

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

**Crim. Case No: HAC 16 of 2022**

**STATE**

**vs.**

**IOSEFO KALAIKREKETI**

**Counsel:** Ms. A. Vavadakua for the State  
Ms. N. Ali for the Accused

**Date of Hearing:** 23<sup>rd</sup> to 25<sup>th</sup> September 2022

**Date of Judgment:** 08<sup>th</sup> September 2022

**Date of Sentence/Mitigation Submission:** 09<sup>th</sup> September 2022

**Date of Sentence:** 13<sup>th</sup> September 2022

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**SENTENCE**

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*(The name of the victim is suppressed she will be referred to as "N.W")*

**Introduction**

1. Iosefo Kalaidreketi, you have been found guilty and stand convicted for the offence of Sexual Assault, contrary to Section 210 (1) (a) of the Crimes Act, 2009 which carries a maximum sentence of 10 years imprisonment, for putting in and rubbing your genitals on the buttocks of N.W on the 12<sup>th</sup> of December 2021.

### Circumstances of the offending

2. As for the said offences of Sexual Assault, the occasion on which you placed your naked genitals on of N.W's buttocks on 12<sup>th</sup> of December 2021, you were 20 years and the girl was 07 years of age she is your own cousin sister. On the 12<sup>th</sup> night you went to your grandmother's house surreptitiously and entered the room in which N.W was sleeping alone as her mother had gone to Nadi. You have then have then approached from her rear whilst she was lying sideways and placed your genitals on or in here buttocks and satisfied your perverted sexual desires using this small girl of 7 years of age. She says that she felt pain. She had not shouted but tried to push you away by kicking with her legs. She demonstrated in court how she was lying on her side when this was done. After doing this, the you told her that she should not to wake up anybody and then gone towards the kitchen and left the house.

### Sentencing regime

3. In the case of **State v Laca** - Sentence [2012] FJHC 1414; HAC252.2011 (14 November 2012) Justice Paul Madigan considering the tariff for the offence of sexual assault stated thus,

*“6. The maximum penalty for this offence is **ten years** imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in **Abdul Kaiyum** HAC 160 of 2010 that the range of sentences should be between **two to eight** years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range is for less serious assaults such as brushing of covered breasts or buttocks.*

*7. A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:*

#### **Category 1** (the most serious)

*Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.*

#### **Category 2**

- (i) *Contact between the naked genitalia of the offender and another part of the victim's body;*

- (ii) *Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
- (iii) *Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia of the victim.*

**Category 3**

*Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)".*

4. The maximum penalty for the offence of sexual assault under Section 210 (1) (a) is ten years imprisonment. As the law stands now the tariff for sexual assault is between 2 - 8 years' imprisonment and placing the naked genitalia on the buttocks will fall within category the middle range which would be between 4 to 6 years.

**Objective seriousness, capability and harm of the offending**

5. This is a case of sexual exploitation of a child by a known elder (cousin) from her own family and neighbourhood. You were in a position of trust. The culture and the rich traditions of the Fijian society expect you to protect young children in the family and the community and the elders enjoy the respect and of the children in the community. You taking advantage of this rich culture sexually exploited N.W when her parents were not at home. Sexual exploitation of children within their own family and the neighbourhood by known elders has become a matter of concern and a social menace as I see. You have taken advantage of her innocence when here parents were not there and when she was alone and vulnerable in the night. Therefore, I find this offending is serious.
6. Sexual assault is an unwelcome physical invasion committed on the victim under a certain coercive circumstance. Therefore, the degree of invasion of the victim's bodily integrity and sexual autonomy is an indispensable factor in determining the gravity and impact of the crime on the victim. The degree of invasion should be ascertained based on the level of harm and culpability.

7. This court was not provided with a victim impact report however her conduct of running to her grandmother and then telling her aunt secretly what you did clearly indicate how your act did affect the Complainant immediately emotionally and psychologically. Thus, the level of harm of this offence is high.
8. In view of the serious nature and the prevalence of crimes of this nature, the primary purpose of this sentence is founded on the principle of deterrence. It is the responsibility of this Court to deter offenders or other persons from committing offences of the same or similar nature and protect the community especially the children from offenders of this nature. A custodial sentence is inevitable for offences of this nature to demonstrate the gravity of the offence and reflect that civilised society denounces such crimes without any reservation.

#### The aggravating circumstances

9. (i) You, acknowledged that you are her elder cousin to a child *vis-à-vis* the victim and now it is proved that you sexually assaulted her. You occupied a position of power and trust in relation to your cousin who was just a little child. Such a position of power over the other who is a child renders such sexual activity morally wrong and punishable within the realms of the criminal law. N.W was vulnerable to your seniority in age and the familial standing within the family. You taking advantage of this sexually exploited N.W a child. As echoed in many a Judicial pronouncement, sexual exploitation of children within their own home by known elders has become a social menace. Therefore, I find this offending is a serious crime as you have exploited the position of power which you held over her. The act of sexual assault is committed in the safety of her home so to say, by a person from whom she was entitled to expect protection. You have violated and abused that position of trust which the complainant and her mother placed in you.

(ii) There was a considerable disparity in age between you and the complainant. The complainant was 07 years old at the time you committed these offences on her and you were 20 years and so you were 13 year her senior in age. Your offending involves some scheming and premeditation. You took advantage of the complainant's vulnerability, helplessness and naivety. You have exposed the mind of a child to sexual

activity and you had no regards as to her right as a child, her right as a human being and her right to live a happy unmolested and peaceful life. You caused misery to her family.

#### The mitigating factors

10. The mitigating factors in your favour are as follows. Iosefo you are now 21 years of age. You are now employed as a carpenter and earns \$216 per week and is looking after your grandmother and is the sole breadwinner. Unfortunately, these are all personal circumstances and cannot be considered as mitigating circumstances. The state admits that you are a first offender and you have a clear record to your credit with no previous convictions or pending cases. Therefore, Court considers you as a person of previous good character. You are remorseful.

#### Sentence

11. The least possible sentence I can impose, having regard to the aggravating and mitigating factors of the case, will be as follows. I pick and start with the sentence of 4 years imprisonment. I add a modest 2 years for the aggravating factors, making the total aggregate sentence 6 years imprisonment. For the mitigating factors I deduct 1 year and 6 months leaving a balance of 4 years and 6 months imprisonment.
12. In view of the reasons discussed above, I impose on you a sentence four (4) years and six (6) months imprisonment for the offence of sexual assault for which you stand convicted.
13. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that three (03) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for three (03) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

#### Head Sentence

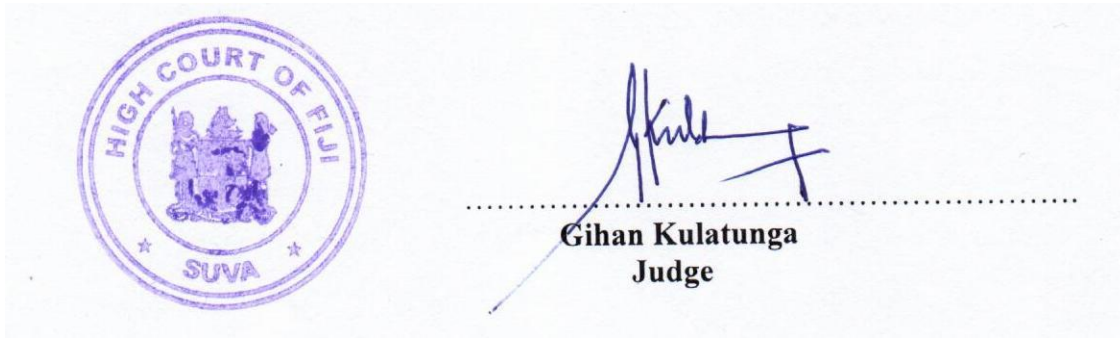
14. Accordingly, I sentence you to a period of four (04) years and six (6) months imprisonment being the sentence for the offence of sexual assault for which you were

found guilty and convicted. However, you are not entitled to parole for three (03) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

15. You were in custody for a period of 4 months and 2 weeks for this matter. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 4 months be considered as imprisonment that you have already served.
16. Accordingly, the actual sentencing period of your aggregate sentence is four (04) years and two (02) months imprisonment with a non-parole period of two (02) years and eight (08) months.
17. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is meted out to punish you in a manner that is just in all the circumstances, to protect the community, deter like-minded offenders and to manifest that the court and the community denounce what you did to the 07-year-old child complainant N.W.
18. Since this incident involves domestic violence, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Act. I accordingly make a permanent Domestic Violence Restraining Order against you with standard non-molestation conditions and no contact conditions pursuant to Section 24 and 28 of the Domestic Violence Act. The above Domestic Violence Restraining Order will be in force until it is varied or suspended by this Court or any other competent Court. Furthermore, if you breach this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.
19. The complainant's name is permanently suppressed to protect her privacy.

20. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire



**At Suva**

13<sup>th</sup> September 2022

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused