

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

Criminal Case No. HAC 230 of 2024

STATE

-v-

MAKISI KAKILI

Counsel:	Ms. Bibi Shaheen for the State Mr. Waqanivalagi, Atama for the Accused
Date of trial:	29 th September, 2025 – 3 rd October, 2025
Date of Hearing of Closing Submissions:	2 nd December, 2025
Date of Judgment:	23 rd February, 2026
Date of Sentence:	6 th March, 2026

SENTENCE

The name of the complainant is suppressed and she will be referred to as “M.S”.

[1]. The Director of Public Prosecution filed the Information on 19th September, 2024. Then on 11th October, 2024, the accused pleaded not guilty to the following offence;

Count 1

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

MAKISI KAKILI on the 23rd day of July, 2024 at Kilikali Settlement, in Suva, in the Central Division, penetrated the vulva of **M.S**, a child under the age of 13 years, with his tongue.

[2]. After a full trial, the Court finds the accused not guilty of one count of Rape and he was acquitted forthwith. However, based on the evidence adduced by the Prosecution, the Court finds the accused guilty of a lesser offence of Sexual Assault contrary to *section 210(1)(a) of the Crimes Act, 2009*.

Law and Tariff

[3]. The Offence of "Sexual Assault" carries a maximum sentence of 10 years' imprisonment.

- [4]. There is no established tariff for Sexual Assault committed on children. In *State v Epeli Ratabacaca Laca*, HAC 252 of 2011, Justice Paul Madigan set the tariff for the offence between 2 and 8 years' imprisonment, the higher tariff being set for serious sexual assaults.
- [5]. As defined in the United Kingdom's Legal Guidelines for Sexual offences, sexual assault is any form of non-consensual touching which ranges offending from touching of the victim over clothing to non-penetrative touching of the victim's genitals.
- [6]. With the assistance of the said Legal Guidelines for Sentencing in the United Kingdom, Justice Madigan in the case of *State v Laca* [2012] FJHC 1414; HAC252.201114 November 2012) divided Sexual Assault offending into three (3) 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 parts of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)

- [7]. The Accused used his tongue to lick the victim's genitalia. His actions fall within category 2 (ii) as mentioned above.
- [8]. The Sentencing Guidelines of the United Kingdom had identified 3 "categories" of offending based on quantum of "harm" to the victim and "culpability" factors of the offender. It has recommended the tariff to be from "high level community Orders to 9 years imprisonment." The higher end of the range is obviously for serious offending with use of violence, abduction or detention of the victim and forced entry into victim's house. A sentence of middle range is recommended when the offending takes place with touching of genitalia, prolonged or sustained incident, additional degradation or humiliation and in a context of habitual sexual abuse. The lower range of sentencing is suggested when the "harm factors" and the "culpability factors" identified are not in existence.

Sentencing Guidelines

[9]. Before sentencing the Accused, this court has considered **sections 4(1), 4(2) and 4(3)** of the *Sentencing and Penalties Act, 2009*.

[10]. After having carefully considered the legal background on sentencing for the offence of Sexual Assault, I now turn to identify the aggravating and mitigating factors in this case.

Aggravating factors

[11]. The complainant, M.S was a child of five years old at the time of offending. Being a child of a young age is one of the aggravating factors. There is no doubt that a unique set of issues and sensitivities do exist in a sexual offence when the victim is a child. *State v. Yavala* [2013] FJHC 333 (9 July 2013).

[12]. Furthermore, the child is in a domestic relationship with the accused as her step father is the related to Makisi Kakili. In this case the victim trusts the accused as he is much older than her and she would refer to him as a cousin.

Mitigating Factors

[13]. Accused is 29 years old and a first offender. He currently lives with his father's older brother and assists his uncle in the farm.

[14]. At the time of the offending, the accused resides next door to the victim. The accused and the victim are well acquainted.

[15]. There is no evidence of injuries or pre planning.

[16]. Accused was remanded in custody from the 11 September, 2024 to the 18 November, 2024, a total of two months and seven days.

Sentence

[17]. In considering the seriousness of this offence, I select a starting point of 2 years and 6 months imprisonment. For the aggravating factors, I add 1 year and arrive at 3 years and 6 months imprisonment. In considering his mitigating factors, I decrease a 1 year and arrive at 2 years and 6 months.

[18]. **Section 24** of the *Sentencing and Penalties Act, 2009* 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.”

[19]. You have been in remand for this case from 11 September, 2024 to 18 November, 2024. Accordingly, you have been in custody for 2 months and 7 days. The period you were in custody shall be deemed as period of imprisonment already served by you in accordance with **Section 24** of the *Sentencing and Penalties Act, 2009*.

[20]. Accordingly, I order that you, **MAKISI KAKILI** to serve a **custodial term of 2 years and 3 months** imprisonment. Pursuant to **Section 18** of the *Sentencing and Penalties Act, 2009*, I order that you are not eligible to be released on parole until you have served 1 year and 3 months of this sentence.

[21]. The Counsel for the Defence beseeched the court for leniency on account of Mr. Kakili being 29 years old and a first offender. The Learned Counsel referred the court to the case of *State v. Nabose* [2025] FJHC 124; HAC 127.2024 (16 July 2025). In the said case, the Acting Director of Public Prosecutions filed the Amended Information dated 16 June 2025 on 17 June 2025. On 19 June 2025, the accused voluntarily and unequivocally pleaded guilty to the charge of Sexual Assault. The accused was sentenced to a custodial term of 2 years and 5 months, which the court wholly suspended to 4 years.

[22]. His Lordship, Justice Madigan as noted in *State v Epeli Ratabacaca Laca* [2012] FJHC 1414; HAC 252. 2011 (14 November 2012):

"such leniency can only be afforded to a convict who expresses remorse by way of a guilty plea or some other expression of regret."


[23]. In this case, Makisi Kakili, you pleaded not guilty to the charge of rape. You totally denied touching the victim at all. I note the victim's traumatic experience in court.

[24]. Based on the above reasoning, I refuse to suspend your sentence.

Appeal Period

[25]. Any party not in agreement with this decision have 30 days to appeal to the Court of Appeal.




Waleen M George
Acting Puisne Judge

Dated at Suva this 6th day of March, 2026.

Solicitors: Office of the Director of Public Prosecution for State
Legal Aid Commission for the Accused