

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

**CRIMINAL CASE NO. HAC 315 OF 2023**

**STATE**

**v**

**MAKARIO TURAGANIQALI**

**Counsel:** Mr. H. Nofaga for the State  
Mr. K. Verebalavu for the Accused

**Date of Mitigation and Sentence Hearing:** 13 June 2025  
**Date of Sentencing:** 4 July 2025

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**SENTENCE**

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**Caveat** – The victim shall herein be referred as ‘**JIL**’ pursuant to the Name Suppression Order.

1. **Makario Turaganiqali**, the accused, was tried, found not guilty and acquitted of Count 2: Rape on 3 October 2024 on the basis of *No case to answer*, but found guilty and duly convicted on 23 May 2025 of Count 1: Rape, laid out as follows in the Amended Information by the Acting Director of Public Prosecutions dated 2 August 2024 and filed on 5 August 2024:

**COUNT 1**

*Statement of Offence*

**RAPE:** Contrary to section 207(1), 2(a) and (3) of the Crimes Act 2009

*Particulars of Offence*

**MAKARIO TURAGANIQALI** between the 8<sup>th</sup> day of September 2022 and the 21<sup>st</sup> day of December 2022 at Wainadoi, Namosi, in the Central Division, penetrated the vagina of **JIL**, a child under the age of 13 years, with his penis.

**COUNT 2**

*Statement of Offence*

**RAPE:** Contrary to section 207(1), 2(b) and (3) of the Crimes Act 2009

*Particulars of Offence*

**MAKARIO TURAGANIQALI** between the 8<sup>th</sup> day of September 2022 and the 21<sup>st</sup> day of December 2022 at Wainadoi, Namosi, in the Central Division, penetrated the vagina of **JIL**, a child under the age of 13 years, with his tongue.

**Brief facts of Count 1: Rape**

2. **JIL (PW3)**, the complainant, was born on 7 July 2010 and turned 12 years old on 7 July 2022. In the period 8 September 2022 and 21 December 2022, JIL resided with her mother Alevina Durilala Matanimekewai *a.k.a* Duri, step-father **Makario Turaganiqali (accused)** *a.k.a* Makario and Makari, and younger siblings at Wainadoi, Namosi. On Wednesday 21 December 2022 during breakfast, Mareta Josivini Katonivere (PW1) asked her niece JIL (PW3) as to what Makari *a.k.a* Makario Turaganiqali (accused) had signaled to her earlier, to which JIL (PW3) then being tearful replied that '*Makari had raped her*'. PW1 then on the same day accompanied JIL (PW3) to Lami Police Station where they lodged a formal complaint of rape, and then taken to Totogo Police Station in Suva for further inquiry. JIL was then medically examined at CWM hospital by Dr. Radhika Elizabeth Menon whose medical report of JIL dated 21.12.2020 is marked prosecution exhibit 1 – [ **PE1** ]. Forensic

Biologist Nacanieli Gusu's (DW2) Microscopic Report no. 14/12/22 for Laboratory Case no. 60/12/22 dated 28/02/2023 marked prosecution exhibit 2 – [ **PE2** ] was also tendered by consent, which report conclusively show that there were no sperm head / *Spermatozoa* detected on the 6 swab specimen obtained from the complainant JIL (PW3). According to **JIL (PW3)**, she was raped by her step-father **Makario Turaganiqali (accused)** on 4 separate occasions in the period 8 September 2022 and 21 December 2022, which are briefly noted as follows.

### **Rape incident 1**

On **Sunday 18 September 2022** JIL's family celebrated her younger brother's birthday. While asleep in the house that Sunday night, JIL was woken up by her step-father Makario Turaganiqali at about 12 midnight to take him to the toilet located outside the house, which she did because her mother also forced her to do so. Makario Turaganiqali went inside the toilet, while JIL waited outside, and after 10 minutes, Makario Turaganiqali asked JIL to join him inside the toilet, which JIL refused, but her step-father became angry causing JIL to reluctantly enter the toilet. After spending about 7 minutes inside the toilet, JIL then exited the toilet followed by her step-father who then instructed her to wait at the blue house while he puts on the kettle to boil the tea at the outside kitchen. After boiling the tea, Makario Turaganiqali then entered the blue house, spread the bed, laid down and was on his phone, while JIL sat beside the window. Makario Turaganiqali then told JIL to lie down, but JIL refused and remained sitting beside the window, and Makario Turaganiqali angrily insisted, to which JIL obliged and went to sit beside him. Makario Turaganiqali then told JIL to lie down beside him, but she refused, and Makario Turaganiqali got angry on her, and JIL then lied down beside him facing up while he was on Facebook on his phone. Makario Turaganiqali then played an adult movie and showed it to JIL for about 2 minutes, moved JIL closer to him and asked JIL if her uncle Tomasi Rasegadi or cousin-brother Simione Matanimekewai had already touched her, to which JIL said 'no'. Makario Turaganiqali then asked JIL if he could touch her, to which she said 'no', but he then pulled off JIL's trousers, removed his trousers, held her breast, moved up to her and put his erect penis into her vagina, and raped her for about 6 minutes. After raping JIL, Makario Turaganiqali told JIL to put on her clothes and

take the lead home. On the next day, JIL went to school and told her friend Torika whom she trusts, of being raped by her step-father Makario Turaganiqali.

### **Rape incident 2**

The second time JIL was raped by her step-father Makario Turaganiqali was in her grandmother's room on a Saturday night after 1.00 am. Makario Turaganiqali woke JIL and told her to go and lie down in her grandmother's room, which she did and took her blanket and pillow to that room and lied down on a mattress placed on the floor. While lying down in the room, Makario Turaganiqali then entered the room with her small twin sister, and told her twin sister to go and use the toilet inside the house. When the small twin sister left, Makario Turaganiqali then lay on top of JIL and told her not to talk because her grandmothers might hear him, he then pulled up JIL's dress, removed his trousers, and forcefully put his erect penis into JIL's vagina, raping her for 6 minutes, and JIL could feel his penis going inside her vagina and it felt painful. Makario Turaganiqali stopped raping JIL when he saw one of JIL's grandmothers wake up, and told JIL to move back where the toilet is. The room where the second rape happened is an open room with no door, and the toilet is also where they put their stuff that they don't use.

### **Rape incident 3**

The third time JIL was raped by her step-father Makario Turaganiqali was when they went to fetch firewood in the nearby bush. JIL was reluctant to go and collect firewood with her step-father and siblings because she knew that her step-father will rape her again, but only went because her mother insisted and forced her to go. While collecting firewood, her siblings were away from her, JIL and her step-father went under a big tree where he raped her again. Under the big tree, Makario Turaganiqali removed his trousers, he then removed JIL's trousers, and put his erect penis into JIL's vagina while she was lying down on the ground facing upwards. JIL felt her step-father's penis go inside her vagina, and he raped her for 7 minutes.

### **Rape incident 4**

After midnight and in the early hours of Wednesday 21 December 2022, Makario Turaganiqali switched off the light, lay on top of JIL in the living room and told her not to talk nor make any sound, then he removed her trousers and his trousers, and then put his erect penis into her vagina, and JIL felt her step-father put his penis into her vagina. This particular rape happened for 8

minutes while everyone was asleep.

### **Count 1: Rape sentence analysis**

3. The maximum penalty for **Rape** contrary to section 207(1), (2)(a) & (3) of the Crimes Act 2009 is life imprisonment.
4. The sentencing tariff for rape of a child including persons under 18 years is 11 to 20 years imprisonment pursuant to Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018), and at paragraphs 24 – 25, the Supreme Court held:

*[24] The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise discretion taking into account the age group of these child victims. I do not for myself believe that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.*

*[25] **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.*

5. The complainant **JIL** was 12 years old when she was raped by Makario Turaganiqali.
6. Given the sentencing tariff of 11 to 20 years imprisonment for rape of a person below 18 years, for this instant, I choose a **starting point** of 14 years imprisonment.
7. The starting point of 14 years is enhanced by 6 years due to the following **aggravating factors**:
  - a) The accused raped JIL who is his 12 year old step-daughter, by intentionally penetrating

JIL's vagina with his penis.

- b) The accused had acted opportunistically and atrociously during the 4 incidents of rape, and isolating JIL and eventually raping her by inserting his penis into her vagina.
  - c) This is an incestuous and heinous rape of a vulnerable 12 year old girl and a primary school student, and also a blatant betrayal of trust by the accused who was a 31 year male adult at the time of the rape, married to JIL's biological mother, deemed and obliged to uphold good morals and values, protect and prevent vulnerable young girls like JIL from being raped and sexually abused.
  - d) The complainant JIL, being raped by her step-father the accused in her dwelling home and vicinity at Wainadoi, Namosi, has undoubtedly caused her emotional and psychological trauma, and Wainadoi is no longer a safe haven for her from sexual predators and exploiters. In the *Victim Impact Statement* dated 3 July 2025, the complainant JIL noted that 'she was afraid of her step-father and his relatives. She is worried as to who will look after her, thinking that she will be taken to the Care Home. She does not like her mother because she did not was to believe what her step-father did to her. She does not like relatives who questioned what happened to her including some false rumors that spreads in the community'. The Supreme Court in Aitcheson v State (supra) at paragraph 72 held, '[72] [u]ndoubtedly it has been accepted by the society that rape is the most serious offence that could be committed on a woman. Further it is said that; "A murderer destroys the physical body of his victim; a rapist degrades the very soul of a helpless female."'
  - e) Rape of children and young girls is becoming prevalent in Fiji, thus a scourge and menace to the entire society, compelling the need for holistic means to properly and effectively deter and prevent such societal bane. Deterrence is highly warranted weighed together with *inter alia* the sentencing objectives of punishment, retribution and rehabilitation.
8. The 20 years is reduced by 4 years due to the **mitigating factors** considering that the accused is 34 years old [ D.O.B – 13/01/1991 ], married with children aged from 2 to 7 years and three of whom attend primary school, was employed and sole breadwinner of his family, and has no prior conviction, thus arriving at the interim custodial term of 16 years.

### **Time spent in custody**

9. The 16 years imprisonment is further reduced by 1 year for **time spent in custody** pursuant to section 24 of the Sentencing and Penalties Act 2009, thus arriving at the custodial term of 15 years for Count 1 – Rape.

### **Non-parole period**

10. Pursuant to section 18 of the Sentencing and Penalties Act 2009 and Timo v State [2019] FJSC 22; CAV0022.2018 (30 August 2019), I have decided to fix a non-parole period of 14 years imprisonment for the head custodial term of 15 years for Count 1 – Rape.

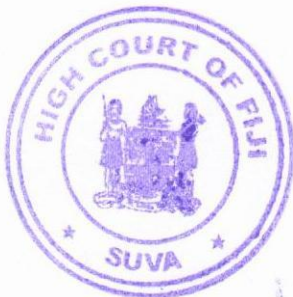
### **CONCLUSION**

11. **Makario Turaganiqali** stands convicted of Count 1 Rape in the indictment, and hereby sentenced to a custodial term of 15 years, with the non-parole period of 14 years imprisonment.

### **Permanent DVRO, standard non-molestation, non-contact orders**

12. In addition to the imprisonment sentence, pursuant to the Domestic Violence Act 2009, I hereby issue a ***Permanent Domestic Violence Restraining Order*** [ s.22 ] with the standard non-molestation conditions [ s.27 ] including a non-contact order [ s.29 ] against **Makario Turaganiqali**, and the protected party being the complainant **JIL**.

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



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Hon. Mr. Justice Pita Bulamainivalu  
**PUISNE JUDGE**

**At Suva**

4 July 2025

**Solicitors**

Office of the Director of Public Prosecutions for the State

Verebalavu Lawyers for the accused