

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 147 - 2018

STATE

-v-

LEVENI TUI

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : Mr Samy A. [Legal Aid Commisison]
Date of Sentence : 13th January 2020

SENTENCE

BACKGROUND

1. **LEVENI TUI**, you have pleaded guilty to the following charge:

COUNT ONE

Statement of Offence

BREACH OF A DOMESTIC VIOLENCE RESTRAINING ORDER: Contrary to section 77 (1) of the *Domestic Violence Act 2009*.

Particulars of Offence

LEVENI TUI on the 16th day of October, 2017, at Tavua Magistrate Court, Tavua in the Western Division, having been served a notice of a domestic violence restraining order vide CF no. 199 – 17 issued by Tavua Magistrate Court by which he was bound without reasonable excuse contravenes the order by unlawfully assaulting the protected person.

COUNT TWO

Statement of Offence

BREACHING CONDITIONS OF BAIL: Contrary to section 25 (1) (b) and 26 (1) of the Bail Act No. 26 of 2002 and the Bail Amendment Act No 28 of 2012.

Particulars of Offence

LEVENI TUI on the 25th day of April, 2018 at Nadala, Nadarivatu in the Western Division, breaches the Bail Conditions imposed by the Tavua Magistrate Court vide, Case File No. 55 – 15, by reoffending whilst on bail.

COUNT THREE

Statement of Offence

BREACHING CONDITIONS OF BAIL: Contrary to section 25 (1) (b) and 26 (1) of the Bail Act No. 26 of 2002 and the Bail Amendment Act No 28 of 2012.

Particulars of Offence

LEVENI TUI on the 25th day of April, 2018 at Nadala, Nadarivatu in the Western Division, breaches the Bail Conditions imposed by the Tavua Magistrate Court vide, Case File No. 97 – 17, by reoffending whilst on bail.

2. I am satisfied that your guilty plea to the counts in the charge is voluntary and that you understand the consequence of your plea. Your admission in court and the evidence tendered in furtherance of your guilty plea and admission, supports a finding of guilt.
3. I have also taken judicial notice of the records in your other cases which is the subject of the three counts.
4. In Tavua CF 199 – 17 you pleaded guilty to and were sentenced for one count of assault occasioning actual bodily harm and a second count of breaching your bail condition. You were imposed a temporary Domestic Violence Restraining Order [DVRO] with section 27 standard non molestation conditions on the 16th of October 2017 and this was finalised on you on the 19th of December 2017 when your sentence was pronounced. The victim in that case was your wife who you punched repeatedly on the head and then kicked on the back when she was down and you also hit her with a chair. It happened during an argument about taking the children's food to school. There was tenderness to the back of her right shoulder. You were sentenced to a concurrent 6 month imprisonment term which was not suspended either in part or in whole. You ended up serving 4 months imprisonment as you had spent 2 months in remand already.
5. The DVRO in that case was still in place when you assaulted your wife again on the 25th of April 2018. You punched her head several times when you two argued on the road about a phone. You have been charged for common assault for that and that

common assault case is the subject of Tavua CF 146 – 18. You have pleaded guilty in that file too and I have found you guilty. Consequently by assaulting her when the interim DVRO was in effect, you breached the DVRO and which is now the subject of count one.

6. You were also supposed to be behaving or you were not to reoffend and that bail condition was in place in your pending cases Tavua CF 55 – 15 and CF 97 – 17. Both these cases are for assault occasioning actual bodily harm and the victim is again, your wife. You have pleaded guilty in these cases too.
7. I find you guilty and convict you of all three counts as reflected in the charge.
8. You admitted in your caution interview with police that you breached the DVRO and the bail conditions. You say that you are sorry and you say that your wife makes you angry. You are fed up with how she treats you and your daughter.
9. You are not a first offender.
10. You had to be remanded considering your several cases pending and the domestic nature of the allegations. I was supposed to sentence you in December 2019 but because of my diary, I could not. That is not your fault. I will only consider the time you have spent in remand from December 2019 until now as time served and I will deduct that from your sentence. I approximate your time in remand to be 1 month and 14 days imprisonment.
11. You are 40 years old. You have 4 children. The youngest is 11 years old. You are a farmer and the sole breadwinner. The victim, your wife still resides with you. You seek a non-custodial sentence.

MAXIMUM SENTENCE

12. The maximum sentence imposable for a first time breach of a DVRO is a fine of up to \$1,000 and or imprisonment of up to 1 year.
13. The maximum sentence imposable for the offence of breaching or absconding bail, can be a fine of up to \$2,000 and or imprisonment of up to 12 months.

TARIFF

14. There is no sentencing tariff for breaching a DVRO.

15. However, violence on a spouse with the use of a stick and cane knife causing injuries can attract a 3 month imprisonment term [State v Kailoma [2018] FJHC 763; HAC46.207 & HAC63.2017 (21 August 2018)].
16. The courts sentencing preference for breaching bail is by imposing a suspended sentence and can even be up to 9 months imprisonment [Koroimeca v State [2019] FJHC 20; HAA74.2018 (29 January 2019)].

STARTING POINT

17. Considering the objective seriousness of the offences,
18. I select the following starting points:

Count One: Breach of DVRO – 1 month imprisonment

Count Two: Breach of Bail – 1 month imprisonment

Count Three: Breach of Bail – 1 month imprisonment

AGGRAVATING FEATURES

19. You breached the DVRO within 4 months of it being finalised on you.
20. Your bail conditions in CF 55 – 15 and CF 97 – 17 were for assault cases where your wife was the victim. You were fortunate to have been bailed and yet you still breached your bail condition by reoffending. This was brazen and an act of defiance. Your action implies a wilful disregard of the court orders and a lack of self-restraint.

Count One: Breach of DVRO – increased to 3 months imprisonment

Count Two: Breach of Bail – increased to 3 months imprisonment

Count Three: Breach of Bail – increased to 3 months imprisonment

MITIGATION

21. Having heard your mitigation, I am persuaded that you are remorseful albeit it may be temporary.

22. You also cooperated with police during your interview.
23. You have a family to support.

Count One: Breach of DVRO – reduced to 2 months imprisonment

Count Two: Breach of Bail – reduced to 2 months imprisonment

Count Three: Breach of Bail – reduced to 2 months imprisonment

GUILTY PLEA

24. Your guilty plea is early.

Count One: Breach of DVRO – reduced to 37 days imprisonment

Count Two: Breach of Bail – reduced to 37 days imprisonment

Count Three: Breach of Bail – reduced to 37 days imprisonment

SUSPENSION and OBJECTIVES

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

SENTENCE

28. Your sentence is as follows:

Count One: Breach of DVRO – 37 days imprisonment

Count Two: Breach of Bail – 37 days imprisonment

Count Three: Breach of Bail – 37 days imprisonment

29. **I refuse to suspend your sentence whether in part or in whole.**

30. I have considered the totality principle and the one transaction rule. I am also aware of your sentences in the other files.

31. I am not inclined to order that you serve your sentence concurrently or concurrently to your sentence in your other files. **You will serve your sentences in each count consecutively to each other and consecutive to any other sentence.**

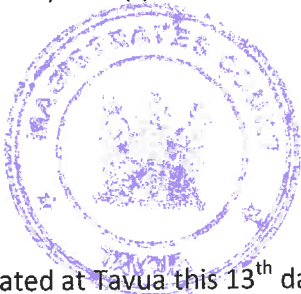
32. **The sentence in all three counts are to be served consecutively. This means that you are to serve a total of 111 days imprisonment.**

33. **I will deduct 1 month and 14 days [or 42 days] for the time you have spent in remand.**

34. **You have a balance of 69 days remaining.**

35. **Serve this remaining 69 days consecutive to any other sentence.**

36. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 13th day of January, 2020