

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

**Criminal Case No. HAC 10 of 2018**

**STATE**

**V**

**PENI MAISIRI**

**Counsel:** Mrs. D. Kumar for the State  
Ms. L. Boseiwaqa (L.A.C.) for the Accused

**Date of Mitigation:** 13 August 2018

**Date of Sentence:** 15 August 2018

**SENTENCE**

1. On the 13<sup>th</sup> March 2018 the accused entered a plea of guilty to two counts of Act Intended to Cause Grievous Harm, contrary to section 255(a) of the Crimes Act 2009.
2. By that plea he admitted that once at the end of January 2018 and again on the 3<sup>rd</sup> February 2018, he acted to cause harm to his wife, unlawfully wounding her.
3. The accused and the victim are husband and wife. At the end of January 2018 the accused beat his wife with an electrical cord, and on the 3<sup>rd</sup> February 2018 he further assaulted her by

punching and kicking her mouth and head, and kicking her multiple times in the ribs, causing her to lose consciousness.

4. She was examined at Korovesi Health Centre and found to have cuts, bruises and tenderness over her scalp, back, lips and thighs.
5. On being questioned by the Police under caution, the accused admitted these assaults.
6. The maximum penalty for this offence is imprisonment for life and it was held by Shameem J. in **Mokubula** HAA52 of 2003S that a condign starting point should be between two and six years. This Court followed that precedent in the horrific domestic violence case of **Tuigulagula** HAC81 of 2010Ltk, where the Court passed a sentence of 6 years.
7. Rajasinghe J. said in **Vucui** HAC63.2016Lbs:

*“Assaults on women, specially within their own domestic environment is one of the worst forms of physical assault. Such offence undoubtedly causes adverse physical and psychological trauma in the life of the victim”*

8. This Court endorses that sentiment and would add that in cases of intent to harm in a domestic violence context should be sentenced at the higher level of the tariff, if not more in very serious cases.
9. In mitigation, Counsel for the accused submits that he is 35 years old, and a yaqona farmer before his arrest earning \$120 per week. He is now separated from his wife and their 4 children

are staying with their maternal grandmother. The wife is in a relationship with another man.

10. Counsel submits that he takes responsibility for his actions and is striving to be better.
11. Most importantly he has entered a plea of guilty at an early stage of proceedings.
12. State Counsel advises that he has two live previous convictions, one for a very minor offence and one for assault occasioning actual bodily harm. The accused admitted those convictions.
13. State Counsel also stresses that a weapon was used in the first count, an electric cord, and that the assaults led to the complainant being admitted to hospital.
14. Finally in mitigation, a report from a Corrections Service Psychologist was placed before the Court providing details and outcomes of counseling sessions that the accused has submitted to whilst in remand.
15. During those sessions, as reported by the psychologist, the accused came to appreciate the issues to be dealt with in his personal behaviour, including anger management, alcohol and soft drug abuse, and aggression to wield power.
16. It is reported that he is responding well to structured counseling and it is the psychologist's opinion that he is genuinely remorseful and has concrete plans to improve himself in order that he can care for his four sons.

## Analysis

17. Despite the favourable report and the psychologist's recommendation for a non-custodial sentence, the Fijian community would expect that such savage physical abuse occasioned to a spouse in the family home should attract a term of imprisonment.
18. There was little or no provocation and to kick and punch someone in the head is very dangerous indeed. The attacks to the body were so serious that the wife lost consciousness and was admitted to hospital.
19. The accused will however receive credit for his early plea and for the 6 months he has spent in remand awaiting this sentence.
20. His previous conviction for assault occasioning harm will not allow for any good character discount however.
21. From a starting point of 4 years imprisonment, I deduct 18 months for his early plea, and a further 6 months for his remorse and his determination to improve his future conduct.
22. A further 6 months is to be deducted for the time he has spent in remand meaning that the accused will serve a total sentence of 18 months' imprisonment. He will serve 12 months of that sentence before he is eligible for parole.
23. This is a lenient sentence for the crime and it not meant to disturb the tariff of 2 to 6 years. Reference should be made however to the six months he has already "served" and his co-operation in proceedings as well as the encouraging prognosis from the Service Psychologist.

**Orders**

24. Accused to serve a term of 18 months' imprisonment.
25. Accused to serve a minimum term of 12 months imprisonment.
26. A final Domestic Violence Restraining Order with the usual non molestation conditions is imposed. This order will remain in place until further order from the High Court.
27. The accused is to continue with in house Correctional Services counseling for as much time that the Psychologist deems it necessary.



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

At Labasa  
15 August 2018