

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 45 of 2023

STATE

V

KATARINA TIKOMAINAQAI

Counsel : Mr. T. Tuenuku for the State
: Ms. R. Raj for the Accused

Date of Trial : 31 March – 2 April 2025
Date of Judgment : 25 April 2025
Date of Sentencing Hearing: 11 July 2025
Date of Sentence : 18 July 2025

SENTENCE

1. Ms. Katarina Tikomaiqai, on 25 April 2025, after trial before this Court, you were acquitted of murdering your newborn son and convicted of Infanticide, contrary to section 244 of the Crimes Act 2009.
2. The factual basis upon which I sentence you today can be briefly stated.
3. On the afternoon of 14 March 2023, you were working as a bowser attendant at Marimuttu & Sons Service Station, Savusavu when your waters broke unexpectedly. You went into a small office where you delivered a baby boy. You used a pair of scissors to cut the umbilical cord. You also inflicted 61

wounds to the baby with those scissors, including a deep wound to the baby's cheek, and a deep wound to his chest which penetrated his lung. You put your baby in a sack, which you placed inside a draw.

4. Your colleagues found you on the floor in a pool of blood and heard your baby crying. You were rushed to the Emergency Department at Labasa Hospital where, despite the best efforts of the clinicians, your baby sadly died later that day. The cause of death was severe blood loss as a result of multiple stab wounds.
5. At trial, you accepted that you had wilfully caused the death of your baby.
6. By my verdict, I found that the balance of your mind was disturbed when you caused the death of your newborn baby. In other words, as a result of the circumstances in which you found yourself, you were not thinking rationally at that time.
7. Infanticide cases are always sensitive, and it is only right that sentencing courts adopt a compassionate approach in such cases.
8. In order to assist me in deciding on the most appropriate manner of dealing with you, I requested the Social Welfare Department to prepare a Pre-Sentencing Report for my consideration.
9. Mr. Asela Tawake has provided a comprehensive and helpful Pre-Sentencing Report for which the Court is grateful.

Pre-Sentencing Report

10. The report reveals that you had a difficult upbringing which severely affected your physical, emotional and mental wellbeing. You left school early because you lacked support and had to find work to support yourself.
11. Your relationship with the father of your first born daughter broke down. You had to seek assistance from your mother and other relatives, but you felt that

you were ridiculed and treated harshly as an unmarried mother. You entered into a short-lived relationship with the father of your deceased son, but he abandoned you before you even knew that you were pregnant with your son. You kept your pregnancy secret because you had been warned not to get pregnant again since you already had a daughter out of wedlock.

12. Your mother has confirmed to Mr. Tawake that you had a difficult childhood and, at one time, the family was impoverished, and she had asked you to move out and fend for yourself.
13. Your pastor vouches for your good character and states that you are committed to church programmes and activities.
14. I am informed that you have completed three sessions of counselling with Medical Services Pacific with different therapeutic techniques – Person-Centred Therapy, Cognitive Behavioural Therapy and the Erik Erikson Psychosocial Therapy. I am told that you demonstrated insight into your offending and were open in expressing your thoughts and emotions. You reflected meaningfully on your actions and shared your ongoing efforts towards personal growth and rehabilitation. You also clearly indicated your intention to raise your daughter independently and showed motivation to engage in supportive interventions.
15. As a first offender, Mr. Tawake assesses that you pose a low risk to the community.
16. Mr. Tawake recommends that the Court considers a suspended custodial sentence, and that you undergo further counselling sessions. He further recommends that you be given the opportunity to raise your daughter independently and to engage in supportive interventions that would facilitate your capacity to do so.

Prosecution sentencing submissions

17. Mr. Tuenuku filed written sentencing submissions and made oral submissions at the hearing.
18. He submits that the fact that the Court acquitted you of murder and found you guilty of the lesser offence of infanticide does not lessen your responsibility for killing your newborn baby.
19. Mr. Tuenuku submits that your offending is made more serious by the brutal manner in which you killed your baby, and because you breached the trust naturally bestowed on you as a mother.
20. Whilst acknowledging that one of the purposes of sentencing is rehabilitation, Mr. Tuenuku maintains that I should impose a deterrent sentence. He makes the point elegantly at paragraph 12 of his written submissions:

“Children, especially newborn babies, are the most vulnerable members of society. Deterring others from harming or killing them, especially in a brutal manner, should also be the message of this honourable court’s sentence.”

Mitigation submissions

21. On your behalf, Ms. Raj has filed helpful written submissions, and also addressed the Court at your sentencing hearing.
22. You are now 27 years old. Your daughter is currently under kinship care. You have no previous convictions.
23. You have committed yourself to religious activities and you seek forgiveness. You have also attended counselling and are willing to attend further counselling to assist you.
24. Ms. Raj submits that a mother found guilty of infanticide may be punished as if she had been found guilty of manslaughter. It follows that the maximum

penalty for infanticide is 25 years' imprisonment. However, Ms. Raj has helpfully cited a local case in which it was said that the tariff for infanticide cases in Fiji and other Commonwealth countries is a non-custodial sentence with counselling.

25. Ms. Raj has also drawn the Court's attention to six infanticide cases disposed of during the past decade in which the sentencing courts imposed short suspended sentences of imprisonment.
26. Ms. Raj invites the Court to impose a suspended custodial sentence coupled with further counselling.

Discussion and resolution

27. Whilst sentences imposed by other sentencing courts provide broad guidance, there is a limit to the assistance that any sentencing court may glean from sentences imposed in other cases for similar offending. Every sentencing exercise is heavily fact specific, and must be approached as such.
28. Having said that, sentencing courts in Fiji have consistently adopted the practice of not imposing immediate custodial sentences on mothers convicted of infanticide. To my mind, this properly reflects that the overriding purpose of a sentence imposed for this offence should be rehabilitation. It is inherent in the offence of infanticide that the mother's culpability is substantially reduced and, in my view, the appropriate sentence ought to be directed towards supporting mothers to recover from what will invariably have been a traumatic experience.
29. It follows that I am compelled to reject Mr. Tuenuku's request that I impose a deterrent sentence.
30. It is a general principle of sentencing that a court may not impose a more serious sentence unless it is satisfied that a lesser or alternative sentence will not meet the objectives of sentencing. Sentences of imprisonment, including

suspended sentences of imprisonment, are to be regarded as the sanction of last resort.

31. Having regard to all the circumstances of this case, I have decided that a non-custodial sentence will best meet the overriding objective of rehabilitation.
32. Sentencing courts now have available a range of orders introduced by the Community-Based Corrections Act 2018, the principal objective of which is to (a) provide the courts with a range of sentencing options and the means of dealing with offenders, other than by imprisonment; (b) establish conditions so that the rehabilitation of offenders may be promoted; and (c) reducing reoffending by managing the rehabilitation of offenders and their reintegration into society.
33. Whilst Mr. Tawake has not addressed the suitability of a community-based corrections order, I infer from his pre-sentencing report that this would be the most appropriate disposal in the particular circumstances of this case. In my view, a community-based order will best serve the interests of both Katarina and society.
34. Whilst I shall leave it to the good judgement of the supervising officer to assign appropriate programmes, I fully support Mr. Tawake's recommendation that Katarina should participate in further counselling sessions.
35. **Katarina**, I hope that you have been able to understand why I have decided to deal with you by imposing a community-based corrections order.
36. A copy of the Order will be provided to you so that you can read and understand it in your own time.
37. The Order requires you to comply with all the conditions I have imposed for a period of 1 year, and during that time you must comply with every reasonable direction of the supervising officer.
38. If you are not able to comply with these conditions you may apply to court and the court may deal with you in a different way.

39. You may also be brought back to court and be dealt with in a different way if you fail to comply with any of the conditions I have imposed.
40. You may appeal to the Court of Appeal within 30 days.




Hon. Mr. Justice Burney

At Labasa

18 July 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused**