

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

Criminal Case No: 20 - 2020

**STATE**

-v-

**TAIVESI MAMAQA**

Before : RM Fotofili L.  
For Prosecution : Inspector Chinsami C. [ Police Prosecution ]  
Accused : In Person, Waived Right To Counsel  
Date of Sentence : 31<sup>st</sup> March 2020

**SENTENCE**

**BACKGROUND**

1. **TAIVESI MAMAQA**, you have pleaded guilty to the following charge:

**Statement of Offence**

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

**Particulars of Offence**

**TAVESI MAMAQA** on the 11<sup>th</sup> day of January, 2020 at Tavua in the Western Division assaulted **Ilisabeta Moa** thereby causing her actual bodily harm.

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. You disputed causing the victim any injury but you admit slapping her head hard. The victim was present in court on the day you pleaded guilty and said that it was painful.

4. Section 4 of the Crimes Act 2009 defines harm to include pain.
5. I accept what the victim said together with your admission and I find that you caused her bodily harm.
6. I find you guilty and convict you of the charge.
7. The victim is your 20 year old wife [ see date of birth on her medical report ]. You slapped the back of her head as she was not observing your Sabbath. It was painful.
8. You have not accepted the answers you purportedly gave police in your written caution interview and since the prosecution did not push to have a trial or voir dire, you will be sentenced based on your admission in court and you will not receive any discount for cooperating with police.
9. You are a first offender.
10. You have not spent any time in remand.
11. You are 22 years old. You apologise for what you have done. You have apologised to the victim or your wife. You have a 9 month old child. You are a farmer and the sole breadwinner.
12. The victim was present in court and verifies that you have apologised to her. You two are still together.

#### LAW

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

#### TARIFF

14. 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**

15. Considering the objective seriousness of the offence, a 2 month imprisonment term is selected as a starting point.

### **AGGRAVATING FEATURES**

16. A domestic relationship was in existence. This was your wife.
17. I increase your sentence to 2 months and 21 days imprisonment.

### **MITIGATION**

18. You have a family to support.
19. I accept that you are remorseful.
20. You are a first offender.
21. You are young.
22. I am certain that emotions must have been high at the time.
23. Your sentence is reduced to 1 month and 10 days imprisonment.

### **GUILTY PLEA**

24. You have pleaded guilty early and I will reduce your sentence to 25 days imprisonment.

### **SUSPENSION**

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** if your sentence is 2 years and below.
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. You have not spent any time in remand and so your sentence will not be reduced any further.

29. You are sentenced to 25 days imprisonment.

30. This imprisonment term will be wholly suspended.

31. Do not commit any other serious offence or any other offence punishable with imprisonment in the next 18 months or you risk this 25 days held in suspense or reserve being activated.

32. You are also fined \$80 to be paid in 28 days. You default and you risk up to 4 days imprisonment.

33. The Domestic Violence Restraining Order [ DVRO ] with section 27 standard non-molestation conditions which was imposed and explained to you on the 14<sup>th</sup> of January 2020 is made final.

34. You are to continue behaving towards your wife. Do not misbehave or breach any of those DVRO condition or you may be charged and prosecuted for another offence.

35. I will give you a mention date to review whether you have paid your \$80 fine. Your bail is extended until your fine is paid.

36. 28 days to appeal.



.....  
Lisiata T.V. Fotofili  
**Resident Magistrate**

Dated at Tavua this 31<sup>st</sup> day of March, 2020.