

**IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION**

Criminal Case No: 314 - 2020

**STATE**

-v-

**ALESI NAULA**                    - 1<sup>st</sup> Defendant  
**KALIOVA CADREVIA**        - 2<sup>nd</sup> Defendant  
**LIVAI TIKOINASAU**        - 3<sup>rd</sup> Defendant

Before                                :        RM Fotofili L.  
For Prosecution                :        A/CPL Chand A. [Police Prosecution]  
All Defendants                 :        In Person, All Waived Right To Counsel  
Date of Sentence                :        16<sup>th</sup> November 2021

**SENTENCE**

1. **ALESI NAULA, KALIOVA CADREVIA and LIVAI TIKOINASAU**, all of you have pleaded guilty to the following charge:

**Statement of Offence**

**FAILURE TO COMPLY WITH ORDERS:** Contrary to section 69 (3) of the Public Health Act, 1935 and Regulation 2 of the Public Health [Infectious Diseases] Regulation 2020.

**Particulars of Offence**

**ALESI NAULA, KALIOVA CADREVIA and LIVAI TIKOINASAU** on the 17<sup>th</sup> day of September, 2020 at Tavua in the Western Division without lawful excuse, were found at Rabulu, Tavua at 0340hrs and fail to comply with the hours of curfew (between 11pm to 4am) orders issued by permanent secretary of Health.

2. I am satisfied that all of you understand the consequence of your plea and that all your pleas of guilty are voluntary. All of you have also made admissions in court and admitted the facts proposed by the prosecution.
3. There was no lawful justification for any of you to be outdoors at the material time.

4. I find all of you guilty and I enter a conviction against all of you.
5. I take judicial notice of the existence of the Novel coronavirus (2019-nCoV) and amongst other things, the imposition of a curfew by the Permanent Secretary which the Secretary is empowered to do pursuant to section 69 (3) (v) of the Public Health Act 1935 to combat the spread of this pandemic.
6. According to the Government of Fiji Gazette NO. 59 of 2020 Public Notice No. 22, the Secretary mandated that a curfew from 11pm until 4am applied for the whole of Fiji with effect from 22 June 2020. Those travelling for work, seeking medical care or an emergency were exempted.
7. On the 17<sup>th</sup> of September 2020 at about 3.40am, all 3 of you were inside a vehicle near a feeder road at Rabulu. All of you were drinking liquor inside the vehicle. A police team on patrol arrested all of you and brought you to the Tavua Police Station.
8. In all your caution interviews with the police, all of you admitted being aware of the curfew. The vehicle in which all of you were in, belongs to the 2<sup>nd</sup> defendant KALIOVA CADREVIA. You had all started drinking liquor in the vehicle before 11pm and then the 2<sup>nd</sup> defendant went off to sleep while the others continued. When police arrived, the 2<sup>nd</sup> defendant's license and vehicle key was demanded.
9. The 1<sup>st</sup> defendant **ALESI NAULA** and the 3<sup>rd</sup> defendant **LIVAI TIKOINASAU** have no previous conviction.
10. The 2<sup>nd</sup> defendant **KALIOVA CADREVIA** has a previous conviction in 2012 for assault causing actual bodily harm where his 6 months imprisonment was wholly suspended for 2 years.
11. Despite the 2<sup>nd</sup> defendant's prior conviction, I will treat him too as a first offender as that prior conviction was almost 8 years ago for an assault case.
12. None of you have spent any time in remand in this case.
13. **ALESI NAULA**, you are 30 years old. You do domestic duties. You are single with no child. You look after your 69 year old father. You seek forgiveness. You explained that you went to drink alcohol outside the village because that was prohibited inside the village. You consent to community work.
14. **KALIOVA CADREVIA**, you are 36 years old. You are married and you have a 5 year old son. You are unemployed at the moment. You look after your mother. You seek forgiveness. You promise not to reoffend. You seek a non-custodial sentence. You consent to community work.

15. **LIVAI TIKOINASAU**, you are 28 years old. You are unemployed. You are single and you have no child. You seek forgiveness. You promise not to reoffend. You consent to community work.

### LAW

16. The maximum sentence imposable pursuant to the **Public Health (Infectious Diseases) Regulations 2020** Legal Notice 26 of 2020 is a fine not exceeding \$10,000 and or imprisonment not exceeding 5 years.

### TARIFF

17. I have been unable to find any tariff for this offence understandably because this is a novel area.
18. It may be worthwhile considering some of the sentences imposed on offenders who disobeyed lawful orders contrary to section 202 of the **Crimes Act 2009** or the **Penal Code Cap 17** where the maximum sentence imposable is up to 2 years imprisonment.
19. A person who was operating his vehicle on hire, had parked his vehicle at a public parking spot. He was ordered to move his vehicle by a police officer but the person refused. The driver was arrested and later convicted by a Magistrate's Court for breaching a lawful order and sentenced to pay a \$200 fine [**Sattar v State** [2000] FJHC 150; Criminal Appeal 83 of 1999 ( 10 January 2000 )]. His appeal was unsuccessful. The sentence was passed when the **Penal Code Cap 17** was in force. The punishment of up to 2 years imprisonment was the same under the repealed **Penal Code Cap 17**.
20. In **State v Mataiasi Kalou** Tavua CF 311 – 18, Mr. Kalou was not supposed to be driving and was disqualified from driving due to his earlier traffic offence for driving with excess alcohol in his blood above the legal limit. Within 5 days of being disqualified, Mr. Kalou was seen driving again in town. Mr. Kalou was sentenced to 2 months and 5 days imprisonment. He was ordered to serve 19 days imprisonment and the remainder of his imprisonment term was suspended for 18 months imprisonment.
21. In **State v Umesh Prasad** High Court Criminal Review HAR 02 of 2019 (27<sup>th</sup> April 2020), the High Court said that generally, suspended terms of imprisonment even up to 6 months imprisonment can be imposed for disobedience of a lawful order which attracts up statutory maximum of up to 2 years imprisonment. On review by the High Court, Mr. Umesh Prasad was fined \$300 to be paid in 60 days. In justifying a fine, the High Court had found that Mr. Prasad's breach in interfering in judicial

proceedings even though he was a court officer was an administrative one and that some time had elapsed since the inception of the case.

22. More recently, for breaching COVID-19 restrictions:
23. In State v Arieta Marama Tavua CF 119 – 20, Ms Marama had come to town at about 10.15pm to buy eggs as she was hungry. She was supposed to be indoors at 10pm due to the national curfew. She was sentenced to 7 days imprisonment which was wholly suspended for 12 months. She was also ordered to pay a fine of \$50. She had spent some time in remand and so the court did not require her to serve her suspended term or pay her fine.
24. In State v Ropate Sokia Rakiraki CF 110 – 20, Mr. Sokia had returned from Suva in a delivery or transport truck and was arrested at a police checkpoint at around 12pm when the national curfew was in place. Mr. Sokia was not formally employed by the Company which owned the truck. He had accompanied the driver of the truck who was also his cousin to help his cousin with the tarpaulin of the truck. Mr. Sokia was ordered to complete 20 hours of community work.
25. In State v Qica Puamau and 4 Others Rakiraki CF 256 – 2020, the defendants were riding on horseback around midnight and shouting profanities at villagers. The adult defendants were sentenced with up to 10 days imprisonment and the juveniles had no-convictions recorded but were ordered to complete 20 hours of community work.
26. In State v Emosi Namaumaulu, Eminoni Bilia and Viliame Salabogi Rakiraki CF 123 – 20, the defendants were gathered or assembled drinking grog at 1am while they waited for the tide in-order that they check their fishing nets. They were all first offenders and they all pleaded guilty. They were sentenced to 22, 20 and 22 hours of community work respectively. The 3<sup>rd</sup> defendant had a conditional non-conviction entered in his favour as he had good prospects of getting employment overseas. The condition was that the 3<sup>rd</sup> defendant will be bound over to be of good behaviour for 12 months. If he complies with the conditions of the bond, his non-conviction will remain.
27. The High Court has said that ‘wilful failure and disobedience of Court Orders and flagrant disregard of rule of law must be met with appropriate sentence.’ [ Namua v State [2008] FJHC 106; HAA025.2008 & HAA026.2008 ( 15 May 2008 ) ].

## INSTINCTIVE SYNTHESIS APPROACH

28. Primarily due to there being no sentencing tariff established for breaching COVID-19 restrictions, I will adopt an instinctive approach when sentencing all 3 of you.
29. The only aggravating factor I see is for the 2<sup>nd</sup> defendant **KALIOVA CADREVIA** as he had allowed his vehicle to be used.
30. All in your favour, you are remorseful, first offenders, cooperated with police when interviewed.
31. Additionally, for the 2<sup>nd</sup> defendant **KALIOVA CADREVIA**, he has a young family to support.
32. I also take into account that all your guilty pleas are early.
33. I have considered whether any or all of you should be sentenced to do some community work.
34. For community work, if the offence is punishable with 2 years or more, you can be ordered to complete between no less than 20 hours of community work with up to 400 hours of community work [ section 3 ( 2 ) ( a ) of the Community Work Act 1994.
35. However, a court shall not sentence a person to community work unless:
  - a. The offender consents;
  - b. The court is satisfied that the offender is a suitable person to perform the community work;
  - c. That community work is available and;
  - d. There are satisfactory arrangements for the supervision of that person's performance of the work

[section 4 ( a ) ( b ) ( i ) ( ii ) ( iii ) of the Community Work Act 1994 ].
36. All of the above factors must be present or met.
37. I am satisfied that all of you meet the criteria for community work.
38. I have also considered the Sentencing and Penalties Act 2009 particularly section 4, 15, 16, 43 and 45 when determining your sentence.
39. I bear in mind that deterrence and punishing all of you adequately are the main objectives when sentencing you.

## SUMMARY

40. **ALESI NAULA, KALIOVA CADREVIA and LIVAI TIKOINASAU**, I do not find that immediate imprisonment is warranted in any of your case.
41. Each of you are sentenced to do some community work. All of you are to complete 20 hours of community work.
42. Each of you are to report to the supervising officer at the social welfare department within 72 hours ( or within 3 days ) from today in-order that you complete the number of community hours you have been prescribed.
43. The court registry will notify the social welfare department beforehand.
44. I advise all of you that it is an offence if you fail without reasonable excuse to report to the supervising officer within 72 hours or you fail to complete the number of hours ordered or you fail to complete the work in a satisfactory manner. The order that you do community work could be varied or cancelled.
45. Comply with all reasonable directions given by the supervising officer.
46. Each of your court bail with the same bail conditions will be extended while this case remains alive or until I am satisfied that each of you have completed your community work hours.
47. I will recall this case on another date to receive an update or report from the social welfare department about the completion of each of your community work punishment.
48. Each of you are to reappear on the next date before me and the specific date I will give to you now.
49. 28 days to appeal if any party is dissatisfied with the sentence.



At TAVUA this 16<sup>th</sup> day of November, 2021.

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