

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 63 of 2025**

**THE STATE**

**-v-**

**NIKOTIMO VUMALUMU**

**Counsel: Mr E Kotoilakeba for the State**

**Ms R Raj for the Accused**

**Date of Trial: 6 – 9 January 2026**

**Date of Judgment: 27 February 2026**

**JUDGMENT**

**Introduction**

1. By an Information dated 4 September 2025, Mr Nikotimo Vumalumu (“the accused”) was charged with a single count of rape of his 4-year-old daughter, contrary to section 207(1) and (2)(b) and (3) of the Crimes Act 2009, the particulars being that, between 1 July 2025 to 31 July 2025, at Taveuni, the accused penetrated the vulva of the complainant with his finger. To protect her identity, I shall refer to the complainant as CC in this Judgment.
2. Given CC’s very young age, this case was expedited and listed for trial commencing on 6 January 2026.

3. Regrettably, the prosecution left it to the morning of trial to inform the Court that the Information was to be amended by the addition of a second count of indecent assault. Frustratingly, the Amended Information had not been signed. Mr Kotoilakeba sought a short adjournment to 1pm for that to be attended to. He assured the Court that the signed Amended Information would be available at 1pm.
4. When the trial resumed at 1pm, Mr Kotoilakeba informed the Court that the Acting Director of Public Prosecutions was not in the office. He informed me that she had given her assurance that the Amended Information would be signed by the following morning. I expressed the Court's displeasure at the prosecution's lack of professionalism, being especially concerned that the prosecution witnesses, including the child complainant and examining doctor, were at Court ready to give evidence. I ordered that the Amended Information be filed at 8am on 7 January 2025, and the trial to resume at 9am.
5. Needless to say, it is essential to the efficient administration of criminal justice that, during court sitting hours, there is always someone available at the Office of the Director of Public Prosecutions duly authorised to make decisions and sign necessary documents on behalf of the Director of Public Prosecutions in a timely manner.
6. The prosecutor did not appear at 9am. When he did eventually put in an appearance, Mr Kotoilakeba sought leave to file an Amended Information dated 7 January 2026, signed by Ms Madanavosa for the Acting Director of Public Prosecutions. The Amended Information added a second count of rape, contrary to section 207 (1) (2) (a) and (3) of the Crimes Act, the particulars being that, between 1 July 2025 to 31 July 2025, at Taveuni, the accused penetrated the vulva of CC with his penis.
7. There being no objection to the Amended Information, and no prejudice to the defence, the accused was re-arraigned and pleaded not guilty to both counts.

### **The prosecution case in outline**

8. The accused is CC's biological father. In 2025, CC was living with her biological mother and her partner. After her parent's separated, CC would spend time with the accused. She spent the month of July 2025 with the accused. It was during this period that the accused raped CC. Both rapes happened on the same occasion. Upon returning home to her mother, CC complained to her that she was sexually abused by the accused. Upon medical examination, CC was found to have an injury consistent with her vulva having been penetrated.

### **Prosecution Evidence**

9. CC gave evidence remotely from the child-friendly room at the Labasa Court Complex.
10. When first asked how old she was, CC replied "10". When asked again, she replied "4". From her answers to a number of preliminary questions, it was clear to me that she was able to understand those questions and provide appropriate answers.
11. When asked whether someone did something to her last year, CC replied, "*Niko touch my piki*". When asked where her piki is, CC pointed at her genitals. When asked what Niko did to her, CC said, "*Putting the polo in the piki*". She was asked to mark the polo and piki on diagrams shown to her, and she marked the penis and vulva respectively. The diagram sheet was adduced as PE-2.
12. When she was asked where Niko was staying, CC said that he stayed in Niko's house. She said that Niko put popolo on piki at Niko's house. CC repeated several times that Niko touched the polo and the piki.
13. CC said that she did not tell anyone what Niko did to her. She said that Niko told the police. She did not know why she was staying at Niko's house, and

she had not stayed there before this incident. She said that Niko did not come to visit her when she was staying with her mum.

14. CC did not reply when asked how she was related to Niko. She said that she did not go to the hospital and did not go to the police.
15. After giving evidence-in-chief, CC indicated that she wished to take a break. She said that she wanted to sleep. When I suggested coming back after a short nap, CC said that she did not wish to come back.
16. In order to make best use of court time, Dr Kameli Raube was called to give evidence whilst CC was resting. Dr Raube is employed as a Medical Officer at Taveuni Hospital. On 5 August 2025, he examined CC and completed a Police Medical Examination Form. CC's mother had given consent for the examination. The history given was that Niko had removed his pants, removed CC's undergarment, and "...put his private part on top of her genitals". CC was alert and not in distress or pain. Upon examination, Dr Raube found an abrasion at around the 3 o'clock position of her labia minora. He also noted that there was redness around her labia majora. There was no bleeding, but there was a greenish discharge from her reproductive system. He said that young children heal quite fast. It would take about 5 days for CC's injuries to fully recover and heal.
17. Dr Raube confirmed that his medical findings "*correlated*" with the history provided.
18. In cross-examination, Dr Raube said that CC's mother gave the history. The child gave the history to the mother and the mother relayed it to him. The greenish discharge was a sign of infection. It could have been a bacterial infection. Dr Raube agreed that scratching the genital area can cause abrasions and redness. He also agreed that small children are fond of scratching, and that his medical findings could have resulted from scratching. When Ms Raj suggested that any sort of penile penetration would cause injury to the private parts of a 4-year-old child, Dr Raube agreed.

19. I asked Dr Raube to clarify a number of matters. He said that, in addition to scratching, abrasions may be caused to the sensitive area of a child by vigorous rubbing. Also, children may get abrasions from playing sport. An infection is not necessarily the result of any sort of sexual penetration. There can be other causes. When I asked Dr Raube whether he wished to reconsider his opinion that the abrasion on CC's labia minora was consistent with the history of a penis having been laid on top of CC's genitals, he said that the injury to CC's labia minora would not have been caused by placing a penis on top of her genitals.
20. In re-examination, Dr Raube said that CC was not scratching her private parts during the time he spent with her. He accepted that any injuries caused by penile penetration may have healed prior to the medical examination.
21. The third prosecution witness was CC's mother ("CM"). She has been married to her husband for three years and has a daughter with him. CC is her daughter from a previous four-year relationship with the accused. She also has an 8-year-old daughter from a previous relationship. CC regards her husband as her father and calls him "*papa*".
22. She lives nearby the accused. They have a private arrangement for the accused to spend time with CC. He would collect her from home and take her to his place, where she would sleep over.
23. In July 2025, the accused came and asked for CC to accompany him to a birthday party. She stayed with the accused for one week. CC contacted her using the accused's account and said that she wanted to return home. The accused brought her home. That same day, she took CC into town. When they returned home that afternoon, CC complained that she felt pain in her vagina. When she inspected CC's vagina, she saw that it was injured. She and her husband took CC to Waimaqera Hospital. A doctor examined her and advised them to make a report to the police. After reporting to police, they were taken to Taveuni Hospital.

24. In cross-examination, CM confirmed that she was in a *de facto* relationship with the accused from 2019, and they had two children together – CC and her elder brother. When he was small, her son was taken to live with the accused's sister.
25. When Ms Raj suggested to CM that the accused had assaulted her in 2023 after he returned from a church function in the West and found out that she was at her current husband's house, and was pregnant with his child, she agreed. He had knocked her to the ground and taken CC to his home. He had also assaulted her current husband. The matter was reported to the police. The accused was convicted and given a short prison sentence. He was released from prison in January 2024.
26. Upon his release from prison, the accused requested access to CC. Having initially refused, a few months later, CM agreed to the accused having access to CC after he had sent groceries and fish for CC. He had taken CC for lunch and returned her the same day. She allowed CC to stay over at the accused's place, and she would return home within two to three days. CM confirmed that CC was comfortable with the accused. In July 2025, CC stayed with the accused for an extended period. CM had asked her to return home, but she refused. CC called her through Facebook Messenger and told her that she wanted to return home as her vagina was aching. When Ms Raj put to CM that CC had not told her that her vagina was paining, she disagreed. On the video call, CC was pointing down and saying "*mosi*", meaning "*hurting*".
27. CM accepted that she was feeling threatened that she may lose CC, but rejected that she had made a false allegation against the accused. CM disagreed that CC had never informed her that she was feeling pain in her vagina after she returned home. When it was suggested to CM that CC had a boil in the area of her vagina, and pus was coming out, CM disagreed.

28. When I sought to clarify what injury CM had seen on CC's vagina, CM said there were bruises on the walls of her vagina and there was a red discharge coming from her vagina.
29. In re-examination, CM said that she trusted the accused to look after CC because he was her father.
30. In answer to a question from the Court, CM said that she had told CC that the accused was her father. She also confirmed that she was quite happy to let CC spend days on end with the accused. When the accused came to take CC to a birthday party, he had said that he would return her the following day. That is why she went two or three times to ask CC whether she wished to return home. The first time she went to the accused's house, CC told her that she wanted to stay with the accused. CM estimated that CC stayed with the accused for more than one month. That was the longest period she had ever stayed with him.
31. Upon making inquiries, it was clear that it was undesirable that CC be asked to resume giving evidence at that time. The trial was adjourned for the day to give time for her to rest.
32. The following morning, Ms Raj and Mr Kotoilakeba went into the child-friendly room. In answer to questions in cross-examination and re-examination, CC was largely verbally unresponsive. She shook her head in response to the questions asked. The sound quality was poor, and the transcript records that many of the questions asked were inaudible.
33. At the close of the prosecution case, I found that the accused had a case to answer on both counts. He elected to give evidence in his own defence.

#### **Defence evidence**

34. The accused testified that he met CM on 9 March 2019 at the Labasa bus stand. They had two children together.

35. In 2023, their relationship was good, but she was having an affair with an Indian man because the accused was working full-time at the farm and full-time going for prayers. He went to Lautoka and Suva for outreach in 2023. CC was aged 2 years 5 months at that time. At the time he left for outreach, he did not know that CM was having an affair. On the day that he returned from Lautoka, he was informed by a neighbour that she was at that Indian man's house. When he went to that house, he told CM that, if she wished to stay with that man, she should give him CC to look after. When she refused, he punched CM. He took CC and her diapers. He was arrested and remanded in custody.
36. After he was bailed, he intended to apply for custody of his children. He went to CM to ask for the notification of birth. When CM refused to give it, he punched the Indian man in his mouth. He immediately sought forgiveness, and CM gave him the notification of birth. This incident was not reported to the police.
37. He was sent to prison for assaulting CM. He was released on 17 January 2024 and went straight to CM to collect his house key. He then went to Ba to find a school for his son. When he returned home in March 2025, he would take CC to his house for one or two days a week. He took CC to his farm for two to three weeks in July 2025. He and CC got boils there because of the water. Before going to the farm, CM had come to his house four times to take CC, but she did not want to go with CM. CM gave permission for him to take CC to the farm.
38. After returning from the farm, CM came to take CC home, but she did not wish to go with her. Because he had tasks to attend to, the accused asked CC to go with CM. He took CC back to her mother on a Monday in August 2025. CC did not wish to go, but he encouraged her to go. He told her that he would take her after returning from work. Before returning CC home to CM, he had called CM's phone so that CC could speak with her. He overheard their video call. CC never said anything about pain in her vagina. CC had told him earlier about the pain in her vagina. He did not tell CM about the boils in CC's vagina.

39. When asked directly by Ms Raj, the accused denied that he had penetrated CC's vulva with his finger. He also denied penetrating her vulva with his penis. He said that he had never touched CC with wrong intentions. She was happy staying with him and was never scared of him. The accused said that he was not really sure why CC kept on saying "*polo, polo, piki*".
40. In cross-examination, the accused said that he was together with CM for four years. He agreed that CM had done her best to take care of his house whilst he was in prison. After he was released, CM allowed CC to stay at his place. At no point did CM stop him seeing CC.
41. The accused denied that he had penetrated CC's vulva with his finger and his penis at his house. He had seen boils on her hand and her thigh. She had told him about a boil on her "*peta*". CC never said "*piki*", she said "*peta*". CC removed her panty and showed him. He saw a boil on the side of her vagina. Pus was coming out for three days. He put hot water and lemon in a bucket for her to sit in. He did not tell CM about the boil because he planned to take CC to the hospital.
42. In answer to a question from the Court, the accused said that CM had been perfectly happy and comfortable with the arrangement that their son would be raised by his childless sister. He could not think of any reason why CC or CM would make up a false allegation against him.

### **Closing submissions**

43. I heard closing speeches on 9 January 2026.
44. Mr Kotoilakeba made the point that it is agreed between the parties that CC was born on 8 July 2021, and that the accused is her biological father. CC gave evidence that he touched her piki and put his popolo in her piki. She had marked on PE-2 the popolo and piki as the penis and vulva respectively. CC stated numerous times that the accused had touched her piki and put his popolo in her piki. Mr Kotoilakeba submitted that the medical evidence supports CC's evidence and invited the Court to infer that the abrasion to CC's

labia minora was caused by the accused penetrating her vulva with his finger, and the redness on her labia majora resulted from penile penetration of her vulva. When pressed by the Court, Mr Kotoilakeba quite properly accepted that CC did not give direct evidence of digital penetration. He maintained that CC's evidence was that the accused had put his popolo in her piki. Mr Kotoilakeba also submitted that the fact that the accused did not mention to her mother that CC had a boil on her vagina is highly suspicious. CC had told her mother during the video call that she had pain in her vagina.

45. Ms Raj submitted that CC's evidence was very unclear as to whether her vulva was penetrated. CC was clear that she had not told anyone about the accused doing something to her. Also, she said that she was not medically examined.
46. Dr Raube agreed that the abrasion on CC's labia minora may have been caused by scratching. Ms Raj submitted that the abrasion was not caused by digital or penile penetration of CC's vulva. Also, there may have been other reasons why there was redness around CC's labia majora.
47. CM agreed that she had felt threatened that she was going to lose CC to the accused when she refused to return home. Ms Raj suggested this as a possible motive for the fabricated allegation of sexual abuse. Also, CC's refusal to return to her mother suggests that she was happy to stay with the accused.
48. The accused answered honestly that he did not know of any reason why CC and CM would make a false allegation against him.
49. Ms Raj reminded me that CC had been reluctant to answer questions in cross-examination and re-examination. She had resorted to shaking her head. Ms Raj argued that CC's repetition of the words "*Niko, popolo and piki*" suggests that she may have been coached to say those words. This suspicion is heightened by CC's refusal to answer other questions asked of her.
50. In a nutshell, the prosecution has failed to prove the elements of rape.

### **Legal Directions/warnings**

51. The prosecution must prove that the accused is guilty. The accused does not have to prove anything to me. The defence does not have to prove that the accused is innocent. The prosecution will only succeed in proving that the accused is guilty if I have been made sure of his guilt. If, after considering all of the evidence, I am not sure that the accused is guilty, my verdict must be not guilty.
52. CC is a very young child. She had just turned four years of age at the time of the alleged offending, and was 4 years old at trial. It is for me to decide whether she is reliable and has told the truth. The fact that she is young does not mean that her evidence is any more or less reliable than that of an adult. I must assess her evidence in the same fair way as I assess the other evidence in the case.
53. Because CC was so young, I bear in mind a number of things. A child does not have the same degree of maturity, logic, perception or understanding as an adult. A child may find questions difficult to understand – they may not fully understand what they are being asked to describe. It may be that they do not have the words to accurately or precisely to describe things in the same way that an adult might.
54. A child may be tempted to agree with questions asked by an adult because the child sees an adult as being in a position of authority. Also, if a child feels that what they are asked to describe is bad or naughty, this may lead to them being embarrassed and reluctant to say anything about it, or to be afraid that they get into trouble.
55. A child's perception of the passage of time is likely to be very different to that of an adult. A child's memory can fade, even in a short time.


56. These things are relevant to a child's level of understanding rather than to their credibility.
57. None of these things mean that CC is or is not reliable: that is a matter for my judgement.

### **Analysis and decision**

58. Despite the challenges presented by the trial, ultimately the issue I must determine is relatively straightforward. Am I sure that the accused penetrated CC's vulva with his finger and his penis in July 2025?
59. Making appropriate allowance for CC's tender years, I do not consider that her evidence is sufficiently credible and reliable to make me sure that the accused raped or sexually abused her. She did not give clear evidence about the accused penetrating her vulva. Her repetitious incantation of the words "*Niko, popolo, piki*" may be explained on the basis that, as a young child, those were the key aspects of the accused's offending that were embedded in her memory. Nevertheless, the repetitious nature of her answers causes me some concern that those words may have been drilled into her.
60. Whilst I consider it unlikely that CC has been put up to making a false allegation by her mother, borne of her fear of losing custody of CC to the accused, Ms Raj's suggestion is not wholly implausible. The accused returned CC to her mother with injuries to her genitals and a vaginal infection. It is only natural that CM may have suspected that CC had been interfered with.
61. I do not doubt that CC complained to her mother about pain in her private parts. In light of the medical findings, she would have been in some discomfort. I find it odd that the accused did not report to her mother that CC had a vaginal infection. On his own case, he was fully aware of this issue. However, it would be wrong of me to infer a guilty mind from the accused's failure to mention this to her mother. He would certainly have realised that CM would become aware of CC's condition despite him not having informed her about it.

62. The Court must take great care with the medical evidence in this case. The danger lies in relying on the abrasion to CC's labia minora as proof that the accused must have penetrated her vulva. In light of Dr Raube's evidence that this injury may have been caused in a number of different ways, it is not open to the Court to infer that the accused caused that injury by digital/penile penetration of CC's vulva.
63. Similarly, there may have been a number of causes of CC's vaginal infection. There is no evidence in this case to allow me to draw any link between the infection and penetration of her vulva. It is impermissible for me to draw any such link. Before I could conclude that the vaginal pain made the alleged penetration more likely, I would have to exclude the possibility of the infection separately causing the vaginal pain without any penetration having happened. Plainly, in all the circumstances of this case, the infection provides a possible cause for vaginal pain other than the alleged penetrations. I cannot exclude, beyond reasonable doubt, the possibility that the pain in CC's private parts was caused separately by the infection.
64. It follows that, for the reasons given, I cannot be sure of the accused's guilt. He is acquitted accordingly.
65. 30 days to appeal to the Court of Appeal.



  
Hon. Mr Justice Burney

**At Labasa**

27 February 2026

**Solicitors**

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