

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 19 of 2020

STATE

-v-

ETUATE QIONIWAQA

SEKOVE KAUKITOGA

Before : RM Fotofili L.
For Prosecution : Inspector Chinsami C. [Police Prosecution]
Defendants : Both In Person, Both Waived Their Right To Counsel
Date of Sentence: 31st March 2020

SENTENCE

BACKGROUND

1. **ETUATE QIONIWASA** and **SEKOVE KAUKITOGA**, both of you have pleaded guilty to the following charge:

Count 1

Statement of Offence

DRUNK AND DISORDERLY: Contrary to section 4 of the *Minor Offences Act*.

Particulars of Offence

ETUATE QIONIWASA and **SEKOVE KAUKITOGA** on the 12th day of January, 2020 at Loloma, Vatukoula in the Western Division was drunk and behaving in a disorderly manner in a public place namely Loloma, Vatukoula.

Count 2

Statement of Offence

RESISTING ARREST: Contrary to section 277 (a) of the Crimes Act No. 44 of 2009.

Particulars of Offence

ETUATE QIONIWASA and **SEKOVE KAUKITOGA** on the 12th day of January, 2020 at Loloma, Vatukoula in the Western Division resist the lawful arrest of PC 5142 Emosi and PC 5368 Apisalome with intent to resist their arrest.

2. I am satisfied that both your guilty plea to the 2 counts in the charge is voluntary and that both of you understand the consequence of your plea. Both your admission and the evidence also support both your guilty plea.
3. I am satisfied that both of you were drunk and that the report was true and accurate that it was you two together with some others who were shouting at the taxi base before police arrived. You two tried to run away when police tried to arrest both of you.
4. I convict both of you of both counts in the charge accordingly.
5. Police who were on patrol, attended to a call that some youths were drunk and shouting at a taxi base. This was around 10pm. Police approached the defendants and warned them to go home but both the defendants swore at police saying 'fuck each other'. The smell of liquor emanated from the defendants and they were staggering. The defendants were also aggressive. The police officers then tried to arrest both the defendants. The 1st defendant Etuate Qioniwasa resisted by trying to run away. The 2nd defendant Sekove Kaukitoga pushed the police and tried to run away. Police still managed to arrest both defendants. The defendants were then escorted to the Police Station.
6. When interviewed by police under caution later, the 1st defendant Etuate Qioniwasa admitted that he was drinking homebrew and then he and some others came down to the taxi base. Police came and told them not to make noise and to go. He saw police holding his friend and he went to bring his friend away from police. He explained that he wanted to save his friend from going to the police station.
7. When interviewed by police under caution later, the 2nd defendant Sekove Kaukitoga admitted that he was drinking liquor and homebrew with some friends. The 2nd defendant cannot recall whether he swore at police as he was drunk. He also cannot recall whether he resisted arrest.

8. Both the defendants are first offenders.
9. They have not spent any time in remand.
10. The 1st Defendant Etuate Qioniwasa is 22 years old. He is working at a scrap metal business. He looks after his grandparents. He seeks forgiveness and promises he will not reoffend.
11. The 2nd defendant Sekove Kaukitoga is 29 years old. He apologises for what he has done. He admits being really drunk on the day in question. He supports his younger sister who is schooling and who is 9 years old.

AGGREGATE SENTENCE

12. Both the counts were committed in the course of the same transaction or founded on the same facts.
13. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on both of you for both counts.
14. Since the 2nd count of resisting arrest is the more serious of the two counts, I will use that as the foundation when passing both your aggregate sentence.

MAXIMUM

15. The maximum sentence that is imposable by law for the offence for which the prosecution has preferred against you in the 2nd count - resisting arrest, is up to 5 years imprisonment.

TARIFF

16. The High Court case of **Hicks v State** [2011] FJHC 455; HAA018.2011 (19 August 2011) stated that the tariff of 6 to 12 months may be appropriate.
17. **Hicks** was found guilty and sentenced for resisting arrest under the repealed **Penal Code Cap 17** where the maximum sentence too at the time was up to 5 years imprisonment.

18. Incidentally, the **Crimes Act 2009** is now in force and there has been an amendment made to serious assault contrary to section 277 (b) increasing the maximum imposable to 10 years imprisonment.
19. The High Court case of **State v Bulavou** – Sentence [2019] FJHC 1034; HAC 252.2017 (29th October 2019) envisage that the tariff for an offence contrary to section 277 (b) should attract sentences between 2 to 7 years imprisonment.

STARTING POINT

20. Considering the objective seriousness of your case and the tariff in **Hicks**, I select 6 months imprisonment as the starting point for both of you.

AGGRAVATING FEATURES

21. Both of you two were drunk and shouting in public.
22. The 2nd Defendant Sekove Kaukitoga I find was more intoxicated out of the two of you.
23. Both of you two swore at the police.
24. The 2nd Defendant Sekove Kaukitoga pushed the police.
25. I increase the 1st Defendant Etuate Qioniwasa's sentence to 13 months imprisonment.
26. I increase the 2nd Defendant Sekove Kaukitoga's sentence to 14 months imprisonment.

MITIGATION

27. Both of you two are first offenders.
28. You have family to support.
29. I accept that both of you two are remorseful.

30. I accept that both of you two cooperated with police during your interview even if the events could not be recalled.
31. The 1st Defendant Etuate Qioniwasa's sentence is reduced to 9 months imprisonment.
32. The 2nd Defendant Sekove Kaukitoga's sentence is reduced to 10 months imprisonment.

GUILTY PLEA

33. Both of you have pleaded guilty early.
34. The 1st Defendant Etuate Qioniwasa's sentence is reduced to 6 months imprisonment.
35. The 2nd Defendant Sekove Kaukitoga's sentence is reduced to 6 months and 15 days imprisonment.

SUSPENSION and OBJECTIVE

36. 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** as long as it is below 2 years imprisonment.
37. 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.
38. Your sentence will be aimed at deterrence, denunciation and to punish you adequately.

SENTENCE

39. No further reduction in sentence will be made as no time was spent in remand by either of you.
40. Both of you will receive an aggregate or combined sentence for both the counts.


1st Defendant Etuate Qioniwasa

41. For the 1st Defendant Etuate Qioniwasa, you are sentenced to an aggregate 6 months imprisonment term.
42. I am inclined to wholly suspend this imprisonment term for the next 18 months.
43. Do not commit any other serious offence or offence punishable with imprisonment in the next 18 months or you risk this 6 months imprisonment held in waiting being activated.
44. In addition to your wholly suspended sentence, you are fined \$140 to be paid in 28 days.
45. You default and you risk up to 7 days imprisonment.

2nd Defendant Sekove Kaukitoga

46. For the 1st Defendant Sekove Kaukitoga, you are sentenced to an aggregate 6 months and 15 days imprisonment.
47. I am inclined to wholly suspend this imprisonment term for the next 18 months.
48. Do not commit any other serious offence or offence punishable with imprisonment in the next 18 months or you risk this 6 months and 15 days imprisonment held in waiting being activated.
49. In addition to your wholly suspended sentence, you are fined \$160 to be paid in 28 days.
50. You default and you risk up to 8 days imprisonment.
51. I will give both of you a date hereafter to check on whether your fine has been paid. Both of your bail and the bail conditions will be extended until your fine is paid.
52. 28 days to appeal.




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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 31st day of March, 2020