

**IN THE MAGISTRATE'S COURT AT SIGATOKA**  
**CRIMINAL DIVISION**

**Criminal Case No. 380/2018**

**The State –v- Simione Vua Nakailagi**

**For the State: Sgt. Cerei**

**For the Accused: Mr. Makanjee**

**JUDGMENT**

The Accused is charged with one count of Defilement of a Young Person between 13 and 16 Years of Age contrary to section 215(1) of the Crimes Act.

It is alleged that on 14<sup>th</sup> day of July, 2018 at Sigatoka in the Western Division you had unlawful carnal knowledge of a girl namely LN aged 13 years 7 months and 7 days.

The Accused was arraigned on 23<sup>rd</sup> July 2018 and later entered a plea of not guilty. The matter was then heard on 6<sup>th</sup> November 2023.

**Prosecution's Case**

Prosecution Witness 1 (PW1) is LN , 17 years of Mavua. On day in question, she was about 13 years and residing at Nayawa at her Adopted Mum's residence with her small brother and Aunt Meresini. Between 4pm and 7pm, she recalls wearing a skirt, t-shirt, sport bra and panty. She was with Vani, Vasiti and her Aunty Siteri at Aunt Siteri's house, which consists of 3 bedrooms, kitchen, sitting room and bathroom. She knows Simi is related to Aunt Siteri and he stays with Aunt Siteri with Aunt Siteri's daughter, Mili. They were cooking dhal in the kitchen when Simi who was in the bedroom beside the kitchen called out to her. She went to him in his bedroom. He then began touching her breasts by squeezing them and kissed her neck. He then touched her private parts over her clothes and put his right index finger into her private part. She did not call out to Vani when he was doing this to her. He then stopped after she told him to stop and went back inside the sitting room where Vani and Vasiti had moved to but did not tell them. Simi then called her back into the room again. She went to him. Making sure the others did not

see them, he then took her to the toilet which was beside the bedroom. Inside the toilet, he then took off her t-shirt, sports bra and panty and began kissing her neck. He then caressed her breasts and he then had sexual intercourse with her by lifting her and lowering her vagina onto his penis resulting in penetration. The penetration went on for about 5 minutes and as result she was not feeling good. He then put her down onto the floor to stand where she then put on her pant and sports bra. She came out of the toilet, saw Vani and Vasiti and went out of the house to return to her home, which is beside Aunt Siteri's house. She recalls she was born on 11<sup>th</sup> December 2004 and her adopted mother's name whom she was residing with is Asenaca Kurikama but her biological mother is Litiana Bau. Asenaca Kurikama is actually her father's sister and her name appears on her birth certificate. She knows Simi as her Uncle and has known him prior to the incident. She knows Simi works at Sigatoka Town Council as he wears a uniform of the said Council whenever she would see or meet him after school. However, after the incident she did not meet him again as she moved to Mavua to occupy their other home in 2018. She recalls Simi is fair in complexion, tall in height, does not have hair on his head and no scars on his face. She identified Simi as the Accused in the dock.

In cross-examination, she states that she did not know the Accused for that long prior to the incident. She went to him after he initially called her because he called her and she did not know of his intentions. She admits touching the Accused's penis and then they kissed. She recalls the toilet is beside the kitchen and if one situated either in the sitting room or the kitchen one cannot see who goes into the toilet. She denies lying about her evidence just to protect her reputation. She states that she had the opportunity to tell Vani and Vasiti but she did not tell them.

Prosecution Witness 2 (PW2) is Asenaca Kurikaba, 45 years of Mavua Village. PW1 is her adopted daughter but PW1's actual biological mother is Litiana Bau. She recalls when she came back from work on 15<sup>th</sup> July 2018, which was the next day after the incident when she heard about the incident. She then met PW1 and saw a love bite on her neck so she waited for PW1's father to return home to talk to her about it. Her father then reported the matter to the police.

Prosecution tendered in the Birth Certificate of PW1 as Prosecution Exhibit 1 (PE1).

Prosecution closed its case.

The Court found the Accused had a case to answer to and explained the options to the Accused.

#### Defense Position

The Accused exercised his right to remain silent.

#### Analysis

Prosecution bears the burden of proof in proving the elements of the charge beyond reasonable doubt. In this matter, the elements of the offence are:

1. That the Accused;
2. Had unlawful carnal knowledge of PW1;
3. PW1 being a young person above the age of 13 years but below 16 years.

In relation to the first element of the offence, that being identification, PW1 recognized the Accused in the dock as Simi. She states that she was at the house of Aunt between 4pm and 7pm that day and in that period she met the Accused. Could she have mistaken Simi's identity? She knows Simi from before the day in question as she saw him returning from work in his work uniform when she would be returning from school. She also knows Simi as her Uncle and they reside next door to her. Now back to the day in question, she does not mention when in particular between 4pm and 7pm that she first saw and met Simi. But I take judicial notice that it would still be daylight from 4pm to 6pm and dusk setting in before or around 7pm. Therefore, the reasonable perception of lighting inside the house during these time would be sufficient to make a positive identification of people in a house. I also note that Prosecution did not further expand on this nor did Defense make it an issue. I therefore accept that lighting was sufficient to make such and identification and recognition. In regards to the distance and time to make

the said observation of Simi, PW1 stated that she was physically, and intimate, with him. There is no doubt at all that a person that close would not be able to make that observation. There was also nothing infringing the observation. In addition to all this, PW1 explained in Court that Simi was fair, tall and had no hair. These descriptions matched the Accused physical characteristics. I therefore accept that Simi is the Accused.

For Element 2, PW1 stated she had sexual intercourse with the Accused. She described sexual intercourse as him lifting her and lowering her to allow her vagina to sit onto his penis resulting in penetration. The penetration went on for about 5 minutes and as result she was not feeling good. He then put her down onto the floor to stand where she then put on her pant and sports bra. This element is proved beyond reasonable doubt.

For Element 3, PW1 stated that she was about 13 years of age at the time of the incident. PE1 was also submitted in evidence and it shows she was born on 11<sup>th</sup> December 2004. This indicates that at the time of the incident, PW1 would have been 13 years, 7 months and 7 days old. This also proves the element of the offence beyond reasonable doubt.

#### Court's Findings

The Prosecution has therefore discharged its burden in establishing the charge beyond reasonable doubt.

Simione Vua Nakailagi I find you guilty as charged.

We will now proceed to antecedent report and mitigation.

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**J Daurewa**  
**Resident Magistrate**

**4<sup>th</sup> December, 2023**