KLUWA did not answer her call. PW3 stated that she then sent her daughter Filomena to go and call KLUWA. PW3 stated that her third daughter Mereoni then called out that KLUWA is putting PW3's son to sleep. PW3 stated that not long she called again and her daughter said that KLUWA is down at Enid's house. PW3 stated that Enid is her niece. PW3 stated that the distance from her house to Enid's house is a block away meaning that they live in a barrack where their block has 5 houses, and Enid's block has 6 houses. PW3 stated that she was not at ease so she stood up and went to look for KLUWA. PW3 stated that she started to look around at Enid's house and was told that KLUWA is not there. PW3 stated that she went all over the barracks and beside the barrack there is a small ground there, and when she stood from there, she can directly see Enid's washroom. PW3 stated that from where she stood, she saw a hand push her daughter out. PW3 stated that she saw a hand inside the toilet that pushed her daughter out. PW3 stated that she then went straight to her daughter and asked her 'who is inside the toilet'. PW3 stated that she saw her daughter KLUWA being pushed out of the toilet by a hand. PW3 stated that first time KLUWA was scared to answer and the second time she said "*Timoci is inside*". PW3 stated that at that time, her daughter KLUWA was scared and anxious. PW3 stated that Timoci is her niece Mereoni's husband. PW3 stated that after her daughter KLUWA came out, she went straight to the toilet and knocked on the door because she could see Timoci peeping from the window. PW3 stated that she kept calling Timoci to come out. PW3 stated that after a few minutes then Timoci came out, and he was surprised and scared. PW3 stated that Timoci did not say anything. PW3 stated that she then told Timoci for them to go inside the house because his dad is in there. PW3 stated that they did go inside the house, and inside were Enid and Timoci's father. PW3 stated that Timoci also went inside the house. PW3 stated that inside the house she went to tell Timoci's father what had happened, and Timoci's father was surprised. PW3 stated that she told Timoci's father what Timoci did to her daughter KLUWA in the toilet, and that it is a rape case. PW3 stated that she knew it was a rape case because it is the first time for her daughter KLUWA to have sexual intercourse, and Timoci had pushed a towel inside her mouth not to scream out. PW3 stated that no one told her it was a rape case. PW3 stated that she came to know that her daughter KLUWA was raped when her daughter KLUWA told her the story

and she was crying because she could not handle what had happened to her. PW3 stated that KLUWA told her that Timoci called her and pulled her to the toilet and started kissing her. PW3 stated that KLUWA told her that Timoci pulled her in and held her hand, and then while kissing her, he pulled her pants down, sat on the toilet pan and pulled KLUWA towards him, closed her mouth with a towel and made KLUWA sit on him. PW3 stated that KLUWA told her that after they had sexual intercourse, Timoci poured water onto KLUWA to wash off the blood, and told KLUWA to put on her pants, and then told KLUWA to go out, and not to tell anybody of what had happened. PW3 stated that after KLUWA had told her of what had happened, she then took KLUWA inside Timoci's house and explained to Timoci's father of what Timoci had done to her daughter KLUWA, and she will report Timoci to the police. PW3 stated she then took KLUWA to the police station and lodged her report. PW3 stated that the police took her report, and then they were sent to Waimanu road to a medical clinic which she cannot recall the name, where they checked KLUWA's private part. PW3 stated that they went to Valelevu Police Station and lodged the report on 3 February 2023.

In **cross-examination** by Mr. Emasi, PW3 stated that on 3 February 2023, she was lifting boxes with her daughter. PW3 stated that she had told her daughter KLUWA to get ready to go and do school shopping. PW3 stated that after a while, she began to call out her daughter KLUWA who was still having her shower. PW3 stated that this was happening during the day. PW3 stated that she was not in a hurry that afternoon. PW3 stated that she went out to personally look out for her child KLUWA when she did not hear her call, because she is concerned of her kids, and having called out 3 times and it was not answered by KLUWA, so she stood up and went out looking for them. PW3 agreed that she told KLUWA to get ready that day for school shopping. PW3 stated that it is not common for KLUWA to go missing from their house when she is busy. PW3 agreed that on that day KLUWA and her were to go school shopping, and KLUWA did go missing from home that day. PW3 agreed that knowing that KLUWA was not home, she then went around the block to look for KLUWA. PW3 stated that she had gone inside Enid's house and was told that KLUWA was not there. PW3 stated that Enid told her that KLUWA was not there in Enid's house, the same house in which Timoci reside. PW3 agreed that after searching at Enid's house and being told by Enid that KLUWA was not there, she then returned. PW3 stated that she reported the matter to the police, and had given a statement to the police while

the matter was still fresh in her mind, and the statement were all true and correct. PW3 stated that she had signed her statement to the police, and if shown the statement, she can confirm that statement given to the police. Leave was then granted by the Court for PW3 to be shown her statement to the police. PW3 stated that the signature on the first page of the statement belongs to her, and her name 'Wati Jaoji' appears on the top-left corner of the statement. PW3 stated 'yes' he can recall that she had stated in her statement to the police that when walking towards Enid's house, she saw someone pushing her daughter out of the bathroom. PW3 stated 'yes' that she had stated that she saw an arm push her daughter out of the toilet, and that is how she can confirm that someone was inside the bathroom. PW3 stated that her statement noted in paragraph 2, line 12 is not the same as her statement in court yesterday. PW3 agreed that when she confronted KLUWA in front of the toilet on what she was doing inside the toilet or bathroom, KLUWA told her that she was washing her legs and not the allegation of rape, and KLUWA was scared at that moment. PW3 stated that her daughter KLUWA told her of the rape allegation outside the toilet. PW3 stated 'no' to the proposition that KLUWA continued to give her alternative answers until she told Timoci and KLUWA to go inside the house. PW3 stated that KLUWA told her about the allegation of rape, and that is the same allegation that she gave the police in her statement. PW3 stated that KLUWA mentioned that she had sexual intercourse with Timoci. PW3 agreed that it is not in her statement that KLUWA had sexual intercourse with Timoci. PW3 stated 'yes' to the proposition that after hearing what KLUWA had shared with her, she then inferred that KLUWA had sexual intercourse with Timoci. PW3 stated 'no' to the proposition that there is nothing in her statement about consent being shared to her by KLUWA. PW3 stated that KLUWA told her. PW3 stated 'yes' to the proposition that in her statement to the police there is nothing about KLUWA having said that she did not consent to having sexual intercourse with Timoci.

In **re-examination** by the prosecutor, PW3 stated that when her daughter KLUWA came out of the toilet, she told her the following story. Timoci called KLUWA and pulled her inside the toilet, started kissing her and closed the door. Timoci held both of KLUWA's hands together while kissing her, and slowly pulled her pants down, and then Timoci pulled his pants down and sat on the toilet pan, and pulled KLUWA towards him. Timoci then told KLUWA to sit on top of him, and when she wanted to scream out, Timoci put a towel inside her mouth. After a few

minutes, they heard noises outside and he pushed KLUWA to go and wash herself with water, and told KLUWA to wear her pants and get out of the toilet.

14. After the testimonies of PW1, PW2 and PW3's, the prosecution then closed its case, and the Court provided the defence its options for the accused to: i) remain silent; ii) give sworn testimony; or iii) call other independent witness, to which the defence opted that the accused remain silent, and not call other witness.

15. Both counsels subsequently made their closing submissions, and this the Court's judgment on *Sexual assault* (Count 1) and *Rape* (Count 2) in the indictment.

Analysis of the prosecution vis-à-vis defence evidence

16. Having carefully considered the entire prosecution and defence evidence including the *Admitted Facts*, I have found that:

a) Based on the *Admitted Facts* between the prosecution and defence filed on 23 August 2023, the following facts are not disputed:

- i) The name of the person charged is Timoci Naqete ["Timoci"].
- ii) Timoci was born on 4th March, 1998 and is currently 25 years old.
- iii) Timoci shares a domestic relationship with KLUWA ["KLUWA"].
- iv) KLUWA is Timoci's sister-in-law i.e. Timoci's wife Mereoni's younger sister.
- v) On 3rd February 2023, KLUWA had visited Timoci's place of residence at Reba Circle, Nadera.
- vi) On 3rd February 2023, Timoci and KLUWA were in the washroom at Timoci's residence.
- vii) The washroom includes a bathroom and toilet into one.
- viii) Timoci and KLUWA were naked in the bathroom, when Timoci made her sit on him whilst he sat on the toilet pan.
- ix) On the same occasion as above, Timoci penetrated the vagina of KLUWA with

his penis.

x) KLUWA had disclosed about the alleged incident to her mother in Timoci's presence and he admitted to the same to KLUWA's mother.

- b) However, I have decided to disregard and not to rely on *Admitted Fact xi*), despite it being noted in paragraph 10 herein, because the prosecution did not tender Timoci Naqete's *Record of Interview*. The only *Admitted Facts* that I will rely on are those numbered i) to x) highlighted in paragraph 16-a) herein.
- c) The identification of the accused Timoci Naqete is well substantiated and established via the *Admitted Facts*.

Count 2: Rape

- d) The physical and fault elements for the offence of *Rape* in this instant are:
- i) A person i.e. the accused Timoci Naqete;
 - ii) Penetrated the complainant KLUWA's vagina with his penis;
 - iii) Without complainant KLUWA's consent; and
 - iv) He did so intentionally.
- e) For **Count 2: Rape**, the *Admitted Facts* numbered i) to x) highlighted in paragraph 16-a) herein, has proved *beyond reasonable doubt* the physical elements of *Rape* of i) 'A person' being the accused Timoci Naqete; and ii) Timoci Naqete penetrated PW1 KLUWA's (complainant) vagina with his penis.
- f) The issues of '*consent*' and fault element of '*intention to rape*' are the main contentious issues for **Count 2: Rape**.
- g) **Did PW1 KLUWA '*consent*' to having her vagina penetrated by Timoci Naqete's penis?**

Having carefully considered the testimonies of PW1 – KLUWA, PW2 – Dr. Avelina Watisowai Rokoduru including **PE1** –Medical report of KLUWA by Dr. Avelina Watisowai Rokoduru dated 3/2/23, and PW3 – Wati Jaoji, I find that PW1 KLUWA did not consent to having her vagina penetrated by Timoci Naqete via his penis.

h) Did Timoci Naqete intentionally rape PW1 KLUWA?

Having carefully considered the testimonies of PW1 – KLUWA, PW2 – Dr. Avelina Watisowai Rokoduru including **PE1** –Medical report of KLUWA by Dr. Avelina Watisowai Rokoduru dated 3/2/23, and PW3 – Wati Jaoji, I find that PW1 KLUWA did not consent to having her vagina penetrated by Timoci Naqete’s penis, and infer that Timoci Naqete had therefore intentionally raped PW1.

- i) In addition to the *Admitted Facts* i) to x) noted in paragraph 16-a) herein, PW1 - KLUWA testified that on 3 February 2023 Timoci Naqete called her to go inside the bathroom where he was in, he then pulled her into that bathroom and shoved a towel in her mouth to prevent her from screaming, and then began kissing her neck and lips. Timoci Naqete then took off PW1’s pants and he also took off his pants and sat on the toilet pan, and then told PW1 to sit on him. PW1 then sat on Timoci Naqete’s lap and he was moving as his penis penetrated PW1’s vagina, and PW1 felt pain on her private part since that was the first time she had had sexual intercourse with a man. PW1 did not consent to having Timoci penetrate her vagina with his penis. PW2 – Dr. Avelina Watisowai Rokoduru relying on **PE1** found that PW1’s hymen was not intact with fresh injuries suggestive of forceful penetration. PW3 – Wati Jaoji i.e. PW1’s mother provided evidence of recent complaint consistent with PW1’s account.
- j) PW1’s testimony and that of PW2 and PW3 are consistent, credible and reliable, and were not heavily discredited or unsettled by cross-examination, and any discrepancy does not, in my view, render the prosecution evidence incredible and unreliable. In Nadim v State [2015] FJCA 130; AAU0080.2011 (2 October 2015) at paragraph 15, Prematilaka,

J. stated:

[15] It is well settled that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be discredited or disregarded. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witnesses. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of incidents, minor discrepancies are bound to occur in the statements of witnesses.

- k) The evidence of *recent complaint* adduced by PW3 - Wati Jaoji has enhanced PW1's credibility.
- l) I therefore attach immense weight to the evidence adduced by PW1, PW2 and PW3 including **PE1**, and held together with the *Admitted Facts* numbered i) to x) highlighted in paragraph 16-a) herein, I find that the prosecution has therefore proved *beyond reasonable doubt* that Timoci Naqete raped PW1 – KLUWA as per **Count 2 – Rape** in the indictment.

Count 1 – Sexual assault

m) The physical and fault elements for the offence of *Sexual assault* in this instant are:

- i) A person i.e. the accused Timoci Naqete;
 - ii) Unlawfully and indecently assaulted PW1 KLUWA the complainant; and
 - iii) Did so intentionally.
- n) PW1 testified that on 3 February 2023 Timoci Naqete called her to go inside the bathroom where he was in, he then pulled her into that bathroom and shoved a towel in her mouth to prevent her from screaming, and then began kissing her neck and lips.
- o) The testimony of PW1 held together with that of PW2 and PW3 are consistent, credible and reliable, and were not heavily discredited or unsettled by cross-examination, and I therefore attach immense weight to the relevant evidence, thus proving *beyond*

reasonable doubt that Timoci Naqete sexually assaulted PW1 – KLUWA as per **Count 1** – *Sexual assault* in the indictment.

CONCLUSION

17. Based on all the reasons stated above, I therefore find Timoci Naqete **guilty** of **Count 1** – *Sexual assault* and **Count 2** – *Rape* in the Information by the Director of Public Prosecutions dated 6 March 2023 and filed on 7 March 2023, and **convict** him accordingly.

18. Timoci Naqete is hereby remanded in custody to await sentencing.

19. Thirty (30) days to appeal to the Fiji Court of Appeal.



Hon. Mr. Justice Pita Bulamainavalu
PUISNE JUDGE

At Suva

22 April 2025

Solicitors

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused