

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 322 of 2012**

**STATE**

**V**

**ILIKIMI NAITINI**  
**PAILATO CAVASIGA**

Counsel: Mr. T. Qalinauci with Mr. M. Vosawale for the State  
Ms. N. Nawasaitoga (L.A.C.) for the first accused  
Mr. S. Waqainabete (L.A.C.) for the second accused

Dates of hearing: 3,4,5,6 November 2014  
Date of Sentence: 10 November 2014

**SENTENCE**

1. The two accused in this case were each convicted of murder following trial in this Court.

2. The facts of the case are that at around midnight on 5/6 August 2012, the deceased had been with his wife visiting relatives in Nanuku settlement, Vatuwaqa. The wife had spent the evening with her sister and they were both still up in the sister's kitchen when the deceased came to the house, very drunk. His wife told him to go away and sleep it off but then the first accused hearing the commotion came and pulled him away from the window. There was conflicting evidence about who threw the first punch but a fist fight ensued between the first accused and the drunken deceased. The second accused came and joined in holding the deceased's hands behind his back, so that the 1<sup>st</sup> accused could punch him. The first accused then took a heavy wooden post and hit the deceased over the head with it.
3. He fell to the ground unconscious with blood coming from his ears. The first accused fled and the second accused remained until the Police came. The pathologist states that the cracked skull and the subdural haemorrhage in the brain were the cause of death and were conducive to the use of the wooden post. The victim died in the CWM hospital.
4. Both accused had admitted in their interviews under caution and the first accused in his evidence that the assault on the deceased that night was in large part done out of revenge for his having assaulted the second accused's brother earlier as one of an aggressive group.

### **Mitigation**

5. Ms. Nawasaitoga for the 1<sup>st</sup> accused submits in helpful written submissions that he is 31 years old and is married with a 1 year old daughter. Formerly a security officer, he has lately been farming root crops to provide for his family and elderly parents.

He has a clear record and was in custody for 50 days while awaiting trial.

6. Mr. Waqainabete for the second accused also in helpful written submissions submits that his client is 33 years old, married with a 4 months old daughter. He too has a clear record and being the sole breadwinner for his family is a root crops farmer. I am told he is remorseful and that he fully cooperated with the Police. Apart from admitting that he had punched the deceased in the face, his "cooperation" with the Police is not supported by the evidence of other witnesses.

### **The Sentence**

7. I am of course mandated by legislation to pass a sentence of life imprisonment on each of these two accused and that I do.
8. However in assessing a minimum term of be served by each, I am able in my discretion to take into consideration aggravating and mitigating factors.
9. In respect of both accused I find it seriously aggravating that they had decided to take the law into their own hands by waiting for and executing a revenge attack on the deceased, their perception being that he had been part of a group who had attacked the second accused's brother at an earlier time. A vigilante attack on anybody denies the victim his rights to defend himself against false charges.
10. It is also aggravating that the two took advantage of the victim's drunkenness subjecting him to a fight in which wasn't possibly able to defend himself. It was a cowardly attack on a defenceless man, purely for reasons that were hearsay.



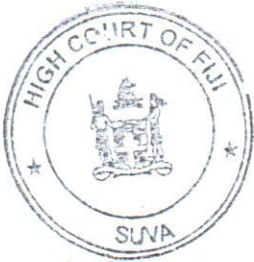
11. These convictions were obtained after trial where the assessors and this Court rejected the defences of self defence and no intention to kill in respect of the first accused and not being a party to the enterprise in respect of the second accused. A minimum term in respect of each must be at least meaningful and send a message that the law will not condone aggressors taking the law into their own hands based on hearsay evidence.

### **The First Accused**

12. I take into account the first accused's family circumstances. I allow for the 50 days he has spent in custody awaiting trial. I take particular notice of his clear record in my sentence. He however inflicted a killing blow with a very heavy piece of wood to a man's head – a blow from which no one would recover.
13. The first accused will serve a term of life imprisonment and will not be eligible for pardon until he has served 18 years of that term.

### **The Second Accused**

14. I accept that the second accused is remorseful but I do not accept that he has cooperated with the authorities from the beginning. His record of interview reveals answers which are less than truthful and in his oral evidence he did everything he could to distance himself from the first accused's murderous intent. I do however take particular notice of his clean record and his young family and I do take into account the 79 days he has been in remand for this case before trial.
15. I sentence the second accused to life imprisonment and he will serve a minimum of 16 years before he is eligible for pardon.



At Suva  
10 November 2014

A handwritten signature in black ink, which appears to read "P.K. Madigan". The signature is written in a cursive style with a large, looping initial "P".

**P.K. Madigan**  
**Judge**