

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

CRIMINAL CASE NO: HAC 145 of 2021

STATE

V

APOROSA NALULU

**Counsel: Mr. U Lal for the State
Ms. Kumari for the Accused**

**Sentence Hearing & Submissions: 2nd July 2024
Sentence: 5th July 2024**

SENTENCE

1. Aporosa Nalulu, you were charged with the following offence as per the Information filed by the Director of Public Prosecutions (DPP):

COUNT ONE

Statement of Offence

CRIMINAL TRESPASS: Contrary to Section 387 (1) (a) of the Crimes Act 2009.

Particulars of Offence

APOROSA NALULU, on the 18th day of December 2021, at Lautoka, in the Western Division, entered upon the property of RAIJIELI LOLOHEA with intent to commit an offence.

COUNT TWO

Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence

APOROSA NALULU, on the 18th day of December 2021, at Lautoka, in the Western Division, with intent to cause some grievous harm to SESENIELI ATOVIA, unlawfully wounded the said SESENIELI ATOVIA with a Beer Bottle.

2. On the 2nd of July, 2024 when the matter was called for trial, your counsel inform the court that you wish to change your plea. The information was again put to you and read out in court on both counts. You pleaded guilty to both counts and you have done so with own free will. You also informed the court that you fully understood the nature of the charge against you and the consequences of your plea.
3. The State filed the Summary of Facts. The Summary of Facts were read out and explained to you and having understood you agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the charge in the Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you one count of Criminal Trespass and one count of Act Intended to Cause Grievous Harm.
4. The Summary of Facts filed by the State was as follows:
 - i). The first complainant in this matter is Sesenieli Atovia 31 years domestic duties of Vunato settlement, Lautoka and the second complainant is Raijieli Lolohea 40 years security officer of 31 Vitogo parade Lautoka.
 - ii). The accused and the 1st complainant were husband and wife in 2021.
 - iii). On 18th December 2021, at around 8pm the first complainant was at second complainant's place where she planned to stay for the night.
 - iv). At around 8pm the first complainant was with her cousin (second complainant) together with few of her friends drinking beer at the front porch of the second complainant's house.

- v). Whilst the drinking party at the porch progressed the first complainant saw the accused walked into the second complainant's compound without the second complainant approval and went into the porch where the first complainant and the 2nd complainant together with their friends were partying.
 - vi). An argument broke out between the accused and first complainant and the accused picked up a beer bottle and struck the back of the head of the first complainant. The first complainant sustained multiple injuries on her head, back of her neck, wrist and fingers as reflected in her medical report.
 - vii). The accused was subsequently charged for one count of Act Intended to Cause Grievous Harm contrary of Section 255 (a) of Crimes Act 2009.
 - viii). The accused pleaded guilty to the charge on 2nd of July, 2024.
5. You have admitted to the above Summary of Facts and taken full responsibility for you actions. Aporosa Nalulu, I now proceed to pass sentence on you.
6. For Count one: Criminal Trespass The maximum penalty for the offence of **criminal trespass** is imprisonment for 1 year.. The tariff for **criminal trespass** by night is from 1 month to 9 months imprisonment (*Ravuwai vs State [2007] FJHC 55*).
- I order a sentence of 5 months imprisonment for the 1st Count of Criminal Trespass.
7. For count two, Section 255 (a) of the Crimes Act of 2009 “A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person —
- (a) Unlawfully wounds or does any grievous harm to any person by any means.....”
- The prescribed maximum penalty for this offence is imprisonment for life.
8. In *State v. Maba Mokubula [2003] FJHC 164; HAA 52J.2003S (23 December 2003); Her Ladyship Madam Justice N. Shameem* said:

The tariff for sentences under section 224 of the Penal Code , is between 6 months imprisonment to 5 years imprisonment. In a case of an attack by a weapon, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon.

Aggravating factors would be:

1. *Seriousness of the injuries;*
2. *Evidence of premeditation or planning;*
3. *Length and nature of the attack;*
4. *Special vulnerability of the victim;*

Mitigating factors would be:

1. *Previous good character;*
2. *Guilty plea;*
3. *Provocation by the victim;*
4. *Apology, reparation or compensation.*

9. In general terms, the more serious and permanent the injuries, the higher the sentence should be. As a matter of principle, a suspended sentence is not appropriate for a case of act with intent to cause grievous harm

10. His Lordship Justice Madigan in **State v. Emosi Taku Tuigulagula [2011] FJHC 163; HAC 31.2010 (15 March 2011)**; stated thus:

“The maximum penalty for this offence is life imprisonment and the Court of Appeal has said in Shaukat Ali (1976) 22 FLR 87 that for this offence a custodial sentence is inevitable. The offence is a kin to section 224 of the old Penal Code and so the authorities pertaining to that section are relevant. In the case of Mokubula (2003) FJHC 164, Shameem J set out several cases of assault intending to cause grievous bodily harm and came to the conclusion that the then prevailing "tariff" was between 6 months imprisonment to 5 years imprisonment, but stressing that where a weapon was used the starting point should be 2 years.”

11. However, in the above case, Justice Madigan sentenced the accused, who pleaded guilty for striking his wife with a cane knife, severing her fingers in both hands, excluding the thumbs, and also injuring the head, to 6 years imprisonment.

12. Aporosa Nalulu, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your

sentence at **2 years imprisonment** for the offence of Act Intended to Cause Grievous Harm.

Aggravating Factors

13. The **aggravating factors** in this case are as follows:

- (i) The frequent prevalence of offences of this nature in our society today.
- (ii) The nature and extent of the injuries caused to the first complainant as a result of your actions. The Medical Examination Report of the first complainant confirms that she sustained multiple superficial scalp laceration on the back of her head with multiple laceration injuries on her posterior back part of her neck. She had also sustained lacerations injuries on her wrist, hand and fingers.
- (iii) This Court is of the opinion that your actions were premeditated since you had picked up a beer bottle prior to striking the first complainant's head.

14. Considering the aforementioned aggravating factors, I increase your sentence by a further 4 years. Now your sentence is 6 years imprisonment.

15. The **mitigating factors** in this case are as follows:

- (i) There was some elements of provocation by the first complainant who was the wife of the accused and was found to be socializing with her cousin the second complainant in a drinking party at the second complainant's residence.
- (ii) You have submitted that you are truly remorseful of your actions and have undertaken to reform and not to re-offend.
- (iii) That you entered a guilty plea in these proceedings before the commencement of the trial. You are entitle to some discount from the same.

16. I accept that you were provoked when you saw the first complainant your wife involved with her cousin and the drinking liquor at the porch of the residence of the 2nd complainant. I also accept your remorse as genuine and also the fact that you have undertaken to reform and not re-offend. Accordingly, considering these mitigating factors, I deduct 2 years from your sentence. Now your sentence is **4 years imprisonment**.

17. I accept that you entered a guilty plea in these proceedings before trial. By doing so, you saved precious time and resources of this Court. For your guilty plea I grant you a further discount of 12 months. Now your sentence is **3 years** for the Charge of Act Intended to Cause Grievous Harm.

18. Your sentence now is as follows;

First count – 6 months imprisonment

Second count – 3 years imprisonment.

I order that both sentence are to be served concurrent to each other. Your total sentence is now 3 years imprisonment.

19. The next issue for consideration is whether your sentence should be suspended.

20. Section 26 of the Sentencing and Penalties Act provides as follows:

(1) On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.

(2) A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—

(a) does not exceed 3 years in the case of the High Court; or

21. I am conscious of the fact that first offenders and offenders who have pleaded guilty and expressed remorse, would usually be granted a non-custodial sentence. The prosecution has filed two previous convictions recorded against you. Therefore, considering the nature and gravity of the offending, your culpability and degree of responsibility for the offending, and the above previous convictions recorded against you, I am not inclined to suspend the entirety of your sentence. I am of the opinion that a partial custodial sentence is appropriate in the given circumstances so as to deter you and other like persons from committing such criminal acts.

22. This Court is also required by law under section 24 of the Sentencing and Penalties Act to consider Time spent in custody.

23. Aporosa Nalulu, you were arrested for this case on 19 December 2021 and granted bail on the 05th of April 2022 but you were released from remand on the 13th of July 2022 due to failure of sureties to sign. Accordingly, you have been in remand custody for a period of **6 months and 25 days**. Concessions will be granted as these are time already served in terms of the provisions of Section 24 of the Sentencing and Penalties Act. Your remaining term of imprisonment to served is 2 years 5 months and 6 days.
24. As a result, I ORDER that you must serve in prison custody a total of term **1 year out of the 2 years 5 months and 6 days term** of imprisonment this Court is imposing on you. The remaining term of **1 year 5 months and 6 days is suspended for a period of 4 years**.
25. You are advised of the effect of breaching a suspended sentence.
26. Finally, I also order a permanent Domestic Violence Restraining Order under section 27 non molestation condition and section 29 non-contact condition against you for the protection and wellbeing of the first complainant.
27. 30 days to appeal to the Court of Appeal.




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Sekonaia. Vodokisolomone
Acting Puisne JUDGE

Dated this 5th Day of July 2024

Solicitors

For the State: Office of the Director of Public Prosecutions, Lautoka.

For the Accused: Office of the Legal Aid Commission, Lautoka.