

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 075 OF 2020

STATE

V

1. ONISIMO RABOILIKU

2. SEMESA BULIKALOUGATA

3. NAVITALAI KANAVO

Counsel:

Ms S. Swastika for State

Mr E. Maopa for 1st Accused

Mr S. Heritage for 2nd Accused

Ms A. Tubuitamana for 3rd Accused

Date of Judgment: 13 August 2025

Dates of Closing Submissions: 22, 25 August 2025

Date of Sentence: 10 September 2025

SENTENCE

1. Onesimo Raboiliku (Raboiliku), Semesa Builkaougata (Semesa) and Navitalai Kanavo (Kanavo), you were jointly charged with murdering Jone Masirewa on 13 April 2020. After trial, the Court acquitted you on Murder but found you guilty of involuntary Manslaughter. Having been convicted of Manslaughter, you now stand before this Court to receive the sentence.

2. When the offence was being committed, you were serving as Correction Officers attached to the Natabua Correction Center. Raboiliku, you, being the Assistant Superintendent of Correction, were the most senior officer in command. Semesa and Kanavo, you, being junior officers, were acting under Raboiliku's command. The deceased was a remandee who had just been admitted to the Remand Centre. Because of the COVID-19 outbreak, the deceased was being kept in the Segregation Block under quarantine protocols.
3. Raboiliku, you received complaints from the junior officers that the deceased, being displeased with the detention at the Segregation Block, was swearing at the officers from the previous night. You commanded Semesa and Kanavo to discipline the deceased and you ordered to kick the deceased while he was rolling on the ground. Apart from giving orders to kick, you hit the deceased multiple times with a nozzle of the fire hydrant hose. Semesa and Kanavo, you, acting blindly under Raboiliku's unlawful command, kicked and punched the deceased. As a result of the assault, the deceased received severe injuries which he eventually succumbed to.

Maximum Sentences and Tariff

4. The killing of a fellow human being by an unlawful act is considered a serious offence. Manslaughter contrary to Section 239 of the Crimes Act carries a maximum sentence of 25 years' imprisonment.
5. The sentencing tariff ranges from suspended sentence to 12 years imprisonment¹. Sentences in the upper range are reserved for cases where the degree of violence is high and the provocation given is minimal. Sentences at the lower end of the scale are reserved for cases where the violence used is minimal and the provocation given is in the extreme². The tariff range is wide and it appreciates that the circumstances and the offender's culpability can vary greatly from case to case. An appropriate sentence in any case is fixed by having regard to a variety of competing considerations.

¹ *Vakaruru v State* [2018] FJCA 124; AAU94.2014 (17 August 2018) para 44

² *Kim Nam Bae v The State*, [1999] FJCA 21; AAU0015u.98s (26 February 1999) Fiji Court of Appeal, Criminal Appeal No. 1998S; *The State v Frances Bulewa Kean*, Criminal CASE No HAC 037 of 2007; *State v Amali Rasalusalu* Criminal Case No. HAC 003 OF 2003, High Court, Suva

Starting Point

6. In determining the starting point, I must have regard the culpability of the offence and the harm caused to the victim. The degree of violence was somewhat high and long-lasting, although no lethal weapon was used. The assault appeared unplanned. Given the minimal provocation offered, the culpability level is high. Although you did not intend to cause the death of the deceased, the risk you took of causing serious harm is not justified in the circumstances. For all cases of manslaughter, the loss of life will inevitably be of utmost importance in measuring the level of harm.
7. Raboiliku, your culpability level is comparatively high. It was under your command that Semesa and Kanavo acted. You also hit the deceased's head with a metal nose. Having considered these facts, I start your sentence from the lower range of the tariff with a starting point of 5 years' imprisonment. Semesa and Kanavo you had acted under Raboiliku's unlawful orders which you should not have followed. Semesa and Kanavo, I start the sentence for each of you with an imprisonment term of 4 years' imprisonment.

Aggravating and Mitigating Factors

8. The final sentence will depend on the presence or otherwise of strong mitigating and/or aggravating factors relevant to each of you. I carefully considered the submissions filed by the counsel to make necessary adjustments, based on the aggravating and mitigating factors to arrive at a sentence that is best suited to you.

Sentence for Raboiliku

9. The aggravating features are that there was evidence that you ordered the deceased to be bathed after the assault and the crime scene to be washed. This was apparently to destroy/erase the vital evidence before the Crime Scene Investigators arrive. The inmates were in your custody and held in trust. It was your duty to look after them and to be accountable to the Court, the relatives and the public. You breached that trust and abused the authority of your office. The deceased was inherently vulnerable as he was a remandee in your custody. You committed the offence on a vulnerable person.

10. In mitigation, I considered your personal circumstances submitted to this Court. You are 58 years of age and married with three children, the eldest being 21 years of age and employed at ATS while others are still schooling. You are currently employed as a security officer at a private company. The medical report shows that your wife is a diabetic patient with a blurry vision and a swollen toe.
11. You have already been punished when you were dismissed immediately after the offence, despite you had completed an unbroken service of 25 years at the Correction Service. I accept that you were offered some provocation by the deceased when he swore at the officers. However, as an experienced officer of a discipline force, you should have exercised restraint and been sensitive to the stressful environment the inmates were exposed to. There was indeed a lapse of time between the provocative act and your reaction and the offence cannot be considered as one being committed in the heat of passion. In any event, you had no powers to take law into your hands and punish the inmates. You are a first offender and has maintained a clear record. The character reference letters show that you have been actively engaged in community projects and church work. You have not shown any tendency to reoffend. There was a delay of approximately 5 years for the disposal of this matter. I concede that the delay subjected you to a psychological trauma. You had been in remand for one month before trial. I have considered all these in mitigation.
12. I would increase your sentence by 1 year to arrive at an interim sentence of 6 years to reflect the above-mentioned aggravating features. I would deduct 2 years for mitigation to arrive at a final sentence of 4 years' imprisonment.

Sentence for Semesa Bulikalogata

13. There are no aggravating features in your offending. You are 25 years of age and single. You are currently employed as a security officer at Fiji Nursing Association. You support your parents who are sick and old. You have no previous convictions. You had maintained a clean record until you committed this offence. You actively participated in community development, charity and religious work. I concede that this case was hanging above your head for the past five years where you have been subjected to a psychological trauma. You

lost your job at Correction Service and already received a punishment. You had been in remand for one month before trial.

14. Having considered the remand period and the mitigating factors I would deduct 1 year to arrive at a final sentence of 3 years imprisonment.

Sentence for Navitalai Kanavo

15. There are no aggravating features in your offending. You are 41 years of age, married with five children. You are the sole breadwinner of your family. You are currently farming in the village. You have no previous convictions. You had maintained a clean record until you committed this offence. The character reference letters indicate that you actively engaged in community development, charity and religious work. I accept that the delay of 5 years has caused you hardship and psychological trauma. You lost your job and the official quarters at Correction Service. You had been in remand for one month before trial.
16. Having considered the remand period and the mitigating factors I would deduct 1 year to arrive at a final sentence of 3 years' imprisonment.
17. Section 26 of the Sentencing and Penalties Act gives the High Court the powers to suspend the sentence fully or partially if it does not exceed three years imprisonment. Your Counsel urged that you be handed down a suspended sentence. Since Raboiliku's imprisonment term exceeds three years, I do not have a discretion to consider a suspended sentence.
18. In any event, there are no exceptional circumstances justifying a suspended sentence for any of you. This is a serious case. This is not a case involving a brawl after a drinking session or an offence committed in the heat of passion in a domestic setting. Although you were not found guilty of Murder, your unlawful conduct took the life of an innocent person. The victim was in a vulnerable position as a remandee under the supervision of the Court. Interest of justice will not be served if a custodial sentence is not passed.
19. The Courts are inundated with complaints of torture against correction officers. Your action must be denounced and a clear message be sent that the Courts do not condone any type of

violence against the inmates held in correction facilities, especially the remandees whose innocence has not been displaced. After a careful consideration of all the facts, I am of the view that a suspended sentence is not warranted in this case.

20. However, to strike a right balance between rehabilitation on one hand and deterrence, denunciation on the other hand, I impose a non-parole period of 2 years for Raboiliku and 18 months each for Semesa and Kanavo.

21. Summary

Onisimo Raboiliku, you are sentenced to 4 years' imprisonment with a non-parole period of 2 years. You are eligible for parole after serving 2 years in the correction facility.

Semesa Bulikalogata, you are sentenced to 3 years' imprisonment with a non-parole period of 18 months. You are eligible for parole after serving 18 months in the correction facility.

Navitalai Kanavo, you are sentenced to 3 years' imprisonment with a non-parole period of 18 months. You are eligible for parole after serving 18 months in the correction facility.

22. 30 days to appeal to the Court of Appeal.



Aruna Aluthge
Judge

At Lautoka

10 September 2024

Solicitors:

Office of the Director of Public Prosecutions for State
Babu Singh & Associates for 1st Accused
Iqbal Khan & Associates for 2nd Accused
Niudamu Lawyers for 3rd Accused