



### ***Particulars of Offence***

**TERESIA DITATALO** on the 17<sup>th</sup> day of October, 2021 at Tukavesi Village, Cakaudrove in the Northern Division, unlawfully assaulted **MELINI SENITOVU** by poking her forehead.

2. She said, she understood the charge and pleaded guilty to the same, out of her own free will. The prosecution then presented the amended summary of facts to the court. The same were as follows. The complainant was 42 years old and resided at Tukavesi Village. She was a domestic worker. The appellant was 31 years old and also resided at Tukavesi Village. She was also a domestic worker. The two were neighbours. The problem started when the complainant went to the appellant's house and requested her to remove their lovo (earth oven) to another area. She advised the appellant that when they used their lovo, they never clean up the same, and her family were the ones cleaning up the same. The appellant became angry, went to the complainant and poked her forehead. The complainant was frightened and scared. She later reported the matter to police.
3. The appellant admitted the above summary of facts, and the court found her guilty as charged. The prosecution said the appellant was a first offender. She then presented her plea in mitigation. She said, she was now 32 years old, married with four young children. She said, she is a domestic worker. She said, she had reconciled with the complainant. The court later sentenced the appellant to 2 months 20 days imprisonment, suspended for 3 years. The suspended sentence was later explained to her. She was given 28 days to appeal to the High Court, if dissatisfied with the court's decision.
4. On 20 April 2022, the appellant filed her notice of appeal in the High Court of Labasa. Her appeal was therefore within time. On 19 July 2022, the appellant filed her written submission in court. On the 18<sup>th</sup> August 2022, I heard the appellant's appeal. At first, the appellant was appealing her conviction and sentence. Later, the appellant submitted she was not appealing her conviction, but only her sentence. Her counsel submitted, the sentence was harsh and excessive. Counsel submitted, the 2 months 30 days imprisonment, suspended for 3 years was harsh and excessive, given the facts of the case. Counsel submitted, the sentence be set-aside, and replaced with a \$500 fine, given that the appellant was a first offender. Prosecution submitted, they had no written submissions, but was not objecting to a fine.

5. I have carefully perused the court record, the learned Magistrate's sentencing remarks, and had carefully listened to the parties' verbal submissions. In my view, given the facts surrounding this case, the fact that the appellant was a first offender at the age of 32 years, the fact that the parties had reconciled and no injury arose out of this offending, and that the appellant pleaded guilty on the first call at the Magistrate Court, I am persuaded to accept the appellant's submission that the suspended 2 months 20 days imprisonment sentence was harsh and excessive.
6. Given the above, the 2 months 20 days imprisonment suspended for 3 years sentence, dated 1 April 2022, is set aside. In substitution thereof, a fine of \$200 is imposed, to be paid in 4 weeks, in default, 1 month imprisonment. The sentence appeal succeeds to the extent described above. I order so accordingly.



  
Salesi Temo  
JUDGE

**Solicitor for Appellant** : **Alvin Prakash Lawyers, Labasa**  
**Solicitor for Respondent** : **Office of Director of Public Prosecution, Labasa**