

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

Criminal Case No. HAC 159 of 2020

STATE

V

EMOSI RAINAKA

Counsels : Ms Cabemaiwai of DPP for the State.
: Ms Sharma of LAC for the Accused.
Date of Sentencing Submissions : 14 July 2025
Date of Sentence : 22 July 2025

SENTENCE

1. The juvenile is charged with the following offence.

First Count

Statement of Offence

MANSLAUGHTER: Contrary to section 239 of the Crimes Act 2009

Particulars of Offence

Emosi Rainaka on the 1st day of October 2020, at Nadi in the Western Division, rode a horse in a reckless a manner and in doing so caused the horse to seriously injured *SERUMAIA VESIBULA* causing his death.

2. You pleaded guilty to the charge and the court is satisfied that your guilty plea is unequivocal.

FACTS

Summary of facts was read out in court as follows.

- 2.1 That the Juvenile in this matter was ER, 17 years of age at the time of incident and resides at Nawaicoba.
- 2.2 On the 1st day of October, 2020 at around 3.30pm Ratu Livai Namau (PW1) and Seru Kalou (PW2) were walking along the road returning from School. Upon reaching the Forest Enterprise Mil they walked down following the feeder road to their house.
- 2.3 Hence before reaching the culvert PW1 and PW2 saw that the juvenile was riding a horse and galloping very fast PW2 yelled out at the Juvenile saying "Vamahua" meaning slow down. Despite that they saw the accused held the rope whipped and the horse galloped very fast.
- 2.4 PW1 and PW2 saw the deceased standing on the feeder road waiting for them as he usually does every afternoon after school. Seru Kalou (PW2) yelled at the juvenile again to control the horse as the deceased was standing at the road. The horse than ran over the deceased.
- 2.5 The Deceased fell over to the ground after he was run over by the horse.
- 2.6 The juvenile did not stop the horse and the horse galloped away to the sugar cane field.
- 2.7. Another bystander, namely Paulini Davila said that the deceased was motionless and when she tried tapping his back there was no movement. She tried to revive the child but there was no response. The deceased was conveyed to Nadi hospital where the doctor tried to resuscitate the same, but doctor confirmed that the child has passed away.
- 2.8 The postmortem was conducted by Dr James Kalougivaki. The doctor found that the cause of death was.
 - i) Partial transection of the brain stem with severe subarachnoid hemorrhage.
 - (ii) Severe traumatic head injury, and

iii) Multiple traumatic injuries.

MITIGATION

3. The learned counsel for the juvenile submitted the following mitigation:
 - a) The juvenile was 17 years at the time of the offending on the 18th of September 2003 he was 17 years of age and a juvenile at that time.
 - b) The Juvenile was a vegetable farmer.
 - c) The Juvenile currently resides at Caubati in Suva with his father.
 - d) Pleaded guilty to the offence.
 - e) Cooperated with the police.
 - f) First and young offender.
 - g) Is genuinely remorseful.
 - h) Seeks forgiveness of the court.
 - i) Promises not to re-offend.

AGGRAVATING FACTORS

4. The juvenile was reckless and had total disregard of the safety and life of the road users in this case the deceased when he is riding the horse. Despite being informed before the accident to slow down by the feeder road users the juvenile continued to whip the horse with the rope, the horse galloped so fast and later on stomped on the deceased child who was standing on the road.
5. The deceased child who was standing on the road was 2 years old.

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. I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.

Law and Tariff

6. The offence of Manslaughter in terms of Section 207(1) of the Crimes Act No. 44 of 2009 ("Crimes Act") carries a maximum penalty of imprisonment for 25 years. The tariff for Manslaughter in general is settled in this jurisdiction. Despite the maximum sentence being reduced drastically under the Crimes Act, the Courts in Fiji thought it fit to maintain the tariff prescribe for Manslaughter under the Penal Code which was suspended sentence to 12 years imprisonment.

7. The current sentencing practice for this offence is reflected in the following paragraph in **State v Milika Vadei** where Temo J (as he then was) referred to the Court of Appeal decision in **Kim Nam Bae v The State**:

Manslaughter is a serious offence. It carries a maximum sentence of 25 years imprisonment. However, case laws in Fiji seemed to show that penalties for manslaughter range from a suspended sentence to 12 years imprisonment. Sentences in the upper range were reserved for Sentences at the lower end of the scale were reserved for cases where the violence used was minimal and the provocation given was in the extreme: see Kim Nam Bae v The State, Fiji Court of Appeal, Criminal Appeal No. 1998S; The State -v- Frances Bulewa Kean, Criminal CASE No HAC 037 of 2007; State v Amali Rasatusalu

Criminal Case No. HAC 003 OF 2003, High Court, Suva. The actual sentence passed will depend on the presence or otherwise of strong mitigating and/or aggravating factors

In Bae v State (supra), the Judges of Court of Appeal observed as follows:

The task of sentencing is not an exact science which is capable of mathematical calculation. This is particularly so with manslaughter where the circumstances and the offender's culpability can vary greatly from case to case. An appropriate sentence in any case is fixed by having regard to a variety of competing considerations.

The wide sentencing range prescribed for the offence recognizes the fact that the circumstances of manslaughter vary greatly so that the sentence should be given wide discretion to tailor his/ her sentence having due regard to the facts and circumstances of each individual case.

THE JUVENILES ACT

8. Section 3(2) of the Sentencing and Penalties Decree 2009 expressly provides that it should operate subject to the requirements of the Juvenile's Act [Cap 56]. However, considering that the juvenile was still 17 years at the time of the offending, the Juvenile Act Cap 56 must also be considered.
9. Section 30 (3) of the Juveniles Act cap 56 provides that a young person shall not be sentence for more than 2 years.
10. Section 31.-(1) Where a juvenile is found guilty of murder, of attempted murder or of manslaughter, or of wounding with intent to do grievous bodily harm and the court is of the opinion that none of the other methods by which the case may legally be dealt with is suitable, the court may order the offender to be detained for such period as may be specified in the order, and, where such an order has been made, the juvenile shall, notwithstanding anything in the other

provisions of this Act, be liable to be detained in such place and such conditions as the Minister may direct.

11. In Court of Appeal case Parere v State [2022] FJCA 184; AAU114.2018 [29 September 2022] the Court of Appeal made the following observations at para 6 quoted.

[6] In terms of section 30 of the Juveniles Act, a young person shall not be ordered to be imprisoned for more than two years for any offence. Komaisavai v State [2017] FJCA 91; AAU154.2015 (20 July 2017) and Matagasau v State AAU0120 of 2017; 4 October 2018 [2018] FJCA 161 confirm this unequivocal position. The terms 'juvenile', 'young person' and 'child' are defined in the Juveniles Act. The original definitions of 'juvenile' and 'young person' in section 2 of the Juveniles Act were amended by section 57 of the Prisons and Corrections Act by increasing the upper age limit from 17 years to 18 years. Therefore, a juvenile is now a person who has not attained the age of 18 years and a juvenile includes a child and a young person. A 'young person' is a person who has turned 14 but has not yet reached 18 years. 'Child' means a person who has not attained the age of fourteen years.

[7] Obviously, the 02nd appellant was a young person at the time of the offending. In Ralulu v State [2019] FJCA 260; AAU19.2018 (28 November 2019) the Court of Appeal dealt with a similar situation as adverted to by the trial judge as follows: [14] I further hold that the crucial threshold for sentencing is not the time of sentencing, but the time of the commission of the offence. Guilty persons are punished according to the statutory sentencing regime prevalent at the time of the commission of the offence. Unfortunately, the learned Magistrate had fallen into a sentencing error, perhaps, by the fact that appellant was no more a juvenile /young person at the time of sentencing....Therefore, the appellant being a juvenile /young person at the time of the commission of the offence, sentence of 05 years of imprisonment imposed by the learned Magistrate is illegal.'(emphasis added)

[8] In Komaisavai (supra) the 02nd appellant was 17 years 03 months old at the time of offending but was 19 years old at the date of sentencing. The

Court of Appeal had taken the same stand and stated that he could not have been sentenced to a term of imprisonment of more than 02 years.

[9] Therefore, it is clear that the aggregate sentence of 04 years of imprisonment on the appellant is wrong and constitutes a sentencing error. He could not have been sentenced to a longer term than 02 years of imprisonment. Therefore, the current sentence has to be set aside.

12. The State counsel in her respective sentencing submission submits that the juvenile's personal circumstances have no bearing on the final sentence as the offence is serious in nature. Further the State argues that the level of seriousness of the crime committed by the juvenile was very high.
13. Defence Counsel on the other end in its mitigating submissions provided that her client pursued a progressive approach which is evidence of remorse his action and saves time resources of conducting a full trial. Also saved the parents of the deceased in the conduct of a full trial.
14. This court, in delivering its decision will be mindful of the fact that the juvenile offenders might not fully understand that they should hold the responsibility of their own action. If such act was not acceptable to the law. Thus, in that case the juvenile was 17 years and was about to enter into the age of an adult which is 18 years. Criminalization of the juvenile or imposing greater restrictions to his liberty should be in accordance with law and that is a young person cannot be imprisoned for more than two years.
15. The juvenile offender in this case, being 17 years at the time of the commission of the offence, is at the upper end of the "age category" of a juvenile. This court will have to seriously consider whether the juvenile offender had the full maturity to apprehend the aftermath of his conduct or was simply been motivated or impulsive with his inchoate life experiences or negative influences by people or things around and catalyzing factors which would have nurtured the offending environment. For instance, riding and whipping a horse to

galloped and run as fast as it can recklessly without anticipating the dangers that lies ahead along that feeder road.

16. Thus, it is not proper to attach the full responsibility only to a reckless act of a juvenile, after considering that the deceased a 2 year old child was left unsupervised on the feeder road on a the day of the accident. This case may raise eyebrows on the responsibilities of the parents and guardian to ensure at all times that safety and wellbeing of their children are of paramount consideration at all times. However, this court takes great concern too in the manner the juvenile had recklessly in control of the horse on that day.
17. The law and case authorities of the Fiji court of Appeal is clear that a juvenile or young person shall not be imprisoned for more than two years. Although the current age of the juvenile is now 22 years old and is deemed to be an adult, the law is clear in this regard in that the juvenile age should be sentence according to his age during the time of the commission of the offence which is in this case 17 years old.
18. I took a starting point of 2 years imprisonment. I add 2 years and 6 months for the aggravating factors. And I deduct 2 years and 3 months for your mitigation and good character. The Juveniles interim total of Imprisonment is 2 years and 3 months.

Time Spent in Custody

19. The juvenile was remanded in custody for breaching his bail condition for 6 months. And the law is clear on this regard. The time spent in remand is time already served. The time spent in remand will be deducted from his initial sentence which is 2 years and 3 months. The total remaining period to be served is 1 years and 9 months.

Suspend or not To Suspend

20. The total remaining sentence is within the powers of the High Court to suspend or not. The Court is of the view given the serious circumstances in which the Juvenile has committed this offence, a partial suspended and a partial custodial term of imprisonment is warranted.
21. I order that the juvenile is to serve 9 months imprisonment and the remaining 1 year is suspended for the next 4 years.

ORDER

22. In the result, your final sentence is as follows.
23. 1 year 9 months imprisonment. You are to serve 9 months in prison custody and the remaining 1 year is suspended for the next 4 years.
24. You have 30 days to appeal to the Court of Appeal if you so wish.


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Sekonaia. V. Voukisolomone
Acting Judge



At Lautoka
22nd of July, 2025

Solicitors

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