

IN THE HIGH COURT OF FIJI AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 310 of 2023

State –v- Apenisa Vasuinubu Vucago Hawea

For the State: Mr. V. Koroinivalu

For the Accused: Ms. S. Chand

Date of Judgment: 24th July 2025

Sentencing Hearing: 14th August 2025

Date of Sentence: 9th September 2025

SENTENCE

1. The Accused faced the following charges on the Information filed on the 27th of October 2023: -

**INFORMATION BY THE
DIRECTOR OF PUBLICPROSECUTION**

Count 1

Statement of Offence

SEXUAL ASSAULT: contrary to section 210 (1) (a) of the Crimes Act 2009

Particulars of Offence

APENISA VASUINUBU HAWEA on the 26th day of September 2023 at Kalabu Housing, Nasinu, Suva in the Central Division, unlawfully and indecently assaulted **KATEHRINE MOLIA**, by kissing her lips and neck and mouth.

Count 2

Statement of Offence

SEXUAL ASSAULT: contrary to section 210 (1) (a) of the Crimes Act 2009

Particulars of Offence

APENISA VASUINUBU HAWEA on the 26th day of September 2023 at Kalabu Housing, Nasinu, Suva, in the Central Division, unlawfully and indecently assaulted **KATHERINE MOLIA**, by rubbing her vagina with his fingers.

Count 3

Statement of Offence

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

Particulars of Offence

APENISA VASUINUBU HAWEA on the 26th day of September 2023 at Suva, in the Central Division, penetrated the vagina of **KATHERINE MOLIA** with his fingers, without her consent

2. After Trial, the Accused was convicted of Sexual Assault contrary to section 210 (1) (a) of the Crimes Act 2009, and acquitted of the remaining counts in the Information.

3. The Accused through counsel has filed the following plea in Mitigation: -
 - a) Apenisa Vasuinubu Vucago Hawea is 37 years of age, date of birth 19th May 1988.
 - b) He resides with his family including his wife and his children in Deuba. He has 7 children and he currently lives with 5 while the other 2 live with his relatives. His children range in age between 3 and 12 years.
 - c) He is a mechanical engineer with Goodman Fielders, earning \$270 per week. He is the sole breadwinner in the family.
 - d) He currently lives with the complainant, his wife, and has done so throughout these proceedings, and they continue to live together as a family.
 - e) He was remanded from September 2023 to December 2023 and this period should be deducted as time already served.
 - f) He fully cooperated with the Police and he did not resist or avoid questioning and he asks that this be taken into account.
 - g) He is a first offender.

- h) The Accused also asks that the Honorable Court consider that he only exercised his right by entering a Not Guilty plea to defend himself and this is not to be taken as a sign of lack of remorse.
- 4. The maximum sentence for Sexual Assault is 10 years' imprisonment and the tariff ranges from 2 - 8 years as per State vs Vuli [2019] FJHC 1091; HAC 205 of 2017 (12 November 2019). The Accused also relies on the authority of State vs Laca [2012] FJHC 1414, where the High Court has adopted the UK Guidelines for Sentencing, setting out the different categories of offenders.
- 5. According to the classification in Laca, the actions in this case fall into Category 3 and the Accused invites the Court to consider a sentence at the lower end of the tariff.
- 6. The Accused therefore submits that the Court ought to consider the above mitigating factors and seeks leniency.

Sentencing Recommendations

- 7. The State submits the following as aggravating factors: -
 - (a) The parties (Accused and the Complainant) are husband and wife and were temporarily separated at the time the Accused went to the complainant's residence and committed the sexual act.
 - (b) The complainant has filed a Victim Impact Statement, and she has set out how the Accused's action affected her physically and emotionally. She was ostracized by her family for reporting her husband and this affected her psychologically as she had to support her children by herself. She lost custody of her children as they were at St Christopher's Home for a while. Ultimately, she reconciled with her husband, and they are now living together with the children, and he is supporting them all financially.
- 8. In mitigation, the State confirms that the Accused has no previous convictions.

9. The Accused was first taken into custody in September 2023, and he was remanded until he was bailed in December 2023 – this 3-month period will be deducted as time already served.
10. The State recommends a deterrent sentence to send a strong message that such domestic offences need to be punished accordingly although the State recognises that the Court may suspend the sentence if appropriate.

Sentencing Remarks

11. The maximum penalty for the offence of Sexual Assault is 10 years' imprisonment.
12. The tariff ranges from 2 to 8 years imprisonment as set out in the case of State -v- Epeli Ratabacaca Laca [2012] FJHC 1414; HAC 252/2011 (14th November 2012).
13. Apenisa Vasuinubu Hawea, in sentencing you the Court notes that the maximum sentence for this offence is 10 years imprisonment. The tariff for this offence was set out by Justice Madigan in State -v- Khaiyum [2012] FJHC1274, Criminal Case 160 of 2010 (10th August 2012).

His Lordship states as follows: -

“[8] The offence of sexual assault has a maximum term of ten years. No tariff has yet been set for this new offence, but given that the summary offence of indecent assault has a maximum penalty of five years with a tariff of one to four years (Ratu Penioni Rakoto HAA 68 of 2002), the tariff for this more serious offence with double the penalty should be in the range of two to eight years.

[9] Any sexual assault which is invasive will be either aggravated sexual assault under Section 210 (2) and 210(3) or it will be rapes, so the most serious sexual assaults *simpliciter* will involve contact with genitalia by hand or mouth, and less serious assaults perhaps a "brushing" of breasts, genitalia or buttocks by hand, when the victim is clothed.”

16. In the case of State v. Epeli Ratabacaca Laca [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of Section 210 (1) of the Crimes Act.

17. It was held in *State v Laca* (supra) “The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.”

“A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

Category 1 (the most serious)

Contact between the naked genitalia of the offender and naked genitalia, face or mouth of the victim.

Category 2

- (i) Contact between the naked genitalia of the offender and another part of the victim's body;
- (ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;
- (iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim, or the naked genitalia of the offender and the clothed genitalia of the victim.

Category 3

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).”

- 18. This is a domestic violence offence and in sentencing you the Court is also required to consider the provisions of section 4 (3) of the Sentencing and Penalties Act 2009.
- 19. The victim is your wife, and she expected your love and protection, even though you were separated at the time, you forced yourself on her and offended in this case.
- 20. Your subsequent actions indicate that you have taken responsibility for your wrongful actions and are being accountable. You continued to support your family throughout the trial and you are abiding by the Domestic Violence Restraining Order issued in this case.

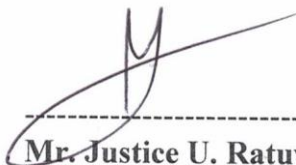
21. In commencing your sentence, the Court finds that the offending in this case falls into Category 3 of sexual offenders, so the Court adopts a starting point of 18 months' imprisonment.
22. The aggravating factors include the breach of trust and the fact that this offending occurred in a domestic relationship.
23. For the aggravating factors above your sentence is enhanced by 6 months.
24. The major mitigating factor in this case is the fact that you are a first offender and a person of previous good conduct. Ordinarily this would have attracted a greater discount however since your offending was in a domestic setting, your sentence is deducted by 4 months.
25. This leaves you with an interim sentence of 20 months' imprisonment.
26. For this case you have been remanded a total of 3 months and this period will be deducted as time already served by you, leaving a final sentence of 1 year 5 months imprisonment (17 months).
27. The final sentence is under 3 years and may be suspended in the appropriate circumstances, pursuant to section 26 of the Sentencing and Penalties Act.
28. From the circumstances of this case, the Court finds that you have reconciled with the complainant, your wife, and you have resumed the responsibility for maintaining your family, even while the matter was still before the Court. You have also spent time in remand and you have tasted life behind bars therefore I trust that you have used that time to reconsider your life choices and the consequences of the same.
29. Your wife and children are also protected by a final Domestic Violence Restraining Order, and you are aware of the consequences of any breach of the same.
30. After considering the above factors, I find that it is appropriate to fully suspend your sentence.

Apenisa Vasuinubu Hawea this is your sentence: -

- 1. On the remaining count on the Information, Sexual Assault, you are sentenced to 1 year 5 months (17 months) imprisonment.**
- 2. This sentence is suspended for 3 years.**
- 3. The final Domestic Violence Restraining Order – Standard Non-Molestation Conditions, protecting the complainant and your children remains in place. You are warned that any breach of this Order is a criminal offence, and you may be subject to further prosecution for the same.**

30 days to appeal.





Mr. Justice U. Ratuville
Puisne Judge

cc: - Office of the Director of Public Prosecutions
- Legal Aid Commission