

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

**Crim. Case No: HAC 57 of 2018**

**STATE**

**vs.**

- 1. JOELI TAGO SOKOBULI**
- 2. ONISIMO TAUKEISOLO**
- 3. RUSIATE KOTOBALAVU**
- 4. KEMUELI NOKONOKOVOU**

**Counsel:**

Ms. K. Semisi for the State  
Mr. F. Vosarogo with Mr. Cakau for all Accused Persons

**Date of Hearing:**

11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 17<sup>th</sup> September 2019

**Date of Closing Submissions:**

18<sup>th</sup> September 2019

**Date of Summing Up:**

19<sup>th</sup> September 2019

**Date of Judgment:**

20<sup>th</sup> September 2019

**Date of Punishment:**

04<sup>th</sup> October 2019

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**PUNISHMENT**

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1. Joeli Tago Sokobuli and Kemueli Nokonokovou, both of you have been found guilty of the offence of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act, which carries a maximum punishment of life imprisonment. Onisimo Taukeisolo, you have been found guilty of the offence of Attempted Rape, contrary to Section 208 of the Crimes Act, which carries a maximum punishment of ten (10) years of imprisonment.
2. It was proved during the hearing that Onisimo Taukeisolo took the complainant into the ladies washroom at the Mau Primary School on the night of the 4th of May 2012 and then tried to penetrate into the vagina of the complainant with his penis. Having attempted to

penetrate into the vagina of the complainant with his penis, Onisimo Taukeisolo then left the washroom, leaving Joeli Tago Sokobuli to come into the washroom. Joeli Tago Sokobuli then penetrated into the vagina of the complainant with his penis.

3. On the evening of the 9th of May 2012, Kemueli Nokonokovou had called the complainant into his house when she was walking around the village with two other friends. When she came into the house, Kemueli had taken her into his parents' room and penetrated into her vagina with his penis.
4. Three of you were juveniles at the time of these three offences took place as Onisimo Taukeisolo was fourteen (14) years old, Joeli Tago was seventeen (17) years old and Kemueli Nokonokovou was sixteen (16) years old. The complainant was eleven (11) years old at that time.
5. Accordingly I now proceed to sentence you pursuant to Sections 30 and 32 (1) (g) of the Juvenile Act and the provisions of the Sentencing and Penalties Act.
6. Section 30 of the Juvenile Act states that:
  1. *No child shall be ordered to be imprisoned for any offence.*
  2. *No young person shall be ordered to be imprisoned for an offence, or to be committed to prison in default of payment of a fine, damages or costs, unless the court certifies that he is of so unruly a character that he cannot be detained in an approved institution or that he is of so depraved a character that he is not a fit person to be so detained.(Amended by 23 of 1975 s.3)*
  3. *A young person shall not be ordered to be imprisoned for more than two years for any offence.*

7. Accordingly, the court is not allowed to order an imprisonment of a young person unless the court certifies that the young person is not a fit person to be detained at an approved institution due to his unruly and/or depraved character. If the court orders such an imprisonment term to a young person, it shall not be more than two years of imprisonment.
8. Justice Aluthge in **State v Tuiviti (Juvenile) - Sentence [2019] FJHC 122; HAC53.2014 (22 February 2019)** has comprehensively discussed the factors and suitable approaches in sentencing of juvenile offenders in relation for sexual offences, where his Lordship held that:

*“Sentencing a child or young person for sexual offences involves a number of different considerations from adults, the primary difference being the age and level of maturity. The law assumes that children and young people are less emotionally developed than adults; offending can arise through inappropriate sexual experimentation; gang or peer group pressure to engage in sexual activity; or a lack of understanding regarding consent, exploitation, coercion and appropriate sexual behaviour. The primary purpose of the youth justice system is to encourage children and young people to take responsibility for their own actions and promote re-integration into society rather than to punish. Children may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes. Restorative justice disposals may be of particular value for children and young people as they can encourage them to take responsibility for their actions and understand the impact their offence may have had on others [ vide: UK Sentencing Council’s Definitive Guideline in relation to the sentencing of children and young people]*

*The age of the offender will be significant in the sentencing exercise in relation to non-consensual offences, especially if an offender is very young and the disparity in age between the offender and the victim is very small. The youth and immaturity of an offender must always be potential mitigating*

*factors for the courts to take into account when passing sentence. However, where the facts of a case are particularly serious, the youth of the offender will not necessarily mitigate the appropriate sentence (R v Paiwant Asi-Akram [2005] EWCA Crim 1543, R v Patrick M [2005] EWCA Crim 1679)."*

9. Rape is one of the most humiliating and distressing crimes. It becomes more serious when it is involved with a child victim. Hence, I find the rape in this nature is a very serious crime. In this case, the complainant was sexually abused by four persons who are known to her as they all have grown up together in the village. This form of sexual exploitation of children by the known people is a serious offence.
10. Onesimo Taukeisolo and Joeli Tago Sokobuli, both of you have committed these crimes together. You have taken the complainant to a location away from others and then committed this crime. Kemueli Nokonokovou, you have asked the complainant to come to your house. She had trusted you and walked into your house. Three of you have breached the trust that the complainant had in you as all of you have grown up in the village together. The complainant was eleven years old at that time. Accordingly, I find the level of culpability in each of these three offences are substantially high.
11. The victim impact report provides the details of the emotional and psychological effects that these crimes have caused to the complainant. It has adversely affected her life, making her a withdrawn and isolated personality. In view of these reasons, I find the level of harm caused by these crimes is substantially high.
12. I have taken into consideration respective mitigation submissions filed on behalf of the three juveniles. These crimes took place in 2012. During the last seven years, all of you have moved on your respective lives. You are entitled for a discount for the delay in prosecution of these offences.
13. None of you have been adversely recorded with any previous punishments. Hence, all of you are entitled for a discount for your previous good characters.

### Joeli Tago Sokobul

14. Mr. Joeli Tago Sokobuli, I find that you have not shown any remorse in committing this crime. Having taken into consideration the seriousness of this crime and the manner that you have committed the crime, I certify you as a person of unruly and depraved character, thus not fit to be detained in an approved institution. Accordingly, an immediate custodial sentence is inevitable pursuant to Section 30 (2) and (3) of the Juvenile Act.
15. In view of the reasons discussed above, Mr. Joeli Tago Sokobuli, I punish you to a period of 22 months imprisonment.
16. Having taken into consideration the seriousness of the offence, the level of harm and culpability, your young age and the prospect of rehabilitation, I am of the view that a non-parole period of 12 months serves the purpose of this sentence. Hence, you are not entitled for any parole for a period of 12 months pursuant to Section 18 (3) of the Sentencing and Penalties Act.

### Punishment

17. Accordingly, I punish you to a period of **twenty two (22) months imprisonment** for the offence of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act. Furthermore, you are not entitled for any parole for a period of **twelve (12) months** pursuant to Section 18 (3) of the Sentencing and Penalties Act.

### Actual Period of the Punishment

18. You have been in remand custody for this case for a period of nearly twenty eight (28) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of **one (1) month** as a period of imprisonment that have already been served by you.

19. Accordingly, the actual punishment period is **twenty one (21) months** imprisonment with non-parole period of **eleven (11) months**.

### Kemueli Nokonokovou

20. Mr. Kemueli Nokonokovou, I find that you have not shown any remorse in committing this crime. Having taken into consideration the seriousness of this crime and the manner that you have committed the crime, I certify you as a person of unruly and depraved character, thus not fit to be detained in an approved institution. Accordingly, an immediate custodial sentence is inevitable pursuant to Section 30 (1) and (2) of the Juvenile Act.
21. In view of the reasons discussed above, I punish you to a period of 22 months imprisonment.
22. Having taken into consideration the seriousness of the offence, the level of harm and culpability, your young age and the prospect of rehabilitation, I am of the view that a non-parole period of 12 months serves the purpose of this sentence. Hence, you are not entitled for any parole for a period of 12 months pursuant to Section 18 (3) of the Sentencing and Penalties Act.

### Punishment

23. Accordingly, I punish you to a period of **twenty two (22) months imprisonment** for the offence of Rape, contrary to Section 207 (1) (2) (a) and (3) of the Crimes Act. Furthermore, you are not entitled for any parole for a period of **twelve (12) months** pursuant to Section 18 (3) of the Sentencing and Penalties Act.

### Actual Period of the Punishment

24. You have been in remand custody for this case for a period of nearly twenty seven (27) days as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and

Penalties Act, I consider the period of **one (1) month** as a period of imprisonment that have already been served by you.

25. Accordingly, the actual punishment period is **twenty one (21) months** imprisonment with non-parole period of **eleven (11) months**.

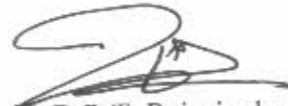
### Onisimo Taukeisolo

26. Mr. Onisimo Taukeisolo, I find that you have not shown any remorse in committing this crime. Having taken into consideration the seriousness of this crime and the manner that you have committed the crime, I certify you as a person of unruly and depraved character, thus not fit to be detained in an approved institution. Accordingly, an immediate custodial sentence is inevitable pursuant to Section 30 (1) and (2) of the Juvenile Act.
27. In view of the reasons discussed above, I punish you to a period of fifteen (15) months imprisonment.
28. Having taken into consideration the seriousness of the offence, the level of harm and culpability, your young age and the prospect of rehabilitation, I am of the view that a non-parole period of eight (8) months serves the purpose of this sentence. Hence, you are not entitled for any parole for a period of eight (8) months pursuant to Section 18 (3) of the Sentencing and Penalties Act.
29. Accordingly, I punish you to a period of **fifteen (15) months imprisonment** for the offence of Attempt to Rape, contrary to Section 208 of the Crimes Act. Furthermore, you are not entitled for any parole for a period of **eight (8) months** pursuant to Section 18 (3) of the Sentencing and Penalties Act.

**Actual Period of the Punishment**

30. You have been in remand custody for this case for a period of nearly three (3) months as you were not granted bail by the court. In pursuant of Section 24 of the Sentencing and Penalties Act, I consider the period of **three (3) months** as a period of imprisonment that have already been served by you.
31. Accordingly, the actual punishment period is **twelve (12) months** imprisonment with non-parole period of **five (5) months**.
32. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
Judge

**At Suva**  
04<sup>th</sup> October 2019

**Solicitors**  
Office of the Director of Public Prosecutions for the State.  
Vosarogo Lawyers for all Accused Persons.