

IN THE MAGISTRATES' COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

Criminal Case No. 1982 of 2018

STATE

-v-

SELEMA BEBE LIGAIRI

**Prosecutor:** Inspector J. Shaw

**Accused:** Present in Person

**Date of Sentence:** 1 November 2019

SENTENCE

1. You entered a guilty plea to one count of **Common Assault** contrary to section 274 of the *Crimes Act 2009* in that you “on the 4<sup>th</sup> day of October 2018 at Suva in the Central Division, unlawfully assaulted **Ilisapeci Mate** by spilling alcohol over her head.” You also entered a guilty plea to one count of **Damaging Property** contrary to section 369 (1) of the *Crimes Act 2009* in that you “on the 4<sup>th</sup> day of October 2018 at Suva in the Central Division, wilfully and unlawfully damaged a wine glass belonging to **Ilisapeci Mate**.” You also pleaded guilty to another count of **Common Assault** contrary to section 274 of the *Crimes Act 2009* in that you “on the 4<sup>th</sup> day of October 2018 at Suva in the Central Division, unlawfully assaulted **DC 3239 Pranil Chand** by pushing him;” and finally, you also pleaded guilty to one count of **Disorderly Conduct in a Police Station** contrary to section 47 of the *Police Act, Cap. 85* in that you “on the 4<sup>th</sup> day of October 2018 at Suva in the Central Division, whilst at the Raiwaqa Police Station acted in a disorderly manner by throwing a chair and using vulgar language at police officers.”
2. You admitted the summary of facts that were read out to you in open court. The facts reveal that on the day in question you had gone to **Ilisapeci Mate**'s home to drink alcohol. You had already been drinking prior to arriving at her place. At **Ms. Mate**'s place, you poured yourself a drink and without any reason, you unlawfully poured the contents of that drink over **Ms. Mate**'s head. She told you to stop and you became enraged and wilfully and unlawfully threw the wine glass causing it to break. She became fearful and called for assistance and police officers came by and intervened.



You then pushed one of those officers, **DC 3239 Prnil Chand**. You were escorted to the Raiwaqa Police Station and at the Station; you acted in a disorderly manner by throwing a chair and swearing at the police officers present. You said, “*dou vei cai*” and “*magaitinamu.*” Translated, the first curse words mean “*fuck each other*” and the second curse word means “*your mother’s vagina.*”

3. I am satisfied that your guilty pleas to each of the counts are unequivocal. I find you guilty of **Common Assault**, **Damaging Property**, **Common Assault** and **Disorderly Conduct in a Police Station** as charged.

### **Non Conviction Order**

4. You plead for the Court to exercise its power pursuant to section 16 of the ***Sentencing and Penalties Act 2009*** and find you guilty *but* not record a conviction against you.
5. In support of this plea, you called Ms. Jokapeci Baleidroka, a counsellor who had professional sessions with you and your wife, to the stand. She holds a degree in professional counselling and a certificate in law. More than that, she has had 20 years experience in the field of counselling. She tendered a letter on your behalf in court and she swore on oath that she prepared that letter and that its contents are true to the best of her knowledge, information and belief.
6. That letter states that you are a police officer who is currently suspended from the Force. You are on quarter pay and sometimes receive only \$40 - \$60 per fortnight. Your wife was diagnosed with depression in 2016 and is a regular patient at the St. Giles Hospital.
7. I pause here to note that there is a stigma attached to being a patient at St. Giles but I note for the record that one’s mental health is just as important as one’s physical health. I accept that a mental health condition will take its toll on an individual and an individual’s family. I accept that because of the stigma attached to mental health coupled with the fact that it is not as easy to “see” and understand, the emotional toll to oneself and one’s family is often, unfairly and unnecessarily, higher than physical health issues faced by other members in our communities.
8. According to that letter, Ms. Ligairi had a psychological breakdown at work in June 2018 and was asked to resign by her place of employment, Lydnhurst Pte Ltd and MAGI Enterprises Pte Ltd, as a result. Ms. Baleidroka then become counsellor for the couple and provided ongoing therapeutic support to both. She states that Mr. Ligairi became primary care-giver for both his children and his wife.
9. In mitigation you submitted the following:

“I accept that what I did that day both at home and with my colleagues was completely unacceptable.

My family is not stable. I was looking for solutions in alcohol and I became an alcoholic. It is because of this that I behaved as I did that day.

Before my family had become unstable I did not drink. I drank because of stress and because of my circumstances. I have two boys who are celebrating birthdays and I cannot afford to do much for them. I will never do this again. I



have been out of work and I know I put myself and my family at risk by what I did.”

10. Ms. Baleidrokadroka continued her letter by stating that you have resolved issues with the complainant and your whole family. You have presented a traditional ‘*i-soro*’ and have asked for forgiveness for the events in October 2018. You have sought forgiveness from your in-laws and have resolved issues on both sides of your family and have reconciled with all the individuals involved. Your family relationships have been rebuilt. In her assessment, you have learnt much from this incident and its aftermath and she is confident you will be law abiding moving forward.
11. The State notes fairly that not entering a conviction is a discretionary power and accepts that this is one of those rare instances where the interests of justice warrant its exercise. No issue was taken with any of the points raised by you in mitigation.
12. In **State v. Batiratu** [2012] FJHC 864; HAR001.2012 (13 February 2012), the then Chief Justice of Fiji, Gates C.J laid out this helpful guidance for sentencing courts in Fiji. We are to ask ourselves and conduct a balancing exercise of our answers in respect of the following:
  - (a) were you morally blameless?
  - (b) was this only a technical breach of the law?
  - (c) was the offence of a trivial or minor nature?
  - (d) is the public interest in the enforcement and effectiveness of the legislation such that escape from penalty is not consistent with that interest?
  - (e) do circumstances exist in which it is inappropriate to record a conviction, or merely to impose nominal punishment?
  - (f) are there any other extenuating or exceptional circumstances, a rare situation, justifying a court showing mercy to an offender?”

### ***Analysis***

13. You were not morally blameless.
14. Count 1 involved a technical breach of the law but Counts 2 to 4 did not.
15. However, each of the counts for which you were charged are minor in nature. They are all misdemeanour counts and the maximum penalties are as follows: *Counts 1 and 3: 1 year imprisonment; Count 2: 2 years imprisonment and Count 4: 3 months imprisonment*. By clear parliamentary intent, these are not objectively serious offences.
16. I will consider my answers to question (d) and (f) together later.
17. In response to (e) above, I note you are a police officer and as such, a higher standard exists for you as it does for all members of law enforcement, the legal profession, executive heads of government, members of the judiciary and members of Parliament. Still, there are moments, regardless of our best intentions when a fall from grace occurs. Had your offences been more serious, a non-conviction would have been out of the question.
18. Fortunately for you, there is material before me that warrants a proper consideration of your plea for a non-conviction. I take into account the fact that you harmed no one



physically by your actions. You poured water on one person, broke one wine glass, pushed another person, threw a chair and swore. You did not punch anyone, break multiple or valuable items, punch or otherwise seriously batter **DC Chand**, and there is no report of damage to the chair you threw or harm to anyone as a result of your behaviour at the police station.

19. I accept that you were a man who was under extreme stress as a result of his personal circumstances. I accept that the sudden change in your wife's health and the sudden burden of being effectively single parent, sole provider and primary care giver had a significant detrimental effect on your own emotional and mental well-being. You turned to alcohol and committed these four crimes as a result. You have paid a significant price for your bad acts. You have been relieved of your duties as a police officer. You have been on quarter pay. You are still the sole breadwinner. Your wife continues to be unwell. She continues to be unemployed. You continue to be financially responsible for her, your children, your unmarried sister and her two children, and your parents.
20. I believe you when you say you have learnt your lesson. You have given up drinking. You have learnt to be stoic. You have been of good behaviour since. More than that you have made the effort to reconcile with all who were affected by your crimes and you have entered a guilty plea at the first available opportunity. In considering all these factors, I find that there are exceptional circumstances, a rare instance, justifying the show of mercy here and now. It is in the public interest that I grant your application for non-conviction. When faced with a deserving plea for mercy, a court of law must grant it or risk being seen as unjust. I exercise my power pursuant to section 16 of the **Sentencing and Penalties Act 2009** and I order that no conviction be entered against you in respect of each of the Counts for which you have been charged.
21. I now move on to considering the next appropriate course of action in sentencing pursuant to section 15 of the **Sentencing and Penalties Act 2009**.

#### **Aggravating Factor**

22. There are no aggravating factors readily discernable on the facts.

#### **Mitigating Factors**

23. There are some very significant mitigating factors present here.
24. You are married and have two children who are 3 years and 1 year and 6 month old. You are the sole bread winner who is also financially responsible for your unmarried sister who has two children who are 9 years and 3 years old. You also support your parents. You are the sole care-giver for your wife.
25. You are a first offender who entered a plea of guilty at the first available opportunity.
26. You were under an incredible amount of stress at the time. You were suffering from alcoholism. You have learnt a sharp lesson. You have been suspended on quarter pay since. You have stopped drinking, have attended counselling, have conducted an *i-soro*, reconciled with members from both sides of your family and have personally apologised to each of the individuals involved.




## Sentencing

27. I accept your suspension and your being on quarter pay as significant extra-curial punishment in all the circumstances of your case. Your immediate family have forgiven you and you have done your best by them without complaint since.
28. The Force that you disrespected and harmed as a result of your actions has taken its ounce of flesh from you.
29. Suspension on a significantly reduced salary is a sign of significant disapprobation. It is a hard but deserved blemish on your career record.
30. Your entire family have suffered a significant degree of hardship as a result of your actions and will likely suffer more if the matter is prolonged further. This is one of those rare cases where the degree of hardship that will be faced by your dependents calls for a degree of mercy in sentencing: *Markovic* [2010] VSCA 105; *Holland* (2002) 134 A Crim R 451 (CCA Vic).
31. In light of the extra-curial punishment apparent here and the extraordinary degree of hardship that a large body of people in the form of your immediate and extended family have faced, I exercise my power pursuant to section 15 (1)(j) of the **Sentencing and Penalties Act 2009** (as opposed to section 15 (1)(e), (f) or (i) of the said **Act**) and I dismiss each Count on the Charge.
32. The extra-curial punishment meted out to you and to other law enforcement officers who behave as badly as you did serves as its own effective deterrent. The hardship and uncertainty you faced served and, I have every confidence after listening to the evidence before me and carefully observing you through this process, will continue to serve as a personal deterrent to you. Undoubtedly, it will also serve as a general deterrent to other, warning others in extraordinary circumstances like yours to be more open and to seek help *before* critical flashpoints are reached.
33. You have proven yourself capable of change. I consider rehabilitation the foremost consideration in sentencing in all the circumstances of this case. It is the rarity of the circumstances in existence here that set it apart from other cases. Section 15 (1) (j) of the **Sentencing and Penalties Act 2009** is rarely used and for good reason but when a fit case for its exercise presents itself, as it has so clearly presented itself here, it must be exercised or else its *raison d'etre* is frustrated.

## Result

34. In the result, and for the reasons set out above, pursuant to section 15 (1) (j) of the **Sentencing and Penalties Act 2009**, without recording a conviction, I dismiss each of the four counts against you.
35. **28 days to appeal.**



  
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Seini K Puamau  
**Resident Magistrate**

Dated at Suva this 1<sup>st</sup> day of November 2019.