

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 347 - 2018

STATE

-v-

TEMESI WAQA

For Prosecution: WPC Chand A. [ Police Prosecution ]  
Accused: In Person, Deemed To Have Waived His Right To Counsel  
Date of Sentence: 21<sup>st</sup> May 2019

SENTENCE

BACKGROUND

1. **TEMESI WAQA**, you have pleaded guilty to the following charge:

Statement of Offence

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

Particulars of Offence

**TEMESI WAQA** on the 22<sup>nd</sup> day of December, 2018 at Rabulu, Tavua in the Western Division assaulted one **NANISE TUWAI** thereby causing her actual bodily harm.

2. I am satisfied that your guilty plea or admission of guilt is voluntary and that you understand the consequence of your plea. The evidence also supports your guilty plea. I have convicted and found you guilty accordingly.
3. The victim here is your 33 year old wife. She was at a party and went and slept at her mothers place. You came over and questioned her about not returning the previous night. In the heat of the argument, you punched her several times on her face and head.
4. The matter was reported. You were arrested and interviewed by police. You found her at her mothers place. You said that you raised the safety of the children with her. She replied back harsly. You punched her eyes and head.

5. Your wife was medically examined about 3 hours later. The medical officer amongst other things, observed that there was swelling to her nose, she had a black eye, she had bleeding to the inside of her mouth, cuts over her left cheek and lip and tenderness to the right side of her face.
6. You are a first offender.
7. You have not spent any time in remand.
8. Your wife was present in court on the 24<sup>th</sup> of February 2018 and she said that she has forgiven you.
9. You are 33 years old. You have sought forgiveness from your wife. You have 4 children. The eldest is 11 years and the youngest is 6 years. You have just started working at a resort. Your wife also works at a bottling company.

#### **LAW**

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

#### **TARIFF**

11. 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**

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

#### **AGGRAVATING FEATURES**

13. There was a domestic relationship in existence. This was your wife.
14. You punched or hit her face several times causing multiple injuries.

15. Your sentence is increased to 9 months imprisonment.

### **MITIGATION**

16. You will get some reduction for having a past good history.
17. I accept that you are remorseful.
18. I accept that you must have been frustrated at the time and the emotions must have been high.
19. You have cooperated with police.
20. You have a family to look after.
21. Your sentence is reduced to 5 months imprisonment.

### **GUILTY PLEA**

22. Your guilty plea is early and I will reduce your sentence to 3 months and 1 week imprisonment.

### **SUSPENSION**

23. I can suspend your 3 months and 1 week imprisonment term either in whole or in part pursuant to section 26 (1 ) and ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009**.
24. 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.
25. Your sentence will be aimed at deterrence and to punish you adequately.

### **SENTENCE**

26. You are sentenced to 3 months and 1 week imprisonment.
27. I will not reduce your imprisonment term any further as you did not spend any time in remand.

28. I will suspend 2 months imprisonment for the next 18 months.
29. Commit any other offence in the next 18 months and this term held in waiting maybe activated.
30. You will serve 1 month and 1 week imprisonment, immediately.
31. The DVRO with section 27 standard non-molestation conditions which was imposed and explained to you on the 24<sup>th</sup> of December 2018 is made final. You are to behave towards your wife. You breach any of these conditions and you may be charged and prosecuted for another offence.
32. 28 days to appeal.



Dated at TAVUA this 21<sup>st</sup> day of May 2019

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