

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

Criminal Case No: 151 - 2018

STATE

-v-

APIMELEKI LOTO

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Mr. Samy A. [Legal Aid Commission]
Date of Sentence : 25th February 2020

SENTENCE

BACKGROUND

1. **APIMELEKI LOTO**, you have pleaded guilty to the following charge:

Statement of Offence

COMMON ASSAULT: Contrary to section 274 of the *Crimes Act of 2009*.

Particulars of Offence

APIMELEKI LOTO on the 22nd day of April, 2018 at Nasomo, Vatukoula in the Western Division, assaulted **SEMAEMA YALAYALA**.

2. I am satisfied that your guilty plea and admission in court is voluntary and that you understand the consequences. The evidence tendered in support of your admission also supports your guilty plea.
3. I find you guilty and convict you of the charge.
4. The victim here is your 69 year old mother. You admitted being drunk on that day. Your mother chased you, your wife and daughter away during a function. You were angry. You argued with your mother and that is when you pushed her.

5. The matter was reported to police and you were then interviewed under caution. You admitted the same. You denied swearing at your mother.
6. You are not a first offender. You have a previous conviction for common assault in Tavua CF 200 – 14. You were drunk and you kicked the female victim [not your mother] on the hip. The offence was committed on the 16th of November 2014.
7. You have not spent any time in remand.
8. You are 44 years old. You are married with a 5 year old daughter. You have some prospects and you may start full time work soon in a mining company. You are the sole breadwinner. You support your parents. You are remorseful and seek forgiveness. You have reconciled with the victim. You seek another chance.

LAW

9. The maximum sentence that is imposable by law for the offence of common assault is up to 1 year imprisonment.

TARIFF

10. Suspended sentences have been deemed appropriate [State v Sokiveta [2013] FJHC 407; HAC 12.2013 (8th August 2013) .
11. Ultimately, each case will determine its own sentence within the maximum punishment imposable.

STARTING POINT

12. Considering the objective seriousness of the offence, a 15 day imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

13. A domestic relationship was in existence. This was your mother. She is elderly.
14. You were drunk at the time.
15. I increase your sentence to 1 month and 15 days imprisonment.

MITIGATION

16. You have a family to support.
17. I accept that you are remorseful.
18. You have cooperated with police during your interview.
19. I am certain that emotions must have been high at the time.
20. Your sentence is reduced to 10 days imprisonment.

GUILTY PLEA

21. You have pleaded guilty early and I will reduce your sentence to 6 days imprisonment.

SUSPENSION

22. 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** if your sentence is 2 years and below.
23. 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.
24. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

25. You have not spent any time in remand and so your sentence will not be reduced any further.
26. You are sentenced to 6 days imprisonment.
27. I refuse to suspend this term either in part or in whole.
28. You will serve this 6 days imprisonment immediately.

29. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation conditions which was imposed and explained to you on the 1st of May 2018 is made final.
30. You are to continue behaving towards your mother. You misbehave or breach any condition of that DVRO, you may be charged and prosecuted for another offence.
31. 28 days to appeal.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at Tavua this 25th day of February, 2020.