

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 71 of 2024

STATE

V

KELEPI LAWAKI

Counsel : Ms. E. Thaggard
: Ms. K. Marama for the Accused

Date of Hearing : 10 December, 2024
Date of Sentence : 24 January, 2025

SENTENCE

1. On 5 November 2024, Mr Lawaki (“the offender”) pleaded guilty to a count of Criminal Intimidation, contrary section 375(1)(a)(i)(2)(a) Crimes Act 2009, and a count of Act With Intent to Cause Grievous Harm, contrary to section 255(a) Crimes Act 2009.
2. On 10 December, 2024, the offender was read and explained the Summary of Facts, which he understood and admitted.
3. The material facts can be shortly stated. The complainant had been in an extra-marital relationship with the offender, and two of her five children, aged five and three years, were fathered by the offender. Early in the morning of 12 June, 2024, the complainant was preparing breakfast when she was approached by the offender, who asked her to go with him. When she

refused, the offender picked up a kitchen knife, pointed it at her, and threatened to stab her if she did not go with him (count 1). The complainant called out to her husband for help, at which point the offender stabbed her twice in her upper chest area (count 2) and then fled the scene.

4. The complainant was escorted to the health centre, where she was examined and found to have suffered a 1cm x 4cm deep wound to her upper chest, and a 1cm x 1cm deep wound on her upper chest.
5. The offender was arrested and made a full confession when interviewed under police caution.
6. I am satisfied that the offender's pleas were informed, voluntary and unequivocal. The Summary of Facts satisfies all the elements of the offences charged. I find him guilty and convict him accordingly.
7. I have read the prosecution and defence written submissions. I have also heard oral submissions, and have taken all the matters advanced by the parties into consideration.
8. The maximum penalty for the offence of criminal intimidation, contrary to section 375(1)(a)(i)(2)(a) Crimes Act 2009 is 10 years' imprisonment, and the maximum sentence for the offence of act with intent to cause grievous harm is life imprisonment
9. There are no applicable guideline judgments for these offences, and the decided cases reveal that the just and proportionate sentence in any given case may vary widely. It is essential to bear in mind that cases such as this are highly fact specific.
10. In this case, the offender pointed a knife at the mother of his children, and threatened to stab her, a threat he then carried out, inflicting serious harm. Sadly, this type of bullying and cowardly behaviour by men towards women is all too prevalent in our society. In deciding on a just and proportionate sentence in all the circumstances of this case, I have at the forefront of my

mind the imperative of signifying that the court and the community denounce the commission of such offences of domestic violence.

11. In all the circumstances of this case, including the threat to use, and actual use of, a highly dangerous weapon, I consider that the appropriate sentence to reflect the objective seriousness of his offending behaviour reflected in count 1 is a term of imprisonment of 3 years. The appropriate sentence to reflect the objective seriousness of his offending behaviour reflected in count 2 is 6 years' imprisonment.
12. If the sentences are imposed consecutively, that would be a sentence of 9 years' imprisonment. Whilst the two offences the offender stands convicted of were committed around the same time, they are each serious in their own right, and each deserving of condign punishment.
13. I must, however, stand back and make an appropriate adjustment to reflect totality, so as to arrive at an overall sentence which is just and appropriate to reflect the totality of the offending across both counts. In order to achieve this, I shall treat count 2 as the lead offence, pass a concurrent sentence in relation to count 1, and treat the criminal intimidation as a seriously aggravating factor in relation to the totality of the offending when setting the sentence on count 2. The offending reflected in count 1 was a serious offence in itself, and it is only right that this court should mark it with a discrete, albeit concurrent, sentence.
14. Mr Lawaki, I have concluded that the appropriate intermediate sentence on count 2 to reflect the totality of your offending across both counts is one of 7 years' imprisonment. The appropriate intermediate sentence on count 1 is 3 years' imprisonment concurrent.
15. Defence counsel has advanced a number of mitigating factors.
16. At the age of 33 years, the offender is a man of effective good character. He is a farmer, and I am told that he is kind to his children and supports them financially.

17. Ms. Marama also tells me that the offender is remorseful, and that his father has presented a traditional apology to the complainant and her family, which was accepted. That may be so, but this carries no weight in my assessment of the just and appropriate sentence in this case. Whilst making amends is to be encouraged where appropriate, in my view, traditional practices cannot be allowed to deflect this court from the imperative of imposing a sentence which clearly signifies that this court and the community strongly denounce the type of offending that the offender has accepted responsibility for.
18. The claimed acceptance of a traditional apology also does not fit happily with the complainant's statement that she still feels scared all the time in her own home. Plainly, the offender's conduct has had a lasting impact on the complainant, and the apology did not serve to restore her trust.
19. To reflect the offender's limited personal mitigation, I reduce his sentence on count 2 to 6 years' imprisonment, and to 2 years' 6 months' imprisonment concurrent on count 1.
20. The offender's best mitigation, of course, is that he pleaded guilty at the earliest opportunity.
21. Whilst it would be fair to say that the prosecution case against the offender was very strong, I am prepared to accept that his early pleas of guilty reflect his genuine remorse.
22. Mr Lawaki, by pleading guilty at the earliest opportunity you have saved the court's time and resources. This is an important consideration quite separate from the question of whether your early guilty plea reflects your genuine remorse.
23. In all the circumstances of this case, I consider that your early guilty pleas warrant a reduction of one-third, resulting in a final sentence of 4 years' imprisonment on count 2, and 20 months' imprisonment concurrent on count 1.

24. Mr Lawaki, before I make allowance for the time you have been in custody since arrest, the period of imprisonment that you will be liable to serve under both the sentences I have imposed is 4 years. In my view, this represents the shortest commensurate with the seriousness of your offending.
25. Since your sentence is 4 years' imprisonment, the question of suspension does not arise. I should say though for the sake of completeness that, in my view, the gravity of your offending against the mother of your children was so serious that only an immediate custodial sentence is appropriate.
26. I fix your non-parole period at 3 years, which I consider to be appropriate to reflect your reasonable prospects of rehabilitation.
27. You have been in custody pending the disposal of this matter since 13 June 2024, totalling about 7 months 2 weeks, which is to be regarded as a period of imprisonment that you have already served.
28. Accordingly, the remaining time you must serve before being eligible to be released on parole is 2 years' 4 months' and 2 weeks' imprisonment.
29. Mr Lawaki, for the reasons I have explained, the sentence I impose is 4 years' imprisonment, less the time you have already served on remand. Your non-parole period is 2 years' 4 months' and 2 weeks from today.
30. Having considered the domestic nature of the relationship you had with the complainant, I order a permanent Domestic Violence Restraining Order (DVRO) with Standard Non Molestation Conditions in place, identifying the complainant as the protected person. You are hereby ordered not to have any contact with the complainant directly, or by any other means, unless otherwise directed by this Court.

31. You may appeal to the Court of Appeal within 30 days should you choose to do so.



At Labasa

24 January, 2025

Solicitors

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