

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

**CRIMINAL CASE NO. HAC 127 OF 2024**

**STATE**

**v**

**TULEVI MASIVESI NABOSE**

**Counsel:** Mrs. U. Ratukalou for the State  
Ms. O. Grace for the Accused

**Date of Mitigation and Sentence Hearing:** 27 June 2025

**Date of Sentencing:** 16 July 2025

---

**SENTENCE**

---

**Caveat** – The victim shall herein be referred as ‘**MAV**’ pursuant to the Name Suppression Order.

1. **Tulevi Masivesi Nabose**, the accused, is indicted with *Sexual assault*, laid out as follows in the Amended Information by the Acting Director of Public Prosecutions dated 16 June 2025 and filed in Court on 17 June 2025:

*Statement of Offence*

**SEXUAL ASSAULT:** Contrary to section 210(1)(a) of the Crimes Act 2009

*Particulars of Offence*

**TULEVI MASIVESI NABOSE** on the 8<sup>th</sup> day of April, 2024 at Valelevu, Suva, in the Central Division, unlawfully and indecently assaulted **MAV**, by rubbing the top of her vagina with his finger.

2. On 19 June 2025, the accused Tulevi Masivesi Nabose voluntarily and unequivocally pleaded *guilty* to the charge of *Sexual assault*, duly confirmed by his Legal Aid counsel Ms. Grace.
3. On 27 June 2025, prosecutor Mrs. Ratukalou read out the *Summary of facts*, which was voluntarily admitted by the accused and confirmed by his Legal Aid counsel Ms. Grace. The Court then formally convicted Tulevi Masivesi Nabose of *Sexual assault* as per the indictment. Thereafter, the accused's counsel Ms. Grace submitted plea in mitigation and sentencing submission followed by that of prosecutor Mrs. U. Ratukalou, and this is the Court's finding on sentence.

**Brief facts of the *Sexual assault***

4. In April 2024, MAV the complainant was 11 years old, a class 7 student at Bhawani Dayal Memorial Primary School, and lived at Rogi Place, Nadera, Nasinu, with her father, mother, younger siblings and a female cousin. On Monday 8 April 2024, the complainant MAV went to see her grandmother who works as security officer at the Valelevu Health Center, and while walking towards the said health center, at about 6.00 pm, she was called by the accused and another young male, and they all met near the nut tree adjacent to the New World supermarket, and the accused introduced himself as Levi aged 18 years and the other Pauliasi. That was the first time for the complainant to meet and be acquainted with the accused and his mate. Pauliasi departed, then the accused and the complainant went to a house at Kanace Road, Valelevu, Nasinu, entered that house and lied down together in an open space. While lying down together, the accused rubbed the top of the complainant's vagina with his fingers. The complainant then left that house early the next morning having stayed the night there with the accused. Tulevi Masivesi Nabose was subsequently arrested by the police, interviewed

under caution on 20 – 21 April 2024, and formally charged on 21 April 2024, at Valelevu Police Station.

### **Sexual assault sentence analysis**

5. The maximum sentence for ***Sexual assault*** contrary to section 210(1)(a) of the Crimes Act 2009 is 10 years imprisonment.
6. The sentencing tariff for *Sexual assault* is 2 to 8 years imprisonment according to State v Vuli [2019] FJHC 1091; HAC205.2017 (12 November 2019) and at paragraphs 30 – 32, Justice Riyaz Hamza held:

*[30] The offence of Sexual Assault in terms of section 210(1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.*

*[31] In the cases of State v Abdul Khaiyum [2012] FJHC 1274; Criminal Case HAC 160 of 2010 (10 August 2012) and State v Epeli Ratabacaca Laca [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); Justice Madigan proposed a tariff between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of section 210(1) of the Crimes Act.*

*[32] It was held in State v Laca (supra), “The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom range is for less serious assaults such as brushing of covered breasts or buttocks.”*

*“A very helpful guide to sentencing for sexual assault can be found in the United Kingdom’s Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:*

#### Category 1 (the most serious)

*Contact between the naked genitalia of the offender and naked genitalia, face or mouth of the victim.*

#### Category 2

- (i) *Contact between the naked genitalia of the offender and another part of the victim’s body;*
- (ii) *Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;*
- (iii) *Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and*

*the clothed genitalia of the victim.*

Category 3

*Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia)."*

7. The *Sexual assault*, in this instant, falls within *Category 2(ii)* noted above, on that basis, I select a starting point of 2 years, and enhance it by 3 years for the **aggravating factors** that: (i) the 18 year old accused sexually assaulted a 11 year old child complainant; (ii) the accused deliberately took the child complainant to an isolated place, and took advantage of the child's naivety and vulnerability then sexually assaulted her; (iii) the child complainant MAV has undoubtedly endured emotional and psychological trauma due to being sexually assaulted by the accused, and in the Victim Impact Statement dated 26.06.2025 the complainant stated that "[t]he incident that happened to me had made it difficult for me to focus well in the thing that I do and also in school"; and (iv) prevalence of child sexual assault.
8. The 5 years is reduced by 1 year for the **mitigating factors** that the accused is currently 20 years old with no prior conviction, and cooperated fully with the police during the course of the investigation.
9. For the **guilty plea**, a further deduction of 16 months from the 4 years resulting in the interim custodial term of 2 years 8 months, in acknowledgement of the fact that the guilty plea was given voluntarily and unequivocally as soon as the prosecution reduced the charge of *Rape* to *Sexual assault* despite it being entered at the eve of the trial, which guilty plea has not only saved the Court's time and resource, but also relieved the complainant from testifying and reliving the trauma as consequence of the sexual assault.
10. The **time spent in custody** of 3 months is further deducted from the 2 years 8 months resulting in the custodial term of 2 years 5 months for the *Sexual assault* indictment.

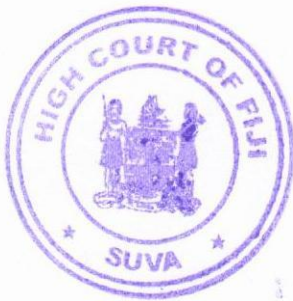
### **Suspended sentence**

11. Having carefully considered the circumstances of this particular case, and pursuant to section 26 of the Sentencing and Penalties Act 2009, I have decided to wholly suspend the custodial term of 2 years 5 months for a period of 4 years based on the following reasons:
- (a) The accused Tulevi Masivesi Nabose is a 20 year old young man, and has been of good character with no prior conviction until this particular conviction for *Sexual assault*;
  - (b) Having spent 3 months remanded in custody, the accused has purportedly pondered on the drastic consequences of his actions and relative need to reform and rehabilitate oneself, weighed together with the sentencing objectives of punishment, retribution and deterrence;
  - (c) The Senior Pastor of Jesus Dispensary Church provided a character reference dated 25 June 2025 for Tulevi Masivesi Nabose, vouching that the latter is an active member of the said church's youth group, and has shown genuine commitment to grow spiritually and reform himself to be a better person, which he has maintained and reliably continues to engage in youth activities, housekeeping and maintenance chores around the church compound, etc. The Senior Pastor basically lays emphasis on the critical need for Tulevi Masivesi Nabose to be given another chance in order to pursue his life in a constructive and productive manner, and avoiding being in conflict with the law, which is highly conducive to the sentencing objective of rehabilitation;
  - (d) Holistically and cautiously considering the rationale provided in (a) – (c) above, I am of the view that fully suspending the custodial sentence in this instant, will constructively enhance the opportunity for Tulevi Masivesi Nabose to rehabilitate and reform himself, without undermining the sentencing objectives of punishment, retribution and deterrence, bearing in mind that the accused shall be explained the consequences of breaching the suspended sentence pursuant to section 26(3) of the Sentencing and Penalties Act 2009.
  - (e) Tulevi Masivesi Nabose is hereby explained that in the event he commits another offence punishable by imprisonment during the 4 years operational period of the suspended

sentence of 2 years 5 months imprisonment, he may be charged with an offence under section 28(1) of the Sentencing and Penalties Act 2009, and if found guilty of the latter offence, the Court may, in accordance with section 28(4), impose a fine not exceeding 100 penalty units and restore the sentence held in suspense (i.e. 2 years 5 months) and order the accused to serve it.

## **CONCLUSION**

12. **Tulevi Masivesi Nabose** stands convicted of *Sexual assault* in the indictment, and hereby sentenced to a custodial term of 2 years 5 months, which custodial term is wholly suspended for 4 years.
13. Tulevi Masivesi Nabose has been explained the consequence of violating the suspended sentence in accordance with section 26(3) of the Sentencing and Penalties Act 2009.
14. Thirty (30) days to appeal to the Fiji Court of Appeal.



.....  
**Hon. Mr. Justice Pita Bulamainivalu**  
**PUISNE JUDGE**

### **At Suva**

16 July 2025

### **Solicitors**

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused