

**STATE v EPELI RATABACACA LACA (HAC00252 of 2011S)**

HIGH COURT — CRIMINAL JURISDICTION

5 MADIGAN J

1-8, 14 November 2012

10 **Criminal Law — sentencing — sexual assault — vulnerable victim — premeditation — mitigation — clear record — service to country — breach of trust — absence of remorse — Crimes Decree s 210(1)(a).**

15 The accused was convicted of sexual assault contrary to s 210(1)(a) of the Crimes Decree 2009. A woman had approached him for help with her anxiety and depression following the birth of her fourth child. The accused recommended she come with him to a health centre for steam bath treatments. The accused accompanied the woman into a steam bath, removed her towel and fondled her breasts.

**Held –**

20 (1) Given the two to eight year range for this offence, a starting point of 2 years' imprisonment is adopted. Two years is added for the gross breach of trust and for the cynical and manipulative pre-planning. In mitigation, the accused has a clear record, had served his country in the RFMF for 18 years and now serves as a pastor. Therefore the sentence is reduced by two years to a final sentence of two years.

*Abdul Kaiyum* HAC 160/10, followed.

25 (2) Leniency in suspending a sentence or imposing a non-custodial sentence can only be afforded where remorse is expressed by way of a guilty plea or some other expression of regret. The breach of trust and absence of remorse in this case prevents the Court from alleviating the burden of an immediate custodial sentence.

*Vocea* HAC 129/09, followed.

30 Sentenced to two years' imprisonment, with a 15 month non-parole period.

*L Fotofili with D Kumar* for the State

35 *F Vosagaro with S Valenitabua* for the Accused

[1] **Madigan J.** Epeli Ratabacaca Laca, you have been convicted of the following offence:

**Statement of Offence**

40 **SEXUAL ASSAULT:** contrary to section 210(1)(a) of the Crimes Decree 2009.

**Particulars of Offence**

45 EPELI LACA RATABACACA on the 22nd day of June 2011 at Sports City, Raiwai, in the Central Division, unlawfully and indecently assaulted [name suppressed].

50 [2] The facts were that on the 22nd June 2011 you were with a lady who had approached you for help with her problems of anxiety and depression. You had told her she had to “work it out” and on your recommendation she went with you to a health centre in Suva to take steam bath treatments. You accompanied her into the steam bath, each of you dressed only in a towel. While in the steam room

you removed her towel and fondled her breasts for approximately three minutes. The lady did not like this but was subjugated by the authority of your pastoral office.

5 [3] In treating the lady in this manner you were in gross breach of trust. She trusted you as a pastor and counsellor to help her alleviate her post natal symptoms of anxiety and depression. Both she and her husband had agreed to avail themselves of your reputation for prayer and counseling and you abused their faith in you. There was no reason either medically or otherwise that would suggest that semi-naked steam treatment would assist her in her fragile mental condition.

[4] Both counsel for the State and for the accused have filed extremely helpful and pertinent submissions in mitigation. Included with the State's submissions are Victim Impact Statements from the victim and her husband. The victim 15 claims to be emotionally disturbed as a result of the offence and has difficulty in any social interaction with others. She has trouble sleeping and gets frustrated easily.

[5] The accused is 54 years old, has been married for 28 years and has three adult children. He was a lay preacher in the Methodist Church from 1978 to 1997 20 after which he started the All Nations Christian Fellowship Church ("ANCF"). He has been ANCF's general superintendent since 1997. The church has extensive interests in Fiji and has a network of affiliated churches throughout Europe, Asia and the Pacific.

25 [6] The maximum penalty for this offence is ten years imprisonment. It is a reasonably new offence, created in February 2010 and no tariffs have been set, but this Court did say in *Abdul Kaiyum HAC 160 of 2010* that the range of sentences should be between two to eight years. The top of the range is reserved for blatant manipulation of the naked genitalia or anus. The bottom of the range 30 is for less serious assaults such as brushing of covered breasts or buttocks.

[7] A very helpful guide to sentencing for sexual assault can be found in the United Kingdom's Legal Guidelines for Sentencing. Those guidelines divide sexual assault offending into three categories:

35 *Category 1* (the most serious)

Contact between the naked genitalia of the offender and naked genitalia face or mouth of the victim.

*Category 2*

40 (i) Contact between the naked genitalia of the offender and another part of the victim's body;

(ii) Contact with the genitalia of the victim by the offender using part of his or her body other than the genitalia, or an object;

(iii) Contact between either the clothed genitalia of the offender and the naked genitalia of the victim; or the naked genitalia of the offender and the clothed genitalia 45 of the victim.

*Category 3*

Contact between part of the offender's body (other than the genitalia) with part of the victim's body (other than the genitalia).

50 [8] These very sensible categories of offending are adopted by this Court and they provide a very useful guide to sentencing within the tariff of two to eight years.

[9] In this case the lady victim was particularly vulnerable being mentally unstable after the birth of her fourth child and the pastor had gone to some lengths to engineer her presence with him alone in the steam room; an environment that she was totally unfamiliar with.

- 5 His pre-meditation of the offending can be seen from –  
(i) asking her to take the children home;  
(ii) suggesting that she need to “work out” her sickness;  
(iii) telling her that there was no spa staff member who could accompany her to the  
10 steam room;  
(iv) telling her to take off her towel to let the steam embrace her whole body.

[10] Fondling of naked breasts comes within category 3 offending as discussed *supra* and I therefore adopt a starting point for the offence of 2 years. For the gross breach of trust and for the cynical and manipulative pre-planning I add two years to that sentence bringing it up to an interim term of four years.

15 [11] The mitigation advanced by your counsel is strong and persuasive. Your two character referees speak of your integrity, your honesty and your service to the community through outreach and a loving manner. You are a popular leader of your church and you open your home to young people who need counseling. You have served in the RFMF for 18 years before resigning and taking to the  
20 pulpit. You have represented Fiji in Lebanon, the Sinai and East Timor.

[12] Such an exemplary record counts for nothing if an adherent’s trust is betrayed and she is sexually abused. Your reputation can work both ways for you. It can be to your great credit but it can also be used to set an example to others and especially to those who do not have your privileges and who look to you for  
25 guidance and advice. You might open your home to the helpless but you will only have the authority to do that if you yourself maintain a spotless reputation. I am sure that you would say you extend your *agape* love to men, women and young people alike but that love is meaningless if you seek out an opportunity and location to sexually abuse a troubled woman asking you for help.

30 [13] Your mitigation nevertheless does entitle you to some discount in your sentence. You have a clear record and you have in earlier days served your country well and in these days you serve your followers and your village in Tailevu. From the interim total of four years imprisonment I reduce your sentence by two years to a final sentence of two years.

35 [14] Your counsel asks for leniency and that the sentence be suspended or an alternative sentence be imposed to keep you from imprisonment. Such leniency can only be afforded to a convict who expresses remorse by way of a guilty plea or some other expression of regret and there is none in this case. As Goundar J said in *Vocea HAC 129 of 2009* (para 20):  
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*“In the end, however, it is not possible for me to give undiminished weight to your previous good character and record of public service .... You were given power and authority. With power and authority comes an obligation of trust. You betrayed that trust and in the course of doing that, you diminished the very values that were your duty to uphold .... For this reason a discharge or a bind over order is inappropriate.”*

45 [15] Despite your powerful mitigation the breach of trust and absence of remorse prevents me from alleviating the burden of an immediate custodial sentence. You will serve a term of imprisonment of two years and you will not be eligible for parole until you have served a minimum term of 15 months  
50 imprisonment.

*Two year sentence imposed.*