

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 78 - 2019

STATE

-v-

EMINONI BULUBULUTURAGA No. 5

For Prosecution: IP Lenaitasi S. [Police Prosecution]
Accused: In Person, Waived Right to Counsel
Date of Sentence: 2nd April 2019

SENTENCE

BACKGROUND

1. **EMINONI BULUBULUTURAGA No. 5**, you have pleaded guilty to the following charge:

Count 1

Statement of Offence

ASSAULT OCCASIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act of 2009*.

Particulars of Offence

EMINONI BULUBULUTURAGA No. 5 on the 12th day of March, 2018 at Drumasi Tavua in the Western Division, assaulted **MERE MARAMA** causing her actual bodily harm.

Count 2

Statement of Offence

GIVING FALSE NAME TO A POLICE OFFICER: Contrary to section 24 of the *Police Ordinances Act Cap 85*.

Particulars of Offence

EMINONI BULUBULUTURAGA No. 5 on the 13th day of March, 2019 at Tavua Police Station in the Western Division being asked to give his name to **Police Constable 5280 Qata** where at he gave his name as **WISAKE TURAGANIVALUCA** where as he is known as **EMINONI BULUBULUTURAGA No. 5**.

2. I am satisfied that your guilty plea to the charge is voluntary and that you understand the consequence of your plea. The evidence also supports your guilty plea. I have found you guilty accordingly on both counts.
3. The victim in Count 1 is your 20 year old wife. You had an argument with her about a phone. You swore at her. You ran after her and punched her face several times. She cried for help but no one was around. The victim fell to the ground and you kicked her head and back several times. She ran to a house for help but you followed her got hold of her by the hair and hit her face against a wall.
4. You were arrested and questioned by police for beating your wife. During your interview with the police, you gave your name as Waisake Turaganivaluca.
5. A few days later police made their checks and found that the name you had provided was not correct. You were re-arrested from Tavua town where you were trying to sell a police boot and re-questioned.
6. Your wife was in court on the day you pleaded guilty. She has forgiven you and she said that when she took your phone and clothes, that is when you punched her.
7. The victim was medically examined about 2 hours later after you hit her. The medical officer observed amongst other things that there was a cut to her forehead, swelling to her nose, there was tenderness to her head and bruises over her right chest.
8. When you were initially questioned by police, you admitted being in a relationship with the victim for about 2 years. You admitted that you had an argument with her about your phone and clothes. She ran away with it and you followed her and punched her. You said that you punched her several times. You admit that you also kicked her. You admit causing her injuries.
9. In your subsequent interview with police, you admitted your real name. You admitted that you did not give that real name to police earlier. You said that you had another case at Valelevu, Nasinu and that is the reason why you lied.
10. You are a first offender.
11. You are 23 years old. You have apologized to the victim.
12. You have been in remand since you were first produced under police custody on the 15th of March 2019.

13. Section 24 of the **Sentencing and Penalties Act 2009** states that if you are sentenced to a term of imprisonment, the court can consider the time you have spent in remand as time already served.
14. Assuming you are sentenced to an imprisonment term in this case, I will not consider the time you have spent in remand as time served. You were remanded not because of this case but because you have an outstanding warrant against you for your other case at Valelevu, Nasinu.
15. The offences or both counts in this case were committed in the course of the same transaction or founded on the same facts.
16. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for both the counts.
17. Count 1 assault occasioning actual bodily harm is the more serious of your 2 offences. I will use that as a guide when imposing your aggregate sentence in this case.

LAW

18. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

TARIFF

19. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence and for more serious cases to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [see for example **State v Kalouteretere** - Sentence [2018] FJHC 845; HAC 270. 2018 (12 September 2018)].

STARTING POINT

20. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

21. There is a domestic relationship in existence. This was your wife.

22. You hit her several times.
23. You kicked her head and back when she was on the ground and you hit her head against a wall.
24. You lied to police to conceal your identity to evade your pending case at Valelevu, Nasinu.
25. Your sentence is increased to 12 months imprisonment.

MITIGATION

26. Having listened and observed you, I accept that you are remorseful.
27. Despite lying about your name, you have cooperated with police during your interviews for the most part.
28. You are young.
29. There must have been some passion in existence at the material time you beat your wife.
30. Your sentence is reduced to 7 months imprisonment.

GUILTY PLEA

31. You have pleaded guilty early on the day of your first appearance.
32. Your sentence is reduced to 5 months imprisonment.

SUSPENSION

33. I can suspend your 5 months imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
34. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.
35. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

36. You will receive an aggregate sentence for both counts.
37. You are sentenced to 5 months imprisonment.
38. As I explained earlier, I will not consider the time you have spent in remand as time served. Your imprisonment sentence will not be deducted any further.
39. I am inclined to suspend 3 months of your sentence for the next 2 years.
40. Commit any other offence in the next 2 years and this term held in waiting maybe activated.
41. You will serve 2 months imprisonment immediately.
42. The DVRO [section 27 standard non-molestation conditions] which was imposed on you and explained to you earlier on the 15th of March 2019 is made final. This is to protect your wife.
43. 28 days to appeal.



.....
Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 2nd day of April 2019