

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 349 - 2018

STATE

-v-

MARIKA NAQUTO NAIKA

Before : RM Fotofili L.  
For Prosecution : WPC Chand A. [ Police Prosecution ]  
Accused : In Person, Waived Right To Counsel  
Date of Sentence : 10<sup>th</sup> December 2019

**SENTENCE**

**BACKGROUND**

1. MARIKA NAQUTO NAIKA, you have pleaded guilty to the following charge:

Count 1

**Statement of Offence**

**ASSAULT OCASSIONING ACTUAL BODILY HARM:** Contrary to section 275 of the *Crimes Act of 2009*.

**Particulars of Offence**

MARIKA NAQUTO NAIKA on the 24<sup>th</sup> day of December, 2018 at Tavua Town in the Western Division assaulted Amele Diwaqa thereby causing her actual bodily harm.

Count 2

**Statement of Offence**

**DAMAGING PROPERTY:** Contrary to section 369 ( 1 ) of the *Crimes Act of 2009*.

**Particulars of Offence**

**MARIKA NAQUTO NAIKA** on the 24<sup>th</sup> day of December, 2018 at Tavua in the Western Division wilfully and unlawfully damaged the Police uniform trousers worn by Police Constable Number 5368 Apisalome Nayasi, valued at \$61 the property of the Fiji Police Force.

2. I am satisfied that your guilty plea and admission in court is voluntary and that you understand the consequences. The evidence tendered in support of your admission also supports your guilty plea.
3. I find you guilty of both counts and convict you of the charge.
4. The female 33 year old victim in count 1 was working at a car wash at the time polishing the dashboard of a vehicle. It was 11am. You were under the influence of liquor at the time. You came to the victim and punched the victim on the left side of her cheek. The police officer who is the subject of count 2, was in a police vehicle and responded to the wave of the victim in count 1 and pursued you. You were caught by the police officer. You were taken to the police station. The police officer tried to search you before locking you in the police cell but you did not cooperate. You braced yourself against the corner of the cell door and refused to go inside the cell. You held and you tore the police officer's trouser pocket. The trousers is valued at \$61 [ not necessarily the damage or tear to the trouser pocket ].
5. You were later interviewed under caution by police. You admitted coming from Nadi to Tavua to see your family. You then drank with some other boys in town. You drank liquor. You cannot remember punching the female victim. You cannot recall damaging the police officer's trousers.
6. The female victim you punched was medically examined about 2 hours later after your violence. The medical officer amongst other things, observed that there was a mild swelling to the left side of her cheek.
7. You are a first offender.
8. You have not spent any time in remand.
9. You are 24 years old. You are married with a wife who was due to give birth in September or October 2019. You have a 2 year old daughter. You are a carpenter.
10. I deferred your sentence intentionally until after your wife gave birth.

### **AGGREGATE SENTENCE**

11. The offences or both counts were committed in the course of the same transaction or founded on the same facts.
12. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for both the counts.
13. Count 1 assault causing actual bodily harm is the more serious of the 2 counts and I will use that as the foundation for your aggregate or combined sentence.

### **LAW**

14. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

### **TARIFF**

15. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence and for more serious cases to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [ see for example **State v Kalouteretere** - Sentence [ 2018 ] FJHC 845; HAC 270. 2018 ( 12 September 2018 )].

### **STARTING POINT**

16. Considering the objective seriousness of the offence, a 4 month imprisonment term is selected as a starting point.

### **AGGRAVATING FEATURES**

17. Your violence was unprovoked.
18. You punched the victim on her face.
19. You were drunk.

20. This was in public.
21. You were resisting at the police station.
22. You tore the police officer's trouser pocket.
23. I increase your sentence to 10 months imprisonment.

#### **MITIGATION**

24. You are a first offender.
25. You have a family to support.
26. I accept that you are remorseful.
27. Although you could not remember much, I accept that you have told police what you could remember and in that capacity, you have cooperated with police during your interview.
28. Your sentence is reduced to 6 months imprisonment.

#### **GUILTY PLEA**

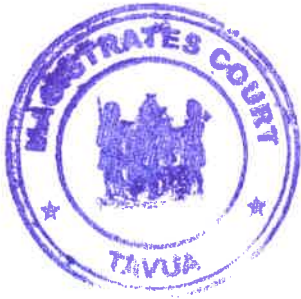
29. You have pleaded guilty early and I will reduce your sentence to 4 months imprisonment.

#### **SUSPENSION**

30. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
31. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.
32. Your sentence will be aimed at deterrence and is to punish you adequately.

**SENTENCE**

33. You are sentenced to 4 months imprisonment.
34. You have not spent any time in remand and so your sentence will not be reduced any further.
35. I am only inclined to suspend your imprisonment term in part.
36. 2 months and 14 days imprisonment is suspended for the next 18 months.
37. Do not commit any other offence punishable with imprisonment in the next 18 months or you risk this 2 months and 14 days imprisonment held in waiting being activated.
38. You will serve 1 month and 14 days imprisonment, immediately.
39. 28 days to appeal.



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Lisiata T.V. Fotofili  
**Resident Magistrate**

Dated at Tavua this 10<sup>th</sup> day of December, 2019