

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

**CRIMINAL CASE NO.: HAC 102 OF 2021**

STATE

-v-

**1. LAISIASA ROKOBECI**

**2. RUCI KALOKALO**

Counsel : Ms. S. Naibe for Prosecution  
Offenders in Person

Date of Judgment : 16 February 2024  
Date of Sentencing Hearing : 26 February 2024  
Date of Sentence : 29 February 2024

**SENTENCE**

1. Mr Laisiasa Rokobeci and Ms Ruci Kalokalo (the offenders), were jointly charged on the following information filed by the Director of Public Prosecution:

**FIRST COUNT**

*Statement of Offence*

**MANSLAUGHTER ARISING BY BREACH OF DUTY:** Contrary to Section 240 and 241 (2) of the Crimes Act 2009.

*Particulars of the Offence*

**LAIASIA ROKOBECE AND RUCI KALOKALO** between the 1<sup>st</sup> day of December, 2020 and the 23<sup>rd</sup> day of February, 2021 at Toko, Tavua, in the Western Division, made an omission which amounted to a negligent breach of duty, by not taking **ALANIETA DRUA NAITUVA**, a 7 years old child to hospital for medical attention which resulted in the death of the said **ALANIETA DRUA NAITUVA**.

**ALTERNATIVE COUNT**

*Statement of Offence*

**FAILING TO PROVIDE THE NECESSARIES TO LIFE:** Contrary to Section 264 of the Crimes Act 2009.

*Particulars of Offence*

**LAIASIA ROKOBECE AND RUCI KALOKALO** between the 1<sup>st</sup> day of December, 2020 and the 23<sup>rd</sup> day of February, 2021, at Toko, Tavua, in the Western Division, being charged with the duty of providing **ALANIETA DRUA NAITUVA**, the necessaries of life, without lawful excuse failed to do so, whereby the life of **ALANIETA DRUA NAITUVA** was endangered and her health was permanently injured.

**SECOND COUNT**

*Statement of Offence*

**RESTRICTION OF BURIAL OF DEAD BODIES:** Contrary to section 12 (1) (a) and (2) of the Burial and Cremation Act 1911.

*Particulars of Offence*

**LAIASIA ROKOBECE AND RUCI KALOKALO** on the 23<sup>rd</sup> day of February, 2021, At Toko, Tavua, in the Western Division, caused to bury the body of **ALANIETA DRUA NAITUVA**, without a certificate of death in the forms prescribed by the Registrar-General by regulation under the Births, Death and Marriages Registration Act in respect of that body signed by a medical practitioner.

2. The offenders were found guilty after trial of Manslaughter Arising by Breach of Duty and Restriction of Burial of Dead Bodies hence convicted. They now come before this Court for sentence.
3. The facts of the case, which are rather unfortunate, can be summarized as follows: The offenders are the parents of the late Alanieta, the deceased in this case. They were followers of Methodist Congregation when they joined the faith group called *Yavu Vatu ni Vanua* in

2017. When Alanieta passed away in 2021, she was a 7-year-old child under the care and protection of the offenders. By reason of her age and sickness, Alanieta was unable to provide herself with the necessities of life which include medical care and attention in the event of sickness. The offenders owed a duty of care to the deceased.

4. Alanieta was sick for three months since latter part of 2020 showing symptoms like body pain, stomachache and was getting thin day by day losing her weight. Within that period, she was never taken to a doctor or to the hospital which was just 10 minutes' drive from where they were residing. The offenders believed that taking the sick to the hospital was ungodly and against their religious convictions. The day Alanieta passed away, she was yelling in pain and complaining of stomachache. The offenders just prayed over her, giving her lemon juice, believing that everything happens according to God's plan. The omission on the part of the offenders in not taking the deceased to the hospital for medical care and attention constitute a breach of duty thus gross negligence amounting to crime punishable by law.
5. When Alanieta passed away, the offenders said they were at peace because they knew that that was God's plan for her. Her body was not taken to the hospital for the doctors to determine her cause of death. They decided to bury the body the day she died without notifying the hospital or the police.

Maximum sentence and sentencing tariff

6. The prescribed maximum sentence for Manslaughter Arising by Breach of Duty pursuant to Section 240 of the Crimes Act No. 44 of 2009 is 25 years imprisonment. The punishment under Section 198 of the Penal Code Cap.17 (now repealed) for Manslaughter was imprisonment for life. Life imprisonment is the maximum sentence prescribed for this offence in England even today.

7. The killing of a fellow human being by negligence breach of duty is recognized by the Legislature as a very serious matter. The maximum term prescribed by law indicates how serious this offence has been viewed by the Legislature.
8. The tariff for Manslaughter in general is settled in this jurisdiction. Despite the maximum sentence being reduced drastically under the Crimes Act, the Courts in Fiji thought it fit to maintain the tariff prescribed under the Penal Code for Manslaughter which was suspended sentence to 12 years imprisonment<sup>1</sup>.
9. The current sentencing practice for manslaughter in general is reflected in the following paragraph in State v Milika Vadei<sup>2</sup> where Temo J (as he then was) referred to the Court of Appeal decision in Kim Nam Bae v The State<sup>3</sup>

Manslaughter is a serious offence. It carries a maximum sentence of life imprisonment. However, case laws in Fiji seemed to show that penalties for manslaughter range from a suspended sentence to 12 years imprisonment. Sentences in the upper range were reserved for cases where the degree of violence was high and the provocation given was minimal. Sentences at the lower end of the scale were reserved for cases where the violence used was minimal and the provocation given was in the extreme: see *Kim Nam Bae v The State*, Fiji Court of Appeal, Criminal Appeal No. 1998S; *The State –v- Frances Bulewa Kean*, Criminal CASE No HAC 037 of 2007; *State v Amali Rasalusalu* Criminal Case No. HAC 003 OF 2003, High Court, Suva. The actual sentence passed will depend on the presence or otherwise of strong mitigating and/or aggravating factors

10. In Bae v State (supra), the Judges of Court of Appeal observed as follows:

The task of sentencing is not an exact science which is capable of mathematical calculation. This is particularly so with manslaughter where the circumstances and the offender's culpability can vary greatly from case to case. An appropriate

---

<sup>1</sup> See *Vakaruru v State* [2018] FJCA 124; AAU94.2014 (17 August 2018) para 44

<sup>2</sup> [2010] FJHC 168; HAC 0068/2009s [May 2010]

<sup>3</sup> [1999] FJCA 21; AAU0015u.98s (26 February 1999)

sentence in any case is fixed by having regard to a variety of competing considerations.

11. The wide sentencing range prescribed in the tariff recognises the fact that the circumstances of manslaughter vary greatly. The law recognizes various categories of manslaughter ranging from gross negligence manslaughter which includes motor manslaughter to assault and violence related manslaughter. The sentencer is given wide discretion to tailor his/ her sentence having due regard to the facts and circumstances of each individual case. Given the tariff range is so wide across board, it is high time that the Appellate Courts devise a distinct tariff for gross negligence manslaughter to avoid disparity in sentencing and also because the guidelines devised by the Court of Appeal in *Bae* guide the sentencing courts to decide the sentence in terms of the 'degree of violence' and the 'level of the provocation' which have no relevance to gross negligence manslaughter at all.
12. The UK Sentencing Council has devised a special sentencing regime for gross negligence manslaughter (which is similar to Manslaughter Arising by Breach of Duty under Crimes Act)<sup>4</sup>. Given that life imprisonment is still the maximum sentence prescribed by law for this offence in England, its relevance to the Fijian context may be of little help. However, those guidelines shed some light for sentencing courts in Fiji for this particular offence.
13. At tier one of the sentencing process, the UK Guidelines recognize four levels of culpability, very high (A), high (B), medium (C) and low (D), and the characteristics are listed for each level of culpability that may attach to the offender's conduct. The court is given discretion to balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence by avoiding an overly mechanistic application of these factors, particularly in cases to which they do not readily apply.
14. Accordingly, the factors indicating high culpability (B) are listed as follows:
  - The offender continued or repeated the negligent conduct in the face of the obvious suffering caused to the deceased by that conduct
  - The negligent conduct was in the context of other serious criminality

---

<sup>4</sup> <https://www.sentencingcouncil.org.uk/offences/crown-court/item/gross-negligence-manslaughter/>

- The offence was particularly serious because the offender showed a blatant disregard for a very high risk of death resulting from the negligent conduct
- The negligent conduct was motivated by financial gain (or avoidance of cost)
- The offender was in a leading role if acting with others in the offending
- Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

15. The factors indicating lower culpability (D) are listed as follows:
1. The negligent conduct was a lapse in the offender's otherwise satisfactory standard of care
  2. The offender was in a lesser or subordinate role if acting with others in the offending
  3. The offender's responsibility was substantially reduced by mental disorder, learning disability or lack of maturity
16. If I were to apply the UK Guidelines to the present case, the culpability level is high because the offenders showed a blatant disregard for a very high risk of death resulting from the negligent conduct. The starting point reserved for this high category (B) is 8 years custody and the sentencing range is 6-12 years custody.
17. However, these guidelines should be adapted to the Fijian context particularly because the maximum sentence for Manslaughter in Fiji has now been reduced from life imprisonment to 25 years' imprisonment. Therefore, I pick a starting point of 3 years custody considering particularly the facts that the offenders deliberately refused to take the sick child to the hospital for their faith and that the life of an innocent child was lost.
18. The maximum sentence for Restriction of Burial of Dead Bodies contrary to Sections 12 (1)(a) and (2) of the Burial and Cremation Act 1911 is imprisonment not exceeding six months. There is no set tariff for this offence.
19. Section 17 of the Sentencing and Penalties Act allows the Court to impose an aggregate sentence if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character. Accordingly, this is a fit case to impose an aggregate sentence for convictions on both counts.
20. I carefully considered the submissions filed by either side to make necessary adjustments based on the aggravating and mitigating factors to arrive at a sentence that is best suited to

the circumstances of this case. It is aggravating that the offenders buried the dead body without informing the relevant authorities thereby preventing the cause of death being known to the rest of the world. It in a way constitutes a form of perverting the course of justice.

21. In mitigation, I considered the personal circumstances of the offenders. They are living together as husband and wife with three children. Both of them are unemployed and earn a living by subsistence farming. They are first offenders and have maintained a good character. Unfortunately, I am unable to consider as a mitigating factor their claim that they committed these offences due to their ignorance of law. They have shown no remorse or repentance on the demise of the child. However, they have to live rest of their lives with the knowledge that their child died because of their negligence.
22. I increase the sentence by two years to arrive at an interim sentence of five years to reflect the above-mentioned aggravating features and deduct two years for the mitigation to arrive at a final sentence of three years imprisonment.
23. Section 26 of the Sentencing and Penalties Act gives the High Court the powers to suspend the sentence fully or partially if it does not exceed three years imprisonment. Since the imprisonment term has not exceeded three years, I must consider if the offenders are suitable candidates for a suspended sentence.
24. The Court of Appeal in Vakaruru v State<sup>5</sup> observed as follows:

[46] The current sentencing trend for the offence of manslaughter under the Crimes Act appears to be between 5 years to 12 years imprisonment. The above sentencing range does take into account the objectives of section 4 of the Sentencing and Penalties Act. Section 26 (2) (a) of the Sentencing and Penalties Act gives the High Court the powers to suspend a final sentence if it does not exceed three (3) years imprisonment. Accordingly, there is no need to establish a new tariff for the offence of manslaughter. A sentencing court can impose a suspended sentence based on the circumstances of the offending, a tariff may be construed as a restriction or may even confuse a sentencer. In exceptional cases a sentencing court should consider suspending a sentence.

---

<sup>5</sup> [2018] FJCA 124; AAU94.2014 (17 August 2018)

[48] I note that a sentence of 5 years to 12 years imprisonment for the offence of manslaughter is in line with the current sentencing regime adopted by the High Court with a suspended sentence to be considered in exceptional circumstances. It does not mean that a sentencing court cannot deviate from the above range. There may be reasons to go below or higher than the range of sentencing between 5 years to 12 years imprisonment depending upon the circumstances of the offending and the sentencing court should provide reasons why the sentence is outside the range.

25. In *State v Ashwin Kumar*<sup>6</sup> Maitaitoga J (as he then was) reviewed sentencing for manslaughter with gross negligence. In that case, the accused drove a bicycle with defective brakes and hit the deceased causing death. His Lordship sentenced the accused to 16 months imprisonment, suspended for 2 years. In the course of his sentencing remarks His Lordship referred to the following cases of manslaughter by gross negligence:

*In State v Metuisela Toka HAC 008/2003* – the High Court sentenced the accused to 9 months imprisonment. This was a case where the father of an 11 year old child threw a spear at her in the early hours of the morning believing her to be a pig.

*In State v Sitiveni Rokaria HAC 017/2003* – the High Court sentenced the accused to 12 months imprisonment suspended for 2 years. The accused was the driver of a boat taking some family friends from overseas, who wanted to go to an offshore island for a picnic. The boat was licenced to carry 10 passengers and the accused told the passengers that he can only take 10 but his father overruled him and he took 14 passengers instead. The boat capsized and two passengers died from drowning. Accused was charged with 2 counts of manslaughter by gross negligence.

*In State v Apolosi Waqalaivi HAC 08/1995S* – The High Court sentenced the accused to 2 years imprisonment suspended for 3 years. This was a case involving the death of an 8 year old child due to the gross negligence of a boat driver who drove his boat close to where some children were swimming. The accused did not see the deceased and ran over the child causing him to die.

*In State v Josaia Boseiwaqa & Anor HAC 032/07* – The High Court sentenced the two accused persons to 2 years imprisonment suspended for 3 years. This case involved the death by drowning of 2 persons who were passengers on boat travelling from Deuba to Beqa island. The boat was overloaded with passengers and the two accused person persons were the drivers of the boat. They were not paid for their work."

26. All the case cited above no doubt deserved suspended sentences. This case is factually different to those cases particularly in that the offence of manslaughter in this case involves

---

<sup>6</sup> HAC 037 of 2007



another offence which was committed to suppress the evidence of the unlawful killing. The cases cited in Ashwin Kumar (supra) way back in 2007 do not represent the current sentencing practice in Fiji.

27. In the present case, I do not consider that a full suspended sentence is the appropriate sentence. The offenders have shown no remorse. They pleaded not guilty and determined to fight the case despite the death of their child due to their gross negligence. I would not consider there to be sufficient special circumstances<sup>7</sup> that would allow me to impose anything other than an immediate custodial sentence of imprisonment.
28. After careful consideration of all the facets, I am of the view that full suspended sentence is not warranted in this case. However, the offenders deserve a partial suspended sentence so as to strike a correct balance between rehabilitation on one hand and deterrence, denunciation and protection of children on the other. In coming to this conclusion, I particularly made inquiries about the children of the offenders and am satisfied that most of them are grown up and not under the care of the offenders anymore.
29. We have seen in Fiji a remarkable rise in cases associated with child deaths due to gross negligence of their parents. The public must be concerned at this sort of wanton disregard for their children inspired by myths about scientifically not proven medical treatments and medicine. It is the responsibility of all parties concerned, including the courts to ensure that the children in Fiji are safe and secure. The offenders and other parents must be sent a strong message that this sort of behaviour is totally unacceptable.

### Conclusion

30. The offenders Mr Laisiasa Rokobeci and Ms Ruci Kalokalo are sentenced to 3 years imprisonment. They are to serve only twelve (12) months in the correction facility and the

---

<sup>7</sup> See for exceptional circumstance: CF R v Petersen [1994] 2 NZLR 55)

remainder of twenty four (24) months to be suspended for a period of three 3 years. If they are found guilty of another offence during the period of three years which this sentence is in suspension, they are liable to be punished. The effect of suspended sentence is explained to the offenders.

31. 30 days to appeal to Court of Appeal.



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

JUDGE

At Lautoka

29 February 2024

Solicitors:

- Office of the Director of Public Prosecution for State