

IN THE MAGISTRATES' COURT  
AT BA  
CRIMINAL JURISDICTION

Criminal Case No. 79/2025

BETWEEN: STATE

PROSECUTION

AND: MANOA BALEINAKEBA

ACCUSED

Counsel: WCPL 4897 Venu Singh appearing on instructions of ODPP  
Accused unrepresented and in person.

Date of Sentence: 19 December 2025.

**SENTENCE**

Introduction

1. Mr. Manoa Baleinakeba, on 17 February 2025 you were charged and produced in Court for 1 count of Aggravated Burglary, 1 count of Unlawful Wounding, 1 count of Criminal Intimidation, 1 count of Assault causing Actual Bodily Harm and 1 count of Breach of Bail Conditions. As the offence of Aggravated Burglary was an indictable offence, the matter was transferred to the Lautoka High Court and you were remanded during such time.
2. The matter was listed for First Call in the High Court on 11 March 2025. On 14 May 2025, State filed an Information in the matter wherein you were charged with 1 count of Aggravated Burglary, 1 count of Criminal Intimidation and 1 count of Assault causing Actual Bodily Harm. The particulars of the offences are:

*First Count  
Statement of Offence*

**Aggravated Burglary:** Contrary to Section 313 (1)(b) of the Crimes Act 2009.

*Particulars of Offence*

**Manoa Baleinakeba** on the 13<sup>th</sup> day of February 2025, at Tauvegavega, Ba in the Western Division, entered into the premise of Zahid Ali as a trespasser with the intent to commit an offence namely causing harm to one Zahid Ali and at the time of offending, he had a cane knife in his possession.

*Second Count  
Statement of Offence*

**Criminal Intimidation:** Contrary to Section 375(1)(a)(i) and (iv) of the Crimes Act 2009.

*Particulars of Offence*

**Manoa Baleinakeba** on the 13<sup>th</sup> day of February 2025 at Tauvegavega, Ba the Western Division, without lawful excuse and with intent to cause alarm to Zahid Ali attacked the said Zahid Ali with a cane knife and uttered the words "tum jano hum kaiviti hai, hum tume khalas kardega" meaning "you know I am iTaukei, I will finish you".

*Third Count*  
*Statement of Offence*

***Assault Causing Actual Bodily Harm: Contrary to Section 275 of the Crimes Act 2009.***

*Particulars of Offence*

***Manoa Baleinakeba on the 13<sup>th</sup> day of February 2025 at Tauvegavega, Ba the Western Division, assaulted Zahid Ali thereby causing actual bodily harm to the said Zahid Ali.***

3. On 28 May 2025, an order was made for you to be psychiatrically evaluated given that when the Information was put to you, you had informed the Court that you did not understand the same.
4. On 30 June 2025, a Psychiatric Evaluation Report was filed and it concluded that you were fit to plead and fit to stand trial given that you understood the current charges. On 18 July 2025, you pleaded Not Guilty to the charges and thereafter the matter was remitted to the Magistrates' Court under extended jurisdiction.
5. When the matter was called before this Court, you informed that you would be raising alibi as a defence as such time had been granted to you to file your Notice of Alibi.
6. On 22 October 2025, you appeared in Court and informed the Court that you wished to change your plea. As such, the charge was read and explained to you in your preferred language of English and once you confirmed that you understood the same, you pleaded Guilty to the above offences.
7. Satisfied that you have fully comprehended the legal effect of your plea and that your plea was voluntary and free from influence, I now convict you and proceed to sentence you for all the offences.

Circumstances of the offending

8. According to the Summary of Facts you admitted in Court, on 13 February 2025 at about 1am, the Complainant was at home at Tauvegavega, Ba. His home was under construction at the time. The Complainant was sleeping in his room which had 2 windows when he heard a loud bang and glass shattering. This noise woke him up.
9. The Complainant then saw someone using a PVC pipe to break the louvers and enter his home. The person then dropped the PVC pipe inside the Complainant's room and then threw stones and a pot plant into the Complainant's room.
10. As the person picked a 4x2 wood, the Complainant then picked up the PVC pipe to defend himself and started shouting for help. The person then tried to enter the Complainant's home through the front door by banging it hard to break. The door broke and the person entered the Complainant's home and the Complainant saw that it was you. The Complainant knew you as Yasa.
11. You had a cane knife in your hand which you swung twice to hit the Complainant. The Complainant was able to defend himself by using the PVC pipe. As you swung the cane knife twice again, it landed on the Complainant's right wrist and right thigh causing a cut.
12. You then grabbed the Complainant's neck with your left hand and held the cane knife in your right hand. You then threatened the Complainant by saying "tum jaano hum kaiviti hai, tumme hum khalas kardega" meaning "you know I am itaukei, I will finish you".

13. The Complainant managed to push you and run outside his home whilst you chased him with the cane knife. There were some men nearby who helped the Complainant and called the Police. You had run away by the time the Police arrived.
14. You were arrested and interviewed under caution where you admitted breaking in and entering into the Complainant's home. You were then charged for this matter.

#### Objective Seriousness

15. The act of breaking into someone's home to cause harm to them is a serious criminal offence due to the profound disruption of personal security with the intent to commit violence in a private dwelling. Thus, the objective seriousness of the crime is high.

#### Sentencing Purpose

16. Considering that the primary purpose of this sentence is founded on the principle of deterrence, it is the responsibility of the Court to deter others from committing such offences of the same or similar nature as well as to protect the community from those who commit such offences.
17. A deterrent sentence for such offences of this nature demonstrates the gravity of the offence and reflects the society's immediate denouncement of such crimes.

#### Sentencing Regime

18. The maximum penalty for the offence of Aggravated Burglary is 17 years imprisonment.
19. The case of *Kumar & Vakatawa v State* Criminal Appeals No. AAU 33 of 2018 & AAU 117 of 2019 (24 November 2022) established the tariff for Aggravated Burglary. The following was highlighted:

*"The court should determine the offence category among 01-03 using inter alia the factors given in the table below:*

- **Category 1** - Greater harm (High)
- **Category 2** - Between greater harm **and** lesser harm (Medium)
- **Category 3** - Lesser harm (Low)

<b>Factors indicating greater harm</b>
<i>Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)</i>
<i>Soiling, ransacking or vandalism of property</i>
<i>Restraint, detention or gratuitous degradation of the victim, which is greater than is necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present</i>
<i>Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary.</i>
<i>Violence used or threatened against victim, particularly the deadly nature of the weapon</i>
<i>Context of general public disorder</i>
<b>Factors indicating lesser harm</b>
<i>Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim</i>
<i>Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced</i>

[76] Once the level of harm has been identified, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they plead guilty or not guilty and irrespective of previous convictions. A case of particular gravity, reflected by multiple features of harm, could merit upward adjustment from the starting point before further adjustment for level of culpability and aggravating or mitigating features.

LEVEL OF HARM (CATEGORY)	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER AND WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years	Starting Point: 09 years Sentencing Range: 08–12 years
MEDIUM	Starting Point: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years
LOW	Starting Point: 01 year Sentencing Range: 06 months – 03 years	Starting Point: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years

[77] The following table contains a **non-exhaustive** list of higher and lower culpability factors relating to the offending. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

<b>Factors indicating higher culpability</b>
Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation) or victim compelled to leave their home (in particular victims of domestic violence).
Child or the elderly, the sick or disabled at home (or return home) when offence committed
A significant degree of planning, or organization or execution. Offence committed at night.
Prolonged nature of the burglary. Repeated incursions. Offender taking a leading role.
Equipped for burglary (for example, implements carried and/or use of vehicle)
Member of a group or gang
<b>Factors indicating lower culpability</b>
Offence committed on impulse, with limited intrusion into property or little or no planning
Offender exploited by others or committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure
Mental disorder or learning disability, where linked to the commission of the offence

[78] The following table contains a **non-exhaustive** list of aggravating and mitigating factors relating to the offender. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some

cases, having considered these factors, it may be appropriate to move outside the identified category range.

<b>Factors increasing seriousness</b>	<b>Factors reducing seriousness or reflecting personal mitigation</b>
<b>Statutory aggravating factors:</b>	<i>Genuine remorse displayed, for example the offender has made voluntary reparation to the victim</i>
<i>Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction</i>	<i>Subordinate role in a group or gang</i> <i>No previous convictions or no relevant/recent convictions.</i>
<i>Offence committed whilst on bail or parole.</i>	<i>Cooperation with the police or assistance to the prosecution</i>
<b>Other aggravating factors include:</b>	<i>Good character and/or exemplary conduct</i>
<i>Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution</i>	<i>Determination, and/or demonstration of steps taken to address addiction or offending behavior</i>
<i>Established evidence of community impact</i>	<i>Serious medical conditions requiring urgent, intensive or long-term treatment</i>
<i>Commission of offence whilst under the influence of alcohol or drugs</i>	<i>Age and/or lack of maturity where it affects the culpability and responsibility of the offender</i>
<i>Failure to comply with current court orders</i>	<i>Lapse of time since the offence where this is not the fault of the offender</i>
<i>Offence committed whilst on licence</i>	<i>Mental disorder or learning disability, where not linked to the commission of the offence</i>
<i>Offences Taken Into Consideration (TICs)</i>	<i>Any other relevant personal considerations such as the offender being sole or primary care giver for dependent relatives or has a learning disability or mental disorder which reduces the culpability</i>

20. The maximum penalty for Criminal Intimidation where there is intent to cause alarm to a person is 5 years imprisonment.

21. In the case of **Sadriu v State** Criminal Appeal No. HAA 65 of 2016 (15 March 2017) His Lordship Justice Sharma highlighted that there was no applicable tariff for the offence of Criminal Intimidation under section 375(1)(a) of the Crimes Act and stated:

*"In my view an acceptable tariff would be a sentence between 6 months and 2 years imprisonment. Serious cases should be given a sentence in the upper range whilst less serious cases should be given a sentence at the lower end of the scale."*

22. Thus, the applicable tariff is between 6 months and 2 years imprisonment with serious cases being given sentences in the upper range and less serious cases at the lower end.

23. The maximum penalty for this offence of Assault causing Actual Bodily Harm is 5 years imprisonment.

24. In **Jonetani Sereka v. The State** [2008] FJHC 88; HAA 27 of 2008 (25 April 2008) His Lordship Justice Daniel Gounder held:

*"The tariff for assault occasioning actual bodily harm ranges from a suspended sentence where there is a degree of provocation and no weapon used, to 9 months imprisonment"*

*for the more serious cases of assault (State v Anjula Devi, Criminal Case No. 04 of 1998 Lab.)."*

25. Thus, the tariff applicable in this matter where there is no domestic violence is a suspended sentence where there is a degree of provocation and no weapon used to 9 months imprisonment for more serious cases.

#### Level of Harm

26. It is apparent from the Summary of Facts that you had damaged the windows and the door in the Complainant's home when you were attempting to gain entry.
27. Further, at the time, you had used a PVC pipe and a 4x2 piece of wood to assist you in gaining entry into the Complainant's home whilst you used a cane knife to threaten and subsequently injure the Complainant.
28. Due to the significant damage or disturbance to the property as well as the various weapons used, I find that the level of harm is medium.

#### Level of Culpability

29. Further, it is evident that there was a degree of planning as you had a cane knife, PVC pipe and a 4x2 piece of wood with you. It is apparent that you had every intention of inflicting harm on the Complainant. As such, I find that the level of culpability is medium

#### Mitigating and Aggravating Factors

30. The Court notes the mitigation offered by you.
31. The Court is aware you took a guilty plea which has saved the Complainant from reliving the trauma of the incident by giving evidence. The Court finds that this guilty plea highlights your remorse for their actions.
32. Further, the Court was informed that you had the following previous convictions at the time of the offending:
- i. Suva CF 1791/16 – Escaping from Lawful Custody – Sentenced on 9 January 2017 to 5 months imprisonment consecutive to any term currently being served;
  - ii. Lautoka CF 923/17 – Breach of Bail Condition – Sentenced on 2 January 2018 to a bound over in the sum of \$200.00 to be of good behaviour and to keep the peace for 2 years;
  - iii. Lautoka CF 121/18 – Aggravated Burglary – Sentenced on 6 April 2018 to 20 months imprisonment with 10 months to be served and the remaining 10 months to be suspended for 3 years;
  - iv. Lautoka CF 121/18 – Theft – Sentenced on 6 April 2018 to 20 months imprisonment with 10 months to be served and the remaining 10 months to be suspended for 3 years;
  - v. Lautoka CF 205/21 – Assault Causing Actual Bodily Harm – Sentenced on 24 March 2021 to 9 months imprisonment suspended for 12 months; and
  - i. Lautoka CF 205/21 – Breach of Domestic Violence Restraining Order – Sentenced on 24 March 2021 to 9 months imprisonment suspended for 12 months.
33. It is evident from your previous convictions that you have not reformed yourself. Moreover, you have not provided the Court with any evidence of any significant contributions made by you to your community. As such, considering section 5 of the Sentencing and Penalties Act 2009, the Court is unable to provide you any discount for your previous character.
34. The aggravating factors are as follows:

- i. there was no provocation from the Complainant to have caused you to commit such offences against him; and
- ii. you then gave chase to the Complainant when he managed to escape his home to seek assistance.

### Sentence

35. Taking note of section 17 of the Sentencing and Penalties Act, I prefer to impose an aggregate sentence for all counts. Thus, considering that the level of harm as well as the level of culpability is medium, the appropriate starting point is 5 years or 60 months with a sentencing range between 3 years to 8 years.
36. Thus, the starting point herein is 60 months imprisonment. I will then add 16 months for the aggravating factors making it a total of 76 months imprisonment.
37. For your mitigating circumstances, I will deduct 4 months. For your guilty plea which highlights your remorse for your actions, I will deduct a further 24 months leaving you with a balance of 48 months imprisonment or 4 years imprisonment.
38. Section 18(1) of the Sentencing and Penalties Act states that the Court must fix a non-parole period if it sentences an offender to be imprisoned for life or for a term of 2 years or more.
39. Thus, considering the seriousness of the crime, the purpose of this sentence and opportunities for rehabilitation, your non-parole period will be for a period of 3 years effective forthwith.
40. Further, the Court is mindful that you have been in custody from 17 February 2025 until the date of this Sentence which is 305 days or 10 months.
41. Considering section 24 of the Sentencing and Penalties Act, 10 months will be considered as time served by you.
42. Thus, your actual sentence is now 3 years and 2 months imprisonment with a non-parole period of 2 years and 2 months.
43. Any party aggrieved with this decision has 28 days to appeal to the High Court.

  
N. Mishra  
Resident Magistrate

