IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 274 of 2024

STATE

v

IKEA

Counsel: Ms. P. Ram for the State
Ms. A. Bilivalu for the Accused

Date of Mitigation/Punishment Submission: 20 May 2025

Date of Punishment: 28 May 2025

PUNISHMENT

Caveat – The names of the juvenile and victim are suppressed and respectively referred herein as ***IKEA*** and ***JBL***.

1. The juvenile IKEA is charged with the offence of *Rape*, laid out as follows in the Information by the Acting Director of Public Prosecutions dated 10 December 2024 and filed on 11 December 2024:

Statement of Offence

RAPE: Contrary to section 207(1) and (2)(a) of the Crimes Act 2009.

Particulars of Offence

IKEA, on the 17th day of October 2024, at Veinuqa village, Tailevu, in the Central Division, penetrated the vagina of **JBL** with his penis without her consent.

2. On 18 February 2025 the juvenile IKEA pleaded *guilty* to aforesaid charge in the presence of his mother and lawyer who then confirmed that the juvenile's guilty plea was voluntary and unequivocal.

3. On 21 March 2025 the juvenile IKEA understood and voluntarily admitted the *Summary of facts* read out by State counsel, which admission was confirmed by the juvenile's counsel Ms. A. Bilivalu of the Legal Aid Commission.

4. This Court is satisfied that the juvenile IKEA, voluntarily and unequivocally, pleaded *guilty* to the charge of *Rape* and admitted the *Summary of facts*, and therefore finds the juvenile guilty as charged.

Brief facts

5. In October 2024 the juvenile IKEA was 16 years old and resided at Veinuqa village, Tailevu, with his uncle Mesulame Beni (PW2 - 47 years, farmer) and his wife Sisilia Davobalavu (PW3 - 44 years, schoolteacher) and their 13 year old daughter JBL who is the victim in this case, has learning disability and attends Hilton Special School in Suva. The juvenile IKEA and victim JBL

are cousins. On 17 October 2024 at around 10.00am, PW2 took some of his children to a nearby river to wash clothes and swim, and the juvenile IKEA and JBL remained at home. While at home, the juvenile IKEA took JBL and placed her on a couch, removed her pants, and inserted his penis into JBL's vagina. JBL started shouting and the juvenile IKEA covered her mouth with a cushion to prevent JBL from making any noise. The juvenile IKEA penetrated JBL's vagina several times until he was done. When PW2 returned home, JBL then told her father PW2 that the juvenile IKEA covered her mouth with a cushion, and PW2 then called his wife PW3 and informed her of what JBL told him. Upon returning home, PW3 asked her daughter JBL of what had happened to her, and JBL told her mother PW3 that the juvenile IKEA inserted his penis into her vagina. PW3 then informed the juvenile IKEA's mother about the incident of rape, and subsequently reported the matter to the police. The juvenile IKEA was later arrested and interviewed under caution in the I-Taukei language at Korovou Police Station on 18 October 2024 by WDC 4501 Mere in the presence of Social Welfare officer Vasiti Waicula. In his caution interview statement, the juvenile IKEA admitted pulling JBL's pants off and penetrating JBL's vagina with his penis for 3 minutes [Q&A: 45-55], and closed JBL's mouth with a pillow when she cried and shouted. The juvenile IKEA also stated that he raped JBL because he watched too many pornographic videos [Q&A: 56].

Rape punishment analysis

6. *Rape* is contrary to section 207(1) & (2)(a) of the Crimes Act 2009, and the maximum penalty is life imprisonment.

7. The punishment tariff for rape of a child including persons under 18 years is 11 to 20 years imprisonment according to Aitcheson v State [2018] FJSC 29; CAV0012.2018 (2 November 2018).

8. The complainant and victim **JBL** was 13 years old at the time of the rape, thus a *'child'* pursuant to section 2 of the Juveniles Act (Cap 56) and section 2(1) of the Interpretation Act (Cap 7).

9. The juvenile IKEA was 15 years old [D.O.B – 12/09/2010] at the time of the rape, thus a *'young person'* pursuant to section 2 of the Juveniles Act (Cap 56).

Punishment for *'young person'* under Juveniles Act (Cap 56)

10. Notwithstanding the punishment tariff for rape for purposes of the *two-tiered* punishment approach, and the juvenile IKEA being a *'young person'*, sections 30(3) and 32(1) – (2) of the Juveniles Act (Cap 56) clearly state:

> *30.-(3) A young person shall not be ordered to be imprisoned for more than two (2) years for any offence.*
>
> *32.-(1) Where a juvenile is tried for an offence and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other written law, the case should be dealt with, namely-*
>
> *(a) by discharging the offender under section 44 of the Penal Code;*
> *(b) by ordering the offender to pay a fine, compensation or costs;*
> *(c) by ordering the parent or guardian of an offender to pay a fine, compensation or costs;*
> *(d) by ordering the parent or guardian of the offender to give security for the good behaviour of the offender;*
> *(e) by making a care order in respect of the offender;*
> *(f) by making a probation order in respect of the offender;*
> *(g) where the offender is a young person, by ordering him to imprisoned [subject to s.3(3)];*
> *(h) by dealing with the case in any other lawful manner.*
>
> *(2) Nothing in this section shall be construed as in any way restricting the power of the court to make any order or combination of orders which it is empowered to make under this or any other written law except that no juvenile shall be ordered to undergo corporal punishment.*

11. Based on sections 30(3) and 32(1) – (2) of the Juveniles Act (Cap 56), I shall now consider the mitigating *vis-à-vis* aggravating factors of the offending.

Mitigating factors

12. Counsel for the juvenile IKEA pleaded in mitigation that he:

1) was born on 12 September 2010 and 15 years of age at the time of the offending.

2) currently resides at Votualevu, Nadi with his adoptive parents since he was born, and his father is a tour driver for Rosy Tours and mother works as a housemaid. Since dropping out of school, the juvenile's adoptive parents had taken him to live with his grandfather at Veinuqa village as they did not have their own accommodation at the time while working in Nadi and living with other relatives; however, they were then able to afford housing in Nadi at Votualevu, and have therefore taken the juvenile IKEA to live with them.

3) currently enrolled as a vocational student studying Agriculture at Votualevu College, Nadi.

4) pleaded guilty at the earliest opportunity being remorseful and deeply regrets his actions, and has therefore saved the court's time and resources from enduring a full trial concurrently saving the victim from testifying and rehashing the trauma of being raped.

5) is ashamed of raping his cousin, and seeks the forgiveness of the victim and her family at Veinuqa village, Tailevu.

6) is a first offender.

7) was on remand for 1 month 10 days in the period 21 October 2024 to 2 December 2024.
8) cooperated with the police in the course of the investigation.

9) is receiving counselling from the Social Welfare service facilitated by his parents who are doing their very best to ensure that the juvenile lives in a stable home environment receiving all the necessary love, care and attention rather than being looked after by other family members.

13. Based on these mitigating factors, counsel for the juvenile IKEA pleads the leniency of this Court in terms of punishment.

Aggravating factors

14. The following aggravating factors are taken into consideration:

a) *Breach of trust and incestuous rape.* The juvenile IKEA (15 years) is the cousin-brother of the victim JBL (13 years), and resided with the victim's family when he raped JBL by inserting his penis into JBL's vagina without her consent.

b) *Vulnerable victim*. The victim JBL has learning disability and attended Hilton Special School in Suva, which school cater for *inter alia* children with learning disability.

c) *Opportunistic rape.* The juvenile IKEA had acted opportunistically, taking advantage of the fact that he was home alone with JBL his younger cousin-sister with learning disability, and then raped her.

d) *Trauma on victim.* The victim JBL has undoubtedly suffered emotional and psychological trauma due to being raped by her cousin-brother IKEA, and may need proper and effective counselling for purposes of relieving her of such trauma. The Supreme Court in Aitcheson v State (supra) at paragraph 72 held, *'[72] [u]ndoubtedly it has been accepted by the society that rape is the most serious offence that could be committed on a woman. Further it is said that; "A murderer destroys the physical body of his victim; a rapist degrades the very soul of a helpless female."*

e) *Prevalence of child rape.* Child rape is becoming prevalent in Fiji, a scourge and menace to the entire society, compelling the need for holistic means to properly and effectively deter and prevent such societal bane. Deterrence is therefore highly warranted, weighed together with *inter alia* the objectives of punishment, retribution and rehabilitation.

Social welfare report for the juvenile IKEA

15. Apart from the mitigation *vis-à-vis* aggravating factors of the rape, I have also carefully considered the Nadi Welfare Officer Vasemaca Uqeuqe's report dated 19 March 2025 who recommended that the Court consider that the juvenile IKEA: a) is a first offender and remorseful of his actions; b) has enrolled at Votualevu College under the Vocational Agriculture confirmed via letter from the said institution; c) is encouraged to improve his behaviour being morally supported by his mother.

Determination of punishment for the juvenile IKEA

16. Considering the objective seriousness of the offence of *Rape*, I choose a starting point of 1 year, and enhance it by 1 year for the aggravating factors, reduce the 2 years by 6 months for the mitigating factors, and further reduce the 1 year 6 months by 6 months for the early guilty plea, and further deduction of 1 month 10 days for time spent in custody, resulting in the head sentence of **10 months 20 days imprisonment**.

Suspended sentence

17. Regarding *suspended sentence*, the Fiji Court of Appeal in State v Khan FJCA 235; AAU139.2017 (24 February 2023), at paragraphs 55 – 61, held:

> *[55] The 2nd ground of appeal states about the Magistrate's failure to expressly articulate exceptional circumstances that led him to impose a suspended sentence. The wording gives the impression that there is an obligation on the part of a Magistrate to expressly articulate exceptional circumstances that substantiate the imposition of a suspended sentence; in other words a prison term cannot be suspended by a Magistrate when exceptional circumstances are lacking.*
>
> *[56] There is no statutory or common law obligation imposed on a Judge to expressly articulate exceptional circumstances to substantiate his decision to suspend a custodial sentence.*
>
> *[57] Section 26(1) of the Sentencing and Penalties Act 2009 (the Sentencing Act) confers power on a Criminal Court to suspend a custodial sentence stating: "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."

[58] In terms of the above provision a wide discretion has been granted to a judge in imposing a suspended sentence without an obligation to seek exceptional circumstances.

[59] However, section 26(2) of the said Act imposes a ceiling on the jurisdiction, that the original criminal courts exercise, in relation to imposing of suspended sentences.
"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 proceedings for more than one offence:-
(a) Does not exceed 3 years in the case of the High Court; or
(b) Does not exceed 2 years in the case of the Magistrates Court."

[60] The foregoing provision makes it clear, that the option of suspending a sentence of imprisonment is available for less serious offences, where the head sentence does not exceed 3 years in the High Court or 2 years in the Magistrate's Court.

[61] The process that should be followed in suspending a sentence is considered in R v. Petersen [1994] 2 NZLR 533 by the New Zealand Court of Appeal in the following terms:
"The principal purpose of [the relevant section] was to encourage rehabilitation and to provide the Courts with an effective means of achieving that end by holding a prison sentence over an offender's head. It was available in cases of moderately serious offending but where it was thought there was a sufficient opportunity for reform, and the need to deter others was not paramount. The legislature had given it teeth by providing that the length of the sentence of imprisonment was fixed at the time the suspended sentence was imposed, that it was to correspond in length to the term that would have been imposed in the absence of power to suspend and that the Court before whom the offender appeared on further conviction was to order the suspended sentence to take effect, unless of the opinion it would be unjust to do so. So, there was a presumption that upon further offending punishable by imprisonment the term previously fixed would have to be served (see p.537 line 4).
The Court's first duty was to consider what would be the appropriate immediate custodial sentence, pass that and then consider whether there were grounds for suspending it. The Court must not pass a longer custodial sentence than it would otherwise do because it was suspended. Equally, it would be wrong for the Court to decide on the shorter sentence than appropriate in order to take advantage of the suspended sentence regime (see p.538 line 47, p.539 line 5). R v Mah-Wing (1983) 5 Cr App R (S) 347 followed.
The final question to be determined was whether immediate imprisonment was required or whether a suspended sentence could be given. If, at the previous stages of the inquiry, the Court had applied the correct approach, all factors relevant to the sentence were likely to have been taken into account already; the sentencer must either give double weight to some factors, or search for new ones which would justify suspension although irrelevant to the other issues already considered. Like most

sentencing, what was required here was an application of common sense judgment, in which the sentencer must stand off and decide whether the imposition of a suspended sentence would be consonant with the objectives of the new legislation (see p.539 line 8, p.539 line 37).”

18. Furthermore, in State v Chand [2002] FJCA 50; AAU0027U.2000S (1 March 2002), the Fiji Court of Appeal held:

Petersen’s case [i.e. R v. Petersen [1994] 2 NZLR 533] was a prosecution appeal against leniency of sentence. Petersen had pleaded guilty, at early opportunity, to reasonably serious drug offences: he was sentenced in the High Court to 18 months’ imprisonment suspended for 2 years plus 9 months’ periodic detention. He had no previous drug convictions and was aged 42 with family commitments. The New Zealand Court of Appeal considered Petersen’s offending so serious that it quashed the suspended sentence and imposed one of 18 months’ imprisonment concurrent on the several charges. The Court discussed at p.539 the factors needing to be weighed in choosing immediate imprisonment or suspended sentence in these words:

> *“Thomas at pp.245-247 lists certain categories of cases which suspended sentences have become associated, although not limited to them. We do not propose to repeat those in detail since broadly all can be analysed as relating either to the circumstances of the offender or alternatively the offending. In the former category may be the youth of the offender, although this does not mean the sentence is necessarily unsuitable for an older person. Another indicator may be a previous good record, or (notwithstanding the existence of a previous record, even one of some substance) a long period of free of criminal activity. The need for rehabilitation and the offender’s likely response to the sentence must be considered. It is clear that the sentence is intended to have a strong deterrent effect upon the offender; if the latter is regarded as incapable of responding to a deterrent the sentence should not be imposed. As to the circumstances of the particular case, notwithstanding the gravity of the offence, as such, there may be a diminished culpability, arising through lack of premeditation, the presence of provocation, or coercion by a co-offender. Cooperation with the authorities can be another relevant consideration. All the factors mentioned are by way of example only and are not intended as an exhaustive or even a comprehensive list. The factors may overlap and more than one may be required to justify the suspension of the sentence in any particular case. Finally, any countervailing circumstances have to be considered. For example, in a particular case the sentence may be regarded as failing to protect the public adequately.*
>
> *In conclusion our consideration of the principles, we wish to add this. Understandably, the form of the legislation requires the sentencer to pass through a series of statutory gates, before reaching the point of availability of*

a suspended sentence. Subject to that however, like most sentencing what is required in the end is an application of commonsense judgment, in which the sentencer must stand off and decide whether the imposition of a suspended sentence would be consonant with the objectives of the new legislation. In many instances an initial broad look of this kind will eliminate the possibility of a suspended sentence as an appropriate response."

19. Based on the Fiji Court of Appeal decisions in State v Khan (supra) and State v Chand (supra) on *suspended sentence*, and pursuant to section 26(2)(a) of the Sentencing and Penalties Act 2009, I find that the circumstances of this case warrant that the head sentence of 10 months 20 days imprisonment be wholly suspended for a period of 3 years.

20. The primary reason as to why this particular punishment is below the relevant tariff is because of the statutory limitations for punishment of *'young persons'* provided under section 30(3) read in conjunction with section 32(1) – (2) of the Juveniles Act (Cap 56).

CONCLUSION

21. The juvenile IKEA has been found guilty of the offence of *Rape* as per the charge in the Information by the Acting Director of Public Prosecutions, and hereby punished with the **custodial term of 10 months 20 days, wholly suspended for 3 years effective from 28 May 2025**.

22. The juvenile IKEA is also hereby explained that if he commits another offence punishable by imprisonment during the 3 years suspension period, he may be tried for that latter offence, and if found guilty, the court may wholly or partly activate the 10 months 20 days custodial punishment.

23. The following **ORDERS** of this Court are to take immediate effect:

    a) The juvenile IKEA is punished with **10 months 20 days imprisonment for *Rape*, which custodial term is wholly suspended for 3 years**.

b) The juvenile IKEA must refrain from watching pornography via electronic and non-electronic means including documents. The parents of the juvenile IKEA are to strictly supervise him on this regard.

c) The juvenile IKEA must not be left alone in a supervisory capacity or otherwise with a female and male child. The parents of the juvenile IKEA are to strictly supervise him on this regard.

d) The juvenile IKEA must remain living with his parents, follow and obey them always, and to ensure that he complies entirely with this Court's ORDERS.

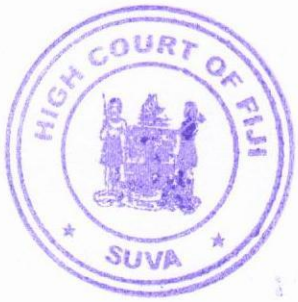
e) The juvenile IKEA is to continue being counselled by the Social Welfare Department in the presence of his father and mother for purposes of helping him to avoid being in conflict with the law.

f) The parents of the juvenile IKEA are to ensure that he complies with all instructions and directives provided by the Social Welfare Department.

g) The juvenile IKEA must not dropout from the Agriculture vocational programme at Votualevu College, Nadi, and his parents must ensure that he remains enrolled and successfully completes the said programme.

24. A copy of this punishment is to be served on the Officer-in-Charge of the Social Welfare Department, Nadi.

25. Thirty (30) days to appeal to the Fiji Court of Appeal.



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Hon. Mr. Justice Pita Bulamainaivalu
PUISNE JUDGE

At Suva

28 May 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused