

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 173 of 2022**

**STATE**

**V**

**UATE QIO**

**Counsel:** Ms. Sheenal Swastika for the State  
Ms. Karen Boseiwaqa for the Accused

**Sentence Hearing:** 18 May and 26 May 2023

**Sentence:** 14 June 2023

## **SENTENCE**

- [1] Uate Qio, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offence:

### **COUNT ONE**

#### ***Statement of Offence***

**MANSLAUGHTER:** Contrary to Section 239 (a), (b) and (c) (ii) of the Crimes Act 2009.

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

**UATE QIO**, on the 29<sup>th</sup> day of October 2022, at Namoli, Lautoka, in the Western Division, being reckless as to the risk that his conduct would cause serious harm, killed **VILIAME TAKAYAWA**.

- [2] On 17 January 2023, the DPP filed the Information in Court, while the Disclosures relevant to the case had been filed on 2 December 2022 and Additional Disclosures on 23 December 2022.

- [3] Uate, on 30 January 2023, you were ready to take your plea. On that day you pleaded guilty to the charge against you in the Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charge against you and the consequences of your guilty plea.
- [4] Thereafter, the State filed the Summary of Facts. On 27 April 2023, the Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the count of Manslaughter in the Information, and found the said count proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the charge of Manslaughter.
- [5] Uate, I now proceed to pass sentence on you.
- [6] The Summary of Facts filed by the State was as follows:

**“Brief Background**

1. *The accused in this matter is Uate Qio, 28 years old of Namoli, Lautoka, Labourer at Humes.*
2. *The victim in this matter is Viliame Takayawa Rokobuli (deceased) 29 years old of Namoli, Lautoka, Construction Worker.*
3. *The accused is the younger biological brother of the deceased.*
4. *The incident occurred in Namoli Village, Lautoka.*

**Offence**

5. *On the 29<sup>th</sup> of October 2022, around 10.00 a.m. a group of boys namely, Apolosi Ranawi, John Shaw, Josaia Namua and Apenisa (Younger brother of the deceased) were in the compound of one Kiniviliame Tuidravu. All the boys except Apenisa were drinking Fiji Bitter beer.*
6. *Whilst they were drinking beer, the deceased came to the drinking party and slapped the head of his younger brother namely Apenisa. Apenisa then ran away from the drinking party and started crying. This was witnessed by witness namely Kiniviliame Tuidravu.*
7. *After a while Kiniviliame then came and saw that deceased and other boys were still drinking in front of his house. Whilst he was there, the deceased stood up and was leaning beside a palm tree whilst holding on to the branches of that tree.*

8. *When the deceased was leaning on the palm tree, the deceased's younger brother (the accused) namely Uate Qio came and suddenly threw a punch. The said punch landed on the deceased's jaw after which the deceased slowly fell to the ground.*
9. *State witness Kiniviliame stated that he saw that the deceased was gasping for air. Apolosi then turned the deceased sideways so that he could breathe properly, however, the deceased became unconscious.*
10. *The deceased was then taken to the hospital by Apolosi's uncle namely Penaia.*
11. *The deceased was resuscitated, intubated and admitted at the Lautoka Hospital at the Intensive Care Unit. He passed away after two days of hospitalization.*
12. *A post-mortem was conducted by Dr. Sainiana Ratuki. According to the post mortem report the main cause of death was severe traumatic brain injury with subarachnoid hemorrhage and the antecedent cause of bilateral bronchial pneumonia. The external cause of death is blunt force trauma. [Annexed herein is the Post Mortem report of the deceased marked as TAB A].*

**Caution Interview**

13. *The accused was arrested and interviewed under caution on the 3<sup>rd</sup> of November 2022. The accused made full admissions in his caution interview. [Annexed herein is the Caution Interview marked as TAB B]."*

[7] Uate, you have admitted to the above Summary of Facts and taken full responsibility for your actions.

[8] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) *The only purposes for which sentencing may be imposed by a court are —*

*(a) to punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

*(e) to signify that the court and the community denounce the commission of such offences; or*

*(f) any combination of these purposes.*

**[9]** Furthermore, Section 4(2) of the Sentencing and Penalties Act provides that a Court must consider the following factors when sentencing an offender:

*(2) In sentencing offenders a court must have regard to —*

*(a) the maximum penalty prescribed for the offence;*

*(b) current sentencing practice and the terms of any applicable guideline judgment;*

*(c) the nature and gravity of the particular offence;*

*(d) the offender's culpability and degree of responsibility for the offence;*

*(e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;*

*(f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;*

*(g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;*

*(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;*

*(i) the offender's previous character;*

*(j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and*

*(k) any matter stated in this Decree as being grounds for applying a particular sentencing option.*

**[10]** I have duly considered the above factors in determining the sentence to be imposed on you.

**[11]** In terms of Section 239 of the Crimes Act No. 44 of 2009 ("Crimes Act"):

*A person commits an indictable offence if —*

*(a) the person engages in conduct; and*

*(b) the conduct causes the death of another person; and*

*(c) the first-mentioned person —*

*(i) intends that the conduct will cause serious harm; or*

*(ii) is reckless as to a risk that the conduct will cause serious harm to the other person.*

The offence of Manslaughter in terms of Section 239 of the Crimes Act carries a maximum penalty of 25 years imprisonment.

[12] According to Section 239 of the Crimes Act the maximum penalty for the offence of Manslaughter is an imprisonment for 25 years. The offence of Manslaughter involves the loss of a human life. As a result of your conduct the life of another human being has been lost. Though the degree of culpability of Manslaughter is lesser in comparison to Murder, still the offence of Manslaughter involves the death of another human being. Causing another person's death for whatever reason or under whatever circumstances is indeed a serious offence. In this instance, most unfortunately, it is your own biological brother (your older brother), who was only 29 years of age, whose life has been taken away.

[13] In the case of *Kim Nam Bae v. The State* [1999] FJCA 21; AAU 0015 of 1998S (26 February 1999), the Fiji Court of Appeal held as follows;

*"The cases demonstrate that the penalty imposed for manslaughter ranges from a suspended sentence where there may have been grave provocation to 12 years imprisonment where the degree of violence is high and provocation is minimal. It is important to bear in mind that this range covers a very wide set of varying circumstances which attract different sentences in different manslaughter cases. Each case will attract the appropriate sentence within the range depending on its own facts."*

[14] It can be noted from the above case, that the Court of Appeal had observed that the penalty imposed for Manslaughter ranges from a suspended sentence to 12 years for different Manslaughter cases. Thus, the case of *Kim Nam Bae* (supra) seems to be only making an observation on the range of sentences which were pronounced by the courts in Manslaughter cases, rather than establishing a tariff for the offence.

[15] In *State v. (Viliame) Ratoa* [2012] FJHC 922; HAC173.2010S (8 March 2012); His Lordship Justice Salesi Temo held:

*"Manslaughter" is a serious offence, and carries a maximum sentence of 25 years imprisonment. The tariff for manslaughter in Fiji is a suspended prison sentence to a sentence of 12 years imprisonment. Sentences in the upper range*

*were reserved for cases where the degree of violence was high, and the provocation minimal. Sentences in the lower range were reserved for cases where the violence used was minimal, while the provocation was extreme. The tariff covers a very wide set of varying circumstances which will attract different sentences, depending on its own set of facts: **Kim Nam Bae v The State**, Criminal Appeal No. AAU 0015 of 1998S, Fiji Court of Appeal; **The State vs Francis Bulewa Kean**, Criminal Case No. HAC 037 of 2007S, High Court, Suva; **The State v Tomasi Kubunavanua**, Criminal Case No. HAC 021 of 2008, High Court, Suva. Of course, the actual sentence will depend on the aggravating and mitigating factors.”*

- [16] In **State v. (Luke) Nasetava** [2022] FJHC 2; HAC310.2019S (14 January 2022); His Lordship Justice Temo has discussed how Judicial Officers have approached sentencing in several cases of Manslaughter.
- [17] In the case of **State v. Dumukoro** [2016] FJHC 199; HAC27.2014 (23 March 2016); His Lordship Justice Vincent Perera having considered and analysed 21 sentencing decisions in Manslaughter cases stated “From the above decisions I have perused, it is evident that this court has been inclined towards selecting a starting sentence of 5 years imprisonment or above for the offence of Manslaughter. In majority of the cases, the court has taken 5 years as the starting point.”
- [18] Accordingly, Justice Perera held “.....since this court has been more favourable towards selecting 5 years as the starting point, I am inclined to form the view that the tariff for the offence of Manslaughter under Section 239 of the Crimes Decree (Act) should be 5 years to 12 years imprisonment.”
- [19] I am inclined to agree with the above tariff of 5 years to 12 years imprisonment proposed by Justice Perera for the offence of Manslaughter. In **State v. Seniceva & Others** [2017] FJHC 481; HAC26.2016 (29 June 2017); **State v. Naimoso & Others** [2018] FJHC 345; HAC095.2016 (27 April 2018); and **State v. (Asenaca) Baulawamafi** [2023] HAC 71 of 2022 (7 June 2023); I followed the same tariff for the offence of Manslaughter.
- [20] In determining the starting point within a tariff, the Court of Appeal, in **Laisiasa Koroivuki v State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

**[21]** In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Uate, I commence your sentence at 5 years imprisonment for the offence of Manslaughter.

**[22]** The aggravating factors are as follows:

- (i) By punching the deceased on his face, you showed utter disregard to his safety.
- (ii) The deceased is your older brother. The two of you are biological siblings. Thus there is a domestic relationship between the two of you. As such, you should have protected and safeguarded the deceased. Instead you have breached the trust expected from you.
- (iii) The use of extreme force on the deceased, which is confirmed by the serious injuries sustained by him. As per the post-mortem examination conducted by Dr. Sainiana Ratuki and the post mortem report submitted to Court, the main cause of death was severe traumatic brain injury with subarachnoid hemorrhage and the antecedent cause of death was bilateral bronchial pneumonia. Dr. Ratuki testified during the sentence hearing and explained the nature of the injuries sustained by the deceased and the manner in which his death would have been caused.
- (iv) There was no provocation by the deceased towards you at the time you caused the assault on him. Even though, the deceased had slapped your younger brother Apenisa a few minutes earlier, the deceased had not used any violence on you personally.

**[23]** Considering the aforementioned aggravating factors, I increase your sentence by a further 6 years. Now your sentence is 11 years imprisonment for the offence of Manslaughter.

**[24]** Uate, in mitigation you have submitted as follows:

- (i) That you fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (ii) You have submitted that you are truly remorseful of your actions which resulted in the death of the deceased. You have promised not to re-offend and said you are willing to reform.
- (iii) That you entered a guilty plea at a very early stage of these proceedings.

- [25] Uate, I accept that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine and the fact that you have promised not to re-offend and undertaken to reform. Accordingly, considering these mitigating factors, I deduct 2 years from your sentence. Now your sentence would be 9 years imprisonment.
- [26] Uate, I accept that you entered a guilty at a very early stage of these proceedings. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 3 years. Now your sentence would be 6 years imprisonment.
- [27] Uate, you cannot be considered as a first offender. As per the Previous Convictions Record submitted to Court by the State, you have two previous convictions recorded in your name. These convictions were imposed by the Magistrate's Court of Lautoka in 2017 – for the charge of Theft (12 months imprisonment of which you had to serve 7 months and the remaining 5 months was suspended for 12 months) and for Breaching of Bail Conditions (you were fined \$100.00).
- [28] Uate, you are now 29 years of age. You are said to be recently married with an 11 month old son and is the sole breadwinner of your family. Prior to being remanded for this case, you had been working as a Security Officer earning approximately \$150.00 per week.
- [29] You are the second eldest of five siblings. The deceased Viliame, was the eldest out of the five siblings. The deceased and you lived with your parents and your three younger siblings in Namoli Village, Lautoka.
- [30] You have submitted that since gaining employment a few years ago, Viliame would drink and arrive home drunk. He was a bad drunk who would constantly verbally and physically abuse and intimidate your family members and others, often causing disruptions and fights. Viliame would also harass your parents for money and on one occasion, he is said to have assaulted your father. At most times, the deceased was very disrespectful towards your parents when he was drunk.
- [31] You have further submitted that as the second eldest son, you became the delegated person who would be sent by your parents (specially your mother) to keep an eye on Viliame and to prevent him from causing trouble to the people in the village.
- [32] You have stated that recurring tensions would arise every time the deceased would be drunk and proclaim that their parent's house belonged to him.
- [33] You state that on the day of this unfortunate incident, the deceased had slapped Apenisa, your youngest sibling for no reason. Apenisa is very dear to you because, even though he is the youngest sibling, he shows a lot of maturity. Apenisa is said to have helped you and your wife in numerous ways during your wife's pregnancy and after your wife had given birth to your son. Therefore, when you saw Apenisa crying and realized



that it was due to the deceased having slapped him, it had angered you. Thus you had gone and punched the deceased on the jaw, which resulted in his death.

[34] You have submitted to Court Affidavits sworn by your father, Kaliopate Bulalevu, your mother, Kelera Lewatu and the Turaga Ni Koro of Namoli Village, Manoa Ravouvou in support of your good character.

[35] Uate, I have considered all the material submitted on your behalf in mitigation. However, the fact remains that due to your actions the precious life of another human being has been sadly taken away. During sentencing, this Court has to also consider the nature and gravity of the particular offence and your culpability and degree of responsibility for the offence.

[36] Accordingly, I sentence you to a term of 6 years' imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 4 years' imprisonment.

[37] Section 24 of the Sentencing and Penalties Act reads thus:

*"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*

[38] You were arrested for this case and produced in the Lautoka Magistrate's Court on 7 November 2022 and remanded into custody. You have remained in custody since that day. Accordingly, you have been in custody for a period of 7 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 7 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[39] In the result, your final sentence is as follows:

Head Sentence - 6 years' imprisonment.

Non-parole period - 4 years' imprisonment.

Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 5 years' and 5 months imprisonment.

Non-parole period - 3 years' and 5 months imprisonment.

[40] You have 30 days to appeal to the Court of Appeal if you so wish.



AT LAUTOKA

Dated this 14<sup>th</sup> Day of June 2023

**Riyaz Hamza**  
**JUDGE**  
**HIGH COURT OF FIJI**

**Solicitors for the State:**  
**Solicitors for the Accused:**

**Office of the Director of Public Prosecutions, Lautoka.**  
**Office of the Legal Aid Commission, Lautoka.**