

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

**CRIMINAL CASE NO. HAC 221 OF 2022**

**STATE**

**vs.**

**ESEKAIA NAWELE**

**Counsel:** *Ms. Tamanikaiyaroi U.*        -        *for State*  
                  *Mr. Romanu I.*                                -        *for Accused*

*Date of Hearing:*        **11.10.2023**

*Date of Judgement:*    **01.12.2023**

*Date of Sentence:*     **14.12.2023**

---

**SENTENCE**

1. The accused in this matter, **Mr. ESEKAIA NAWELE**, was charged with one count of **Rape** against **KA (Prosecutrix)**, a child under 13 years of age without her consent, as below:

**COUNT 1**

Representative Count

*Statement of Offence*

**RAPE**: Contrary to Section 207(1) and (2) (b) and (3) of the Crimes Act 2009.

*Particulars of Offence*

**ESEKAIA NAWELE** between the 01<sup>st</sup> day of January 2021 and the 31<sup>st</sup> day of December 2021 at Suva in the Central division penetrated the vulva of **KA**, a child under the age of 13 years with his finger.

2. Upon reading of the charge in Court on 22<sup>nd</sup> August 2022, **ESEKAIA NAWELE** understood and pleaded not guilty to the charge filed against him. At the trial, the Prosecution led the evidence of 3 witnesses, including the evidence of **KA** the victim. For the Defense case, the Accused gave evidence, and two other witnesses were called. The judgement in this matter was

delivered by this Court on 01<sup>st</sup> of December 2023 and this Court found the Accused **ESEKAIA NAWELE** guilty of rape under **Section 207 (1) and (2) (b) and (3)** of the **Crimes Act 2009**, as charged by the information. On the Prosecution and the Defense filing submissions on aggravation and mitigation, this matter is coming up today for the sentence.

3. In comprehending with the gravity of the offence you have committed, this Court is mindful that the maximum punishment for the offence of **Rape** under **Section 207 (1) and (2) (a)** of the **Crimes Act 2009** is Life Imprisonment.
4. The accepted tariffs for the offence you have committed depend on the nature and circumstances under which Rape was committed, and the consequences entailing the commission of the offence to the victim at large.
5. This Court also recognizes that to address the rapid increase of sexual offences in our community against young children, especially where the perpetrators are family members that shatters the fundamental values of our closely-knit community, any punishment imposed by Court for this type of offence should have a reprehensible deterrent effect that could also send a profoundly strong signal to discourage potential wrong doers in our society with a view of safeguarding the younger generation of our country.
6. The seriousness of such offences was well identified by the **Court of Appeal of Fiji** in the case of *Drotini v The State [2006]*<sup>1</sup>, as below:

*“There are few more serious aggravating circumstances than where the rape is committed on a juvenile girl by a family member or someone who is in a position of special trust. The seriousness of the offence is exaggerated by the fact that family loyalties and emotions all too often enable the offender or other family members to prevent a complaint going outside the family. If the child then remains in the family home, the rapist often has the opportunity to repeat the offence and to hope for the same protection from the rest of the family.”*

7. As per the existing law in Fiji, the sentencing tariff for Rape of a child ranges from 11 to 20 years’ imprisonment as held by the **Supreme Court of Fiji** in the case of *Aitcheson v State [2018]*<sup>2</sup>.
8. In assessing the objective seriousness of your offending in this matter, this Court considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to the victim. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In this matter, you had committed the sexual offence on your stepdaughter under 13 years of age, who was residing with you. In this regard, as mentioned before, this Courts has a duty to discourage and deter this

---

<sup>1</sup> [2006]FJCA 26

<sup>2</sup> [\[2018\] FJSC 29](#) (2 November 2018).

kind of behavior that belittles the much-valued family fabric of our society. Having considered all these factors, this Court would pick a starting point of 11 years imprisonment against you as the first step in the sentencing process.

9. Prosecution also brings to the attention of this Court the **Supreme Court of Fiji** pronouncement in the case of *Ram v State [2015]*<sup>3</sup>, where the Court has mentioned the need to consider how horrific the overall circumstances of the crime were to the victim. In this regard, Court had mentioned the suitability of *considering the following circumstances:*

*“(a) whether the crime had been planned, or whether it was incidental or opportunistic;*  
*(b) whether there had been a breach of trust;*  
*(c) whether committed alone;*  
*(d) whether alcohol or drugs had been used to condition the victim;*  
*(e) whether the victim was disabled, mentally or physically, or was especially vulnerable as a child;*  
*(f) whether the impact on the victim had been severe, traumatic, or continuing;*  
*(g) whether actual violence had been inflicted;*  
*(h) whether injuries or pain had been caused and if so how serious, and were they potentially capable of giving rise to STD infections;*  
*(i) whether the method of penetration was dangerous or especially abhorrent;*  
*(j) whether there had been a forced entry to a residence where the victim was present;*  
*(k) whether the incident was sustained over a long period such as several hours;*  
*(l) whether the incident had been especially degrading or humiliating;*  
*(m) If a plea of guilty was tendered, how early had it been given. No discount for plea after victim had to go into the witness box and be cross-examined. Little discount, if at start of trial;*  
*(n) Time spent in custody on remand.*  
*(o) Extent of remorse and an evaluation of its genuineness;*  
*(p) If other counts or if serving another sentence, totality of appropriate sentence.”*

10. In aggravation, Prosecution highlights that you had meticulously pre-planned the commission of the offence and made use of the vulnerability of the victim. Further, by the victim impact statement filed of record, Prosecution has emphasized how traumatic this offence had been on the victim creating a permanent scar in the young girl’s future. Considering these grave considerations, this Court increase your sentence by 2 years.

---

<sup>3</sup> [2015] FJSC 26 (23<sup>rd</sup> October 2015)

11. In mitigation, your counsel informs this Court that that you are the father of 3 young children, who would require your care and attention. Considering your young family I reduce your sentence by one (01) year.
12. The Prosecution also brings to the attention of this Court that you have been in remand custody for 5 months in relation to this matter, which periods should be deducted from your sentence separately.
13. **ESEKAIA NAWELE**, in considering all the factors analyzed above, this Court sentences you to 11 years and 7 months imprisonment with a non-parole period of 11 years under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009**.
14. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Thushara Kumarage", is written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva  
This 14<sup>th</sup> day of December 2023

cc: *Office of Director of Public Prosecutions*  
*Office of MIQ Lawyers*