

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 306 - 2021

STATE

-v-

ERONI LUTUKINALIWA

Before : RM Fotofili L.
For Prosecution : A/CPL Chand A. [Police Prosecution]
For Defendant : Mr. Ravu S. [LAC]
Date of Sentence : 16th November 2021

SENTENCE

BACKGROUND

1. **ERONI LUTUKINALIWA**, you have pleaded guilty to the following charge:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

ERONI LUTUNIKINALIWA on the 5th day of September, 2020 at Korowere Vatukoula in the Western Division, unlawfully assaulted one **EMALI NAIVALU** thereby causing her actual bodily harm.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

ERONI LUTUNIKINALIWA on the 5th day of September, 2020 at Korowere Vatukoula in the Western Division, breached the Domestic violence restraining order number CF 5/20 of Tavua Magistrate Court dated the 6/01/20 by assaulting one **EMALI NAIVALU** the protected person.

2. I am satisfied that your guilty plea and admission in court to both counts is voluntary and that you understand the consequences. The evidence tendered in support of your admission also supports your guilty plea to both the counts.
3. I also take judicial notice of the court records in Tavua CF 05 – 2020 where you were charged, have pleaded guilty to and where I sentenced you for assaulting and causing bodily injuries to your wife **EMALI NAIVALU**. I had imposed an interim domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions on you in that case on the 6th of January 2020 and explained the conditions to you. You were supposed to behave towards your wife.
4. You breached that DVRO when you committed the first count of assault occasioning actual bodily harm which is reflected in the charge.
5. You are found guilty and I convict you of both counts in the charge.
6. The victim is your 33 year old wife. It was around midday when a friend of yours came by your home and asked you to join them in drinking liquor. Your wife told your friends that you will not go out to drink as this was the cause of you separating from your wife. You punched your wife on her face and chest several times and also hit her face and back with a belt buckle. Your wife received injuries as a result.
7. Your wife, the victim was medically examined about 2 days later after your violence. Amongst other things, the medical officer observed that her forehead was tender, there was bruising to her left shoulder and swelling and bruising to her left forearm.
8. The matter was reported and you were later interviewed under caution by police.
9. In your interview, you voluntarily admitted that you have been married to your wife for 11 years. You said that when she returned with the children, you two argued. You admitted punching her three times on her head and three times on her chest. You also hit her with your belt by folding the belt and hitting her with the buckle. The buckle came off. You are aware of the DVRO which was imposed on you in your other case.
10. You were a first offender at the time of this offence.

11. You have not spent any time in remand in this case.
12. You are 33 years old. You are married and you have 5 children. The eldest is 8 years old and the youngest is 1 year old. You work as a miner. You are the sole breadwinner. You have sought forgiveness from your wife. You seek leniency. You say that your wife swore at you for being drunk.
13. Your wife was present in court and she says that she has forgiven you. When you were sentenced to 2 weeks in prison for your other case CF 05 – 20, she found it hard to look after the children. She accepts that she swore at you before you hit her [swear not specified].

LAW

14. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.
15. For breaching a DVRO, the maximum sentence that is imposable by law for a first time breach can be a fine of up to \$1,000 and or imprisonment up to 12 months.

TARIFF

16. 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)].
17. For breaching a DVRO, there is no tariff established yet.
18. 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)].
19. Even a 34 year old man after he pleaded guilty to breaching a DVRO, was sentenced to an immediate 18 days imprisonment for threatening to kill his wife and throwing out her clothes [State v Akariva Seru Rakiraki CF 220 – 19 (Sentenced on 3rd of June 2020)].

FIRST COUNT – ASSAULT CAUSING BODILY HARM

STARTING POINT

20. Considering the objective seriousness of the offence for the first count, I select 4 month imprisonment as a starting point.

AGGRAVATING FEATURES

21. It is not clear from the evidence and I am not sure whether your children witnessed your violence.
22. However, the victim is your wife. A domestic relationship exists.
23. You hit her repeatedly especially on the face.
24. You used a weapon in this case a belt and belt buckle.
25. I increase your sentence for the first count to 9 months imprisonment.

MITIGATION

26. You cooperated with police during your interview.
27. I accept that you are remorseful.
28. Some passion and emotion must have existed at the time when you committed the offence and your wife accepts that she swore at you too.
29. You have a young family to support.
30. Your sentence is reduced to 5 months imprisonment which is equivalent to 140 days imprisonment.

GUILTY PLEA

31. You have pleaded guilty early and I will reduce your sentence for the first count to 93 days imprisonment.

SECOND COUNT – BREACHING DVRO

32. Since there is no tariff for this offence, I will adopt an instinctive synthesis approach when sentencing you for this count.
33. I emphasise the following significant factors before I pronounce your final sentence for this count.
34. Your breach of the DVRO was with the use of a weapon.
35. In your favour, you are remorseful, you have cooperated with police when interviewed, you have a young family to support and that emotions were high or a lot of passion must have been in existence at the time.
36. You have pleaded guilty early.

SUSPENSION, SENTENCING OPTIONS & OBJECTIVE IN SENTENCE

37. I can suspend any of your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
38. I also take into account the factors outlined in section 4 and 15 of the **Sentencing and Penalties Act 2009** in determining your sentence.
39. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

40. **ERONI LUTUNIKINALIWA**, you are sentenced as follows:

FIRST COUNT – ASSAULT CAUSING ACTUAL BODILY HARM

41. You are sentenced to 93 days imprisonment.
42. This will only be suspended in part.
43. 79 days imprisonment will be suspended for 2 years.

44. Do not reoffend or commit any other serious offence punishable with imprisonment in the next 2 years because you risk having this 79 days imprisonment that is held in waiting or in reserve, being activated.
45. The remaining 14 days, you will serve that immediately from today.

SECOND COUNT - BREACH OF DVRO

46. For this count, having adopted an instinctive synthesis approach, you are sentenced to 10 days imprisonment.
47. I am not inclined to suspend this in part or in whole.
48. You will serve these 10 days imprisonment immediately from today.

CONSECUTIVE OR CONCURRENT

49. I have considered the one transaction rule and the totality principle and particularly section 22 of the **Sentencing and Penalties Act 2009**.
50. I order the immediate 14 days imprisonment imposed on you for the first count and the 10 days immediate imprisonment imposed on you for the second count, are to be served by you consecutively.
51. I am of the view that the DVRO with section 27 standard non-molestation which was imposed on you and finalised on you in CF 05 -2020 for the benefit of your wife or the victim, is sufficient and there is no need to impose another DVRO.
52. 28 days to appeal.




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

At TAVUA this 16th day of November, 2021