

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 24 OF 2018

BETWEEN : **STATE**

AND : **AKUILA MOMO**

Counsel : *Mr. J. B. Niudamu / Mr. T. Tuenuku for the State*
Accused absent and unrepresented for the trial
(Accused appeared in person for sentencing)

Hearing on : *09th of March 2020 – 10th of March 2020*
Summing up on : *13th of March 2020*
Judgment on : *26th of June 2020*
Sentence : *01ST of September 2020*

SENTENCE

1. Mr. Akuila Momo, you were charged as follows;

COUNT 1

Statement of Offence

RAPE: Contrary to section 207(1) and (2) (a) of the Crimes Act of 2009.

Particulars of Offence

Akuila Momo, on the 19th day of January 2018, at Lautoka, in the Western Division, had carnal knowledge of Sainimere Tabua, without her consent.

COUNT 2

Statement of Offence

BREACH OF SUSPENDED SENTENCE: Contrary to section 28(1) (2) (a) and section 26 of the Sentencing and Penalties Act 2009.

Particulars of Offence

Akuila Momo, on the 19th day of January 2018, at Lautoka, in the Western Division, breached the suspended sentence of two months of imprisonment which was suspended for two years dated 13th day of March 2017 vide Lautoka Criminal Case File Number 808/16 by committing another offence namely rape.

2. Akuila Momo, you were convicted after a full trial and the assessors were unanimous on their opinion that you are guilty. The complainant was your de-facto partner who has been with you since 2005, giving birth to 5 of your children.
3. The maximum sentence for the offence of Rape contrary to section 207 (1) and (2) (b) of the Crimes Act 2009 is an imprisonment for life.
4. The offence of breach of Suspended Sentence is in relation to a two month suspended term. I have no reason to not to activate such. Therefore it will be activated to run concurrently with the sentence for rape.
5. The tariff for the offence of Rape of an adult is an imprisonment term between 7 to 15 years. [State v Marawa, [2004] FJHC 338]
6. In adopting the guidelines provided by **State v Marawa** (Supra) and **Koroivuki v State** [2013] FJCA 15; AAU0018.2010 (5 March 2013) and the objective seriousness of the offense, I select the 07 years of imprisonment as the starting point of your sentence.
7. He has raped his de-facto partner who has been with him for nearly 15 years, giving birth to 5 of his children. Furthermore frequent prevalence of the offence is also should be considered as an aggravating factor in order to curtail it.
8. In consideration of the aggravating factors set out above I enhance your sentence by further 2 year and now your sentence stands at 9 years of imprisonment.
9. The mitigation submissions submitted by the accused are mere personal circumstances and do not bear much mitigatory factors. Even so, I will consider them and deduct 1 year of imprisonment.
10. Therefore, your final sentence is 8 years of imprisonment and considering all the circumstances, I will fix the non-parole at 6 years.
11. You have been arrested on the 24th of January 2018 and were granted bail on the 01st of March 2018. Thereafter you failed to appear in court and a bench warrant was issued.

Later you were arrested and produced and your bail was cancelled on the 11th of June 2018. Then you were granted bail again on the 02nd of October 2019. Then you failed to appear in court and bench warrant was re-issued. The trial proceeded in your absence on court being satisfied that you were absconding. Your sureties too confirmed the same. You were arrested and produced on the 13th of March 2020. You have been in remand since then and accordingly you have served little short of 23 months in remand. Therefore I will deduct 23 months from your final term considering that as already served. The remainder you'll have to serve would be 06 years and 1 month and you'll be entitled for the consideration of parole after 4 years and 1 month.

12. You will have thirty (30) days to appeal to the Court of Appeal, if you so desire.



Chamath S. Morais
JUDGE

Solicitors : **Office of the Director of Public Prosecutions for the State.**
Legal Aid Commission, Suva for the Accused.