

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

**Criminal Case No. HAC 230 of 2024**

**STATE**

**-v-**

**MAKISI KAKILI**

**Counsel:** Ms. Bibi Shaheen for the State  
Mr. Waqanivalagi, Atama for the Accused

**Date of trial:** 29<sup>th</sup> September, 2025 – 3<sup>rd</sup> October, 2025  
**Date of Hearing of Closing Submissions:** 2<sup>nd</sup> December, 2025  
**Date of Judgment:** 23<sup>rd</sup> February, 2026

**JUDGMENT**

**The name of the complainant is suppressed and she will be referred to as “M.S”.**

[1]. The Director of Public Prosecution filed the Information on 19<sup>th</sup> September, 2024. Then on 11<sup>th</sup> October, 2024, the accused pleaded not guilty to the following offence;

**Count 1**

**Statement of Offence**

**RAPE:** Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

**Particulars of Offence**

**MAKISI KAKILI** on the 23<sup>rd</sup> day of July, 2024 at Kilikali Settlement, in Suva, in the Central Division, penetrated the vulva of **M.S**, a child under the age of 13 years, with his tongue.

**Burden of Proof**

[2]. As Viscount Sankey observed in **Woolmington -v- The Director of Public Prosecutions** [1935] UKHL 1,

**“...throughout the web of the English criminal law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the [defendant’s] guilt beyond reasonable doubt.”**

- [3]. **Section 57** of the *Crimes Act 2009* makes clear that the prosecution bears the legal burden of proving every element of an offence relevant to the guilt of the person charged and **section 58** of the *Crimes Act 2009* makes clear that this legal burden must be discharged by the prosecution beyond reasonable doubt.

### **The Law**

- [4]. The relevant section pertaining to the offence of Rape is **section 207(1), (2) (b) and (3)** of the *Crimes Act, 2009* is;

**207. - (1) Any person who rapes another person commits an indictable offence.**

**Penalty – Imprisonment for life.**

**(2) A person rapes another person if –**

**(b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person’s body that is not a penis without the other person’s consent; or**

**(3) for this section, a child under the age of 13 years is incapable of giving consent.**

### **Elements of the offence of Rape**

- [5]. The Prosecution must establish beyond reasonable doubt the following;

- (i) The Accused, Makisi Kakili
- (ii) On the specified day, 23<sup>rd</sup> July, 2024
- (iii) At Kilikali Settlement, in the Central Division;
- (iv) Penetrated the vulva of the complainant, M.S who is under the age of 13 years;
- (v). Without the complainant’s consent.

## Admitted Facts

- [6]. The following facts are agreed between the Prosecution and the Defence under the provisions of section 135 of the Criminal Procedure Act, 2009.
- (i). The name of the person charged is Makisi Kakili [“Makisi”].
  - (ii). Makisi was born on 10<sup>th</sup> August 1996 and is 28 years old.
  - (iii) Makisi resides in Kilikali Settlement, Nadera.
  - (iv) The Complainant in this matter is M.S.
  - (v). M.S is 5 years old.
  - (vi). M.S’s mother’s name is ‘V’ and her step father’s name is ‘I’.
  - (vii). On 23<sup>rd</sup> July 2024, M.S and Makisi were both at Save’s house.

## Prosecution Case

- [7]. In this case, Prosecution called two witnesses to prove the charge against the accused. The first witness, who is the complainant’s mother states that her daughter M.S was born on 28 August, 2018. She attends St. John Bosco Primary School. Witness tendered her daughter’s **Birth Certificate as Prosecution Exhibit No. 1**.
- [8]. She further states that one early morning, her daughter informed her that the accused laid on top of her and started touching the front of her undergarment. The accused then took her to mummy’s house. Mummy is her husband’s cousin and her house is approximately 7 metres away from their residence. At Mummy’s house, the accused took off his pants and showed her, his penis. Her daughter relayed the incident to her on 23 August, 2024, a day after it happened. She contacted 919 and the police officers from the Valelevu Police Station attended to the matter. The officers wrote down her statement and that of M.S too. The accused is related to her husband.
- [9]. In cross examination she conceded that she received the information from Kesa first and not her daughter. Kesa who is her sister-in-law informed her that she witnessed what the accused did to M.S.
- [10]. In re-examination she confirmed that it was on the next day, that M.S informed her of what the accused did to her.
- [11]. PW2 is M.S, a six year old complainant who states that the accused is a bad person because he laid her down facing upwards. She further states that the accused took her to

Mummy's house then laid on top of her. Complainant demonstrated with the use of two dolls, pointing to the one at the bottom as her and accused at the top. Accused took off her pants and then used his tongue to lick her vagina. She described which part the accused licked by pointing to the front area [vagina area] of the doll and also marked "X" on the child diagram. At that time they were the only ones inside Mummy's house. Prosecution tendered the photo of the Female child as **Exhibit number 2**.

- [12]. Under cross examination she still maintained that the accused laid on top of her. However, she indicates that she was facing down when the accused was on top of her.
- [13]. When re-examined she states that her mother told her to relate her version of what happened in court.
- [14]. Prosecution closed their case. The court ruled that there is a case to answer.
- [15]. Subsequently, the Accused was given his rights as per **Section 231 (2)** of the *Criminal Procedure Act, 2009* and he decided to give evidence.

### **Defence Case**

- [16]. The accused, Makisi Kakili recalled the day he was at Save's house. On the said date, he returned from work and saw his aunts 'V' and Kesa cleaning their house. He took some stuff to Kesa's house. Upon arrival at the house, M.S and Save were playing 'hide and seek' outside. There was no one inside the house. He entered the sitting room, took out his phone and started watching Tik Tok. Save is Kesa's son. M.S is his uncle's step daughter.
- [17]. Whilst inside the house, M.S and Save entered and they were all watching Tik Tok together. Thereafter he left and went back to his house. M.S, Save and Vilikesa were left in the house. Vilikesa came into the house whilst they were watching Tik Tok. Vilikesa is his aunt's nephew.
- [18]. Makisi denied all the allegations M.S made against him. He further states that he did not take M.S to Save's house nor to the bedroom. He also denied turning M.S, pulling her pants down and then licking her vagina.
- [19]. When cross examined, he still denied taking M.S to Save's house then into the bedroom, removed her pants and licked her vagina. He states that M.S likes to watch Tik Tok with him. However, M.S's mother disliked him since he is close to his uncle. He further states that M.S was likely coached by her mother to say those things against him.
- [20]. In re-examination, he still maintained that the allegations were instigated by his aunt, M.S's mother due to her hatred towards him and his uncle.


## Analysis

- [21]. I will now review the evidence presented by the Prosecution to pronounce my judgment.
- [22]. The first prosecution witness, M.S's mother whom the Prosecution called as the recent complainant. In her evidence she states that the complainant informed her that when she woke up, Makisi was on top of her and he was touching her in the front. M.S also informed her that Makisi took her to mummy's house, put her in a room and laid her down. Makisi then took off his pants and showed his penis to her. He threatened her thereafter.
- [23]. She states that the incident happened on 23 August, 2024 and the complainant informed her of same on the next day.
- [24]. In cross examination, PW1 when shown her police statement lines 20 to 25, she confirmed that it was Kesa, her sister-in-law who had told her of what allegedly transpired between Makisi and M.S. Her daughter later confirmed to her what she heard from Kesa.
- [25]. The complainant is a Class 1 student when she was initially called to give evidence, In the early stages of her evidence she recalled going to Save's house with Makisi. She states that her aunty Kesa was there.
- [26]. The court note that the complainant was reluctant to speak in the presence of her mother as the support person. She only spoke freely when providing evidence in the Child Friendly Room but in the absence of her mother. Whilst in the said room, she was able to describe what Makisi did to her. She states that Makisi used his tongue and licked her vagina. M.S pointed to the doll's front area [vagina area].
- [27]. There was no evidence adduced by the Prosecution to indicate that the accused's tongue penetrated the complainant's vulva. However, I accepted the complainant's evidence that the accused did lick her vagina.

## Conclusion

- [28]. Based on the aforesaid reasons, I find that the Prosecution failed to prove beyond reasonable doubt that the accused raped the complainant. The accused is therefore acquitted on the charge of Rape contrary to *sections 207(1), (2)(b) and (3) of the Crimes Act, 2009*.
- [29]. However, I invoke *section 162(1)(f) of the Criminal Procedure Act, 2009* and find the accused guilty for the lesser offence of Sexual Assault contrary to section 210(1)(a) of the Crimes Act, 2009.

[30]. Makisi Kakili, you are found guilty for the offence of Sexual Assault and convicted accordingly.

.....  
Waleen M George  
Acting Puisne Judge

Dated at Suva this 23<sup>rd</sup> day of February, 2016.

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