

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No. HAC 85 of 2024

BETWEEN: THE STATE

AND: MALAKAI NABALARUA

Counsel: Mr. Singh for the State
Ms. Taukei of LAC for the Accused

Date of the Plea: 7th August 2024
Date of Sentence 18th September 2024

SENTENCE

1. The Accused has pleaded guilty to the following offences on the Information:

First Count

Statement of Offence

ACT WITH INTENT TO CAUSE GRIEVOUS HARM; Contrary to section 255 (a) of the Crimes Act 2009

Particulars of Offence

MALAKAI NABALARUA on the 24th day of May, 2024 at Natabua, Lautoka, in the Western Division, with intent to cause some grievous harm to **IRINALE NABALARUA** unlawfully wounded the said **IRINALE NABALARUA** with a cane knife.

Second Count

Statement of Offence

DAMAGING PROPERTY: Contrary to section 369 of the Crimes Act 2009

Particulars of Offence

MALAKAI NABALARUA on the 24th day of May, 2024 at Natabua, Lautoka, in the Western Division, willfully and unlawfully damaged the Louvre blade belonging **IRINALE NABALARUA**

Third Count

Statement of Offence

DAMAGING PROPERTY: Contrary to section 369 of the Crimes Act 2009

Particulars of Offence

MALAKAI NABALARUA on the 24th day of May, 2024 at Natabua, Lautoka, in the Western Division, willfully and unlawfully damaged the Windscreen of Vehicle registration number DW035 belonging to **IRINALE NABALARUA**

Third Count

Statement of Offence

DAMAGING PROPERTY: Contrary to section 369 of the Crimes Act 2009

Particulars of Offence

MALAKAI NABALARUA on the 24th day of May, 2024 at Natabua, Lautoka, in the Western Division, willfully and unlawfully damaged the A52 Pro Mobile Phone belonging to **IRINALE NABALARUA**

2. The Accused Malakai Nabalarua was first produced in the Lautoka Magistrate's Court on the 1st of June 2024 and the matter was sent up to the High Court as an indictable offence.
3. He was then arraigned in the High Court on the 14th of June 2024. On the 25th of July 2024 he advised the Court through his counsel that he wished to take a progressive approach. He then pleaded guilty on all four counts on the 7th of August 2024 and the matter was adjourned to the 14th of August 2024 or the Summary of Facts to be outlined to the Accused.

The Summary of Fact

- The accused in this matter is **Malakai Nabalarua** 24 years old of Natabua, Lautoka and bartender. The complainant in this matter is **Irinale Nabalarua** 45 years of Natabua, Lautoka employed at Lautoka City Council
- The accuse is charged with one count of Act With Intent To Cause Grievous Bodily Harm contrary to section 255 (1) (b) of the Crimes Act 2009 and three counts of Damaging Property contrary to section 369 of Crimes Act 2009.
- The accused is the son of the complainant.
- At the time of the offence the accused and the complainant resided together in Natabua, Lautoka.
- On the 24th of May 2024 at around 3 am the accused person came home drunk and started creating issues with his wife. The complainant intervened in the argument between the accused and his wife.
- The complainant chased the accused outside out of the house. The accused went to the kitchen and grabbed the cane knife the complainant closed the door behind him and the accused managed to damage the Louvre blades and entered into the house. The accused then struck the complainant on the right shoulder twice with a knife.
- The complainant was rushed to the hospital; where the doctor found the following injuries (the medical report dated 24th May 2024 is annexed as MN.
- 10cm laceration with bleeding noted on the rights shoulder.
- 5cm superficial laceration noted medial to the other laceration.

- The accused then went out of the house and broke the windscreen of the complainant's vehicle registration number DW 035. The accused also damaged the A52 Pro mobile phone. After the accused had damaged the vehicle he left the knife outside and ran away.
- The complainant was not admitted but his wound was surgically washed and treated and he was released. The extent of injuries shows that the complainant was struck twice. The complainant fainted due to blood loss.
- The accused was interviewed under caution on the 30th of May 2024. The accused was charged and produced at the Lautoka Magistrates Court on the 1st of June 2024.

Mitigation

4. In mitigation, counsel offers the following plea in mitigation: -
- (a) The Accused is 24 years of age, married with one daughter
 - (b) He is a first offender and a person of previous good conduct.
 - (d) He fully cooperated with the police during the course of the investigations.
 - (e) He has taken his early guilty plea and he has thus saved the Court's time.
 - (f) He is remorseful for his actions and seeks forgiveness.
 - (g) He has been in remand for a total period of 26 days

Law and Tariff

5. The maximum punishment for the offence of Act with intent to cause Grievous Harm is life imprisonment.
6. The tariff was set in the case of State -v- Maba Mokubula [2003] FJHC 164; HAA 52 of 2003 (23rd December 2003), where Justice Nazhat Shameem said as follows: -

"On the basis of these authorities, the tariff for the sentences under section 224 of the Penal Code is between 6 months imprisonment to 5 years imprisonment. In the 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.

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."

7. Later in the case of **State -v- Vakalaca HAC 027 of 2018 (31st May 2018)**; [2018] FJHC 455, Justice Goundar stated as follows: -

"The offence of Act with intent to cause Grievous Harm is punishable by discretionary life imprisonment. The tariff for this offence is between 6 months imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years depending on the nature of the weapon.

Thus Mokubula provides general sentencing guidance that tariff for cases under section 255 of the Crimes Act 2009, committed by any means other than a weapon, is between 6 months to 5 years imprisonment but if the attack is by a weapon the starting point should range from 2 to 5 years which means that the final sentence could be over 5 years depending on the nature of the weapon and the other aggravating circumstances. As stated by the Court of Appeal in Vosa -v- State [2019] FJCA 89; AAU 84 of 2015 (6th June 2019) the list of aggravating and mitigating circumstances set out in Mokubula is not exhaustive."

8. The Case of **Seviono v State Sentence [2023] FJHC 648; HAC47.2023/ 7 September 2023** the facts of that case where the 29 year old _accused who is also the son of the victim threw a kettle of hot water at the victim (mother of the accused) landing on her stomach and hot water spilling down her waist and onto her legs., the accused again took a piece of 6x2 timber with a nail on the edge and struck his mother and the nail pierced her chest resulting into injuries on the victim. In that case His lordship Justice Ratuwili sentence the accused to 20 months imprisonment with 4 months to serve and the balance of 16 months was to be suspended for 3 years.

Sentencing submissions

9. In this case Counsel for the accused submits that the Court takes the lower to the mid end of the tariff which is 2 years as the starting point of the sentence. The Court is also urged to take into consideration the Accused's young age that he is remorseful and has saved the Court's time by pleading guilty at the earliest opportunity. The Accused had also cooperated with the Police Officers during the investigation. He is a first offender and has been of previous good character until he was charged for this offence.
10. The Accused counsel submits that the Court may consider imposing a suspended wholly or in part and that a conviction to be recorded as their client has a high propensity of reforming and rehabilitating himself and he be given an opportunity to do so.

11. Counsel submits that looking at the facts and circumstances of the offending, that a suspended sentence is the most appropriate sanction bearing in mind the mitigating factors set out above.
12. The State submits that the maximum penalty for this offence is life imprisonment and the same offence was also prescribed in the now repealed Penal Code at section 224 with the same penalty of life imprisonment.
13. The State also cites the authorities of Mokubula and Vakalaca as cited by the Accused and the State emphasizes that the above authorities are very clear that "as a matter of principle, a suspended **sentence** is not appropriate for a case of act with intent to cause grievous harm ..."
14. The State identifies the following aggravating factors in this case: -
 - (a) The accused showed utter disregard to his family property rights.
 - (b) The Accused owed a duty of care and responsibility to his father. The victim who had trusted the accused acted on the contrary by striking his father twice with a cane knife.
 - (c) There is a breach of trust and security.
 - (d) The victim had sustained injuries to his shoulder due to the accused person's action. The victim sustained a laceration on his right shoulder and a superficial laceration to the first.
15. The accused has spent nearly one (1) month in remand.
 - i) The State therefore recommends that the Court must consider imposing a severe sentence envisaged by the current guidelines that would best reflect the culpability of the accused and the harm caused to the victim.
 - ii) The State also submits that the Court adopt the tariff set out in **State -v- Vakalaca HAC 027 of 2018 (31st May 2018); [2018] FJHC 455,** The tariff for this offence is between 6 months imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years depending on the nature of the weapon

Second and Third count: Damaging Property

16. The offence of **Damaging Property** in terms of Section 369 (1) of the Crimes Act carries a maximum penalty of 2 years imprisonment, if no other punishment is provided under any other provisions of the Section.

17. After taking into consideration the nature and gravity of the offence, your culpability and degree of responsibility for the offence, the aggravating factors and the mitigating factors.
18. I sentence you to 9 months imprisonment each for the second and third count of Damaging Property. Your sentence of the two counts are as follows:

Count 2 - 9 months imprisonment

Count 3 - 9 months imprisonment

Analysis

19. The facts of this case indicate that this is a domestic violence offence, therefore section 4 (3) of the Sentencing and Penalties Act requires the Court to consider the following factors: -

"4 (3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —

- (a) any special considerations relating to the physical, psychological, or other characteristics of a victim of the offence, including —
 - (i) *the age of the victim;*
 - (ii) *whether the victim was pregnant; and*
 - (iii) *whether the victim suffered any disability;*
- (b) whether a child or children were present when the offence was committed, or were otherwise affected by it;
- (c) the effect of the violence on the emotional, psychological and physical wellbeing of a victim;
- (d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;
- (e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —
 - (i) *accepts responsibility for the offence and its consequences;*
 - (ii) *Has taken steps to make amends to a victim, including action to minimize or address the negative impacts of the offence on a victim;*

- (iii) *May pose any further threat to a victim;*
 - (f) Evidence revealing the offender's —
 - (i) *attitude to the offence;*
 - (ii) *Intention to address the offending behavior; and*
 - (iii) *Likelihood of continuing to pose a threat to a victim; and*
 - (g) Whether the offender has sought and received counselling or other assistance to address the offending behavior, or is willing to undertake such counselling or seek such assistance.
20. In this case the Accused's personal culpability is high as his initial verbal attacks on his father led to the escalating actions between the victim and him.
 21. The Court accepts that the victim's initial actions to protect accused wife, incidentally, the victim exacerbated the altercation and resulted in the acts of violence that have led to the charge as it appears on the information.
 22. In sentencing the Accused, the Court adopts the tariff in **State -v- State -v- Vakalaca HAC 027 of 2018 (31st May 2018); [2018] FJHC 455**, The tariff for this offence is between 6 months imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years depending on the nature of the weapon.
 23. I find that the offending in this case lies at the lower to middle end of such offences and one occasion where a weapon was used –the knife that caused minor injuries on the victims shoulder.
 24. I commence the sentence at **2 years imprisonment**. The aggravating factors for the offending is that this was a domestic violence offence, the accused showed utter disregard to the victims property rights, The accused owed a duty of care to his father for protection and acted on the contrary by striking his father with a knife, breach of trust and security, Injuries sustained was minor and a cane knife was used.
 25. I add 2 years for the aggravating factors identified above.
 26. The major mitigating factors in this case is the guilty plea and his previous good conduct as a first offender. His guilty plea is an early plea which came after he secured legal representation.

27. I deduct 1 year for the early guilty plea and 6 months for his previous good conduct as a first offender.

28. This leaves the interim sentence at 30 months imprisonment.

Your interim sentence are as follows:

29. Count 1- Act with Intent to Cause Grievous Bodily Harm contrary to section 291 (1) of the Crimes Act -30 months imprisonment.

30. Count 2- **Damaging Property** contrary to Section 369 (1) (a) of the Crimes Act 9 months' imprisonment.

31. Count 3- **Damaging Property** contrary to Section 369 (1) (a) of the Crimes Act 9 months' imprisonment I order that Counts 2 and counts 3 are to be made concurrent to count 1. Your total term of imprisonment is 30months.

32. The Accused has been in remand almost 1 month therefore this period will be deducted as time already served leaving the final sentence at 29 months imprisonment.

33. This is a sentence under 3 years therefore it may be suspended pursuant to section 26 of the Sentencing and Penalties Act.

34. In considering whether to suspend the sentence, the Court notes the provisions of section 4(3) and 26 of the Sentencing and Penalties Act as this is a domestic violence offence and the following factors are relevant:

- You are a young offender and you have pleaded guilty at an early stage of this case, saving your father from having to relieve his ordeal at the trial.
- You are a first offender and a person of previous good conduct.
- Your personal culpability in the offending is high and at the time of the offending your actions were aggressive and escalated up to the four separate acts as set out in the charge.
- You have taken responsibility for your actions, including your cooperation with the police in their investigations culminating in your guilty plea in Court.
- The Court finds that you are remorseful now and your father was present in court to confirm his support. You have spent time in remand therefore this period has hopefully given you an opportunity to reassess your decision making and the consequences of your bad choices.

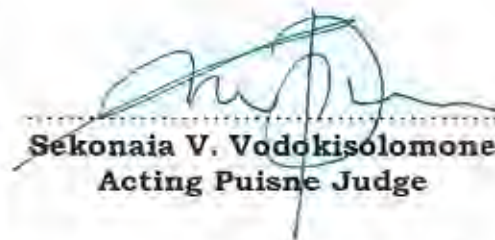
35. After considering the above factors, the Court finds that it will promote the sentencing principle of denouncing your violent actions that day however, as you have shown your remorse by your subsequent actions, the Court will

also promote your rehabilitation. The Court therefore finds that the most appropriate sentence for you is a partially suspended sentence.

Malakai Nabalarua this is your sentence;

36. I order that out of your 29 months imprisonment term you are to serve 09 months in prison custody and the remaining 20 months is suspended for the next 5 years.
37. The interim Domestic Violence Restraining Order – Standard Non-Molestation Conditions for the protection of your father and the family, is hereby made a final order of this Court. You are hereby put on notice that any breach of this Order constitutes a criminal offence, and you may be subject to prosecution for the same.
38. The clerk will explain the suspended sentence and the final DVRO.
39. 30 days to appeal.




Sekonaia V. Vodokisolomone
Acting Puisne Judge

Dated 18th of September 2024

Solicitors:

Office of the Director of Public Prosecution for the State
The Legal Aid Commission for the Accused