

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

CRIMINAL CASE NO. HAC 042 OF 2021

BETWEEN : STATE

AND : **EMITAI BOLADUADUA**

Counsel : Ms E Thaggard for the State
Ms M Bosetimoala for the Accused

Date of Hearing : **17 November 2021**

Date of Sentence : **3 December 2021**

SENTENCE

- [1] The Accused has pleaded guilty to a charge of act with intent to cause grievous harm contrary to section 255(a) of the Crimes Act.
- [2] The complainant is the younger brother of the Accused. The incident occurred on 14 June 2021 at Vunivau settlement in Nakobo, Cakaudrove. On this day the complainant came to the Accused's house to drink alcohol along with their uncle. When they had finished drinking, the complainant was asked to return to his home. Both the complainant and the Accused were very drunk. The complainant started a commotion and the Accused confronted him with a small knife. There was a physical altercation in which the Accused stabbed the complainant several times. By the time their uncle intervened, the complainant fell to the ground and was bleeding profusely.
- [3] The matter was reported to Police and the Accused was arrested. Under caution, he admitted stabbing his brother during an altercation.

- [4] The complainant was medically examined. He sustained multiple chest wounds about 2 cm x 1 cm in size.
- [5] The nature of offence is grave. A weapon was used to inflict physical injuries to the victim. The violence was fueled by alcohol. The Accused who is an older sibling breached the trust of his younger brother by inflicting physical injuries on him.
- [6] The court's duty is to denounce and deter family violence.
- [7] The maximum penalty prescribed for the offence of causing serious harm is life imprisonment. The tariff for the offence is between 6 months imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon (*State v Mokubula* [2003] FJHC 164; HAA0052J.2003S (23 December 2003)).
- [8] The Accused is 25 years old and is married. He pleaded guilty to the charge at the first opportunity. He is a first time offender. He has saved court's time and resources. He is genuinely remorseful. The Accused was provoked when his brother caused a commotion and did not leave his home quietly after the drinking party. The Accused has offered his apology to his brother and his brother has accepted his apology.
- [9] I pick 2 years as my starting point. After adjusting for mitigating and aggravating factors I arrive at a term of 18 months imprisonment.
- [10] The final factor to be considered is the Accused's remand period. The Accused had been in custody on remand for about 6 months. I further reduce the sentence by 6 months to reflect this period.

[11] The Accused is convicted and sentenced to 12 months imprisonment. Suspension is not appropriate.

[12] A permanent restraining order with standard non molestation conditions is issued against the Accused for the protection of the complainant.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused