

**IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY**

Scan, file & Upload
CR 14 of 2016

27/05/16

BETWEEN: **R E X** - Prosecution

AND: **SOSAIA LANGI NAUFAHU** - Defendant

CERTIFICATE OF CONVICTION AND SENTENCE

This is to certify that Sosaia Langi Naufahu, male, date of birth: 30 June 1961, was on 11 March 2016 in the Supreme Court of Tonga, **CONVICTED** upon indictment:

1. On the count of grievous bodily harm, contrary to section 106(1), (2)(a) (c) or (d) of the Criminal Offence Act [CAP 18].
2. On the count of domestic violence, contrary to section 28 (1) (a) of the Family Protection Act 2013.

On 23 May 2016, he was **SENTENCED** as follows:

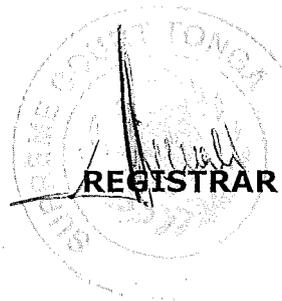
[1] For the count of grievous bodily harm – 5 ½ years imprisonment with the final 18 months suspended on the following conditions;

- a. He is not to commit any offences punishable by imprisonment for two years;
- b. He is during the time of his suspension to reside where directed by his probation officer;

*rec'd 27/05/16
HHC*

- c. He is not to communicate with or physically approach the complainant unless she has made it first known to his probation officer that she is willing to see him;
 - d. He is not to consume alcohol during the period of his suspension;
 - e. He is to attend a course under the direction of the Salvation Army and Probation on alcohol and drug abuse;
 - f. He is to attend a course on domestic violence and abuse under the direction of probation and the Women's Crisis Centre.
- [2] For the count of domestic violence – 10 months imprisonment to be served concurrently with to count 1.
- [3] In total the defendant will serve 4 years imprisonment commencing from 11 March 2016.

DATED: 26 MAY 2016



preparing breakfast and lunch for the children. She stated that she was using her laptop whilst she waited for the food to cook. She heard the prisoner walk into the kitchen and placing a large pot on the stove and running water. After about 20 minutes, he returned and turned the stove off. The prisoner then carried the pot from the stove. The complainant walked out of the room and bumped into the prisoner as she made her way to the toilet. After she had finished in the toilet, she reached out to open the door when the prisoner splashed the pot of hot water on her upper body. He then walked away whilst she cried out to a relative in the house for help. The complainant went to the shower. The relative told the prisoner not to do anything else to the complainant as he went and put the pot back on the stove. The prisoner did not render any assistance to the complainant who went to the shower. A taxi was called for and the complainant went to hospital where she was admitted into intensive care for 5 days. The burns had caused an airway obstruction which required her breathing to be supported by mechanical ventilation. Medical advice is that she received 35 to 40 percent burns of her total body surface area. Permanent scars and damage has been caused to the complainant's hand and eye.

- [3] In his probation report, and indeed initially to the probation office the prisoner suggested that the splashing of water was accidental although he had subsequently admitted it was not to police and on the 11th April 2016 had entered an early plea to both counts. I sentence him on the basis that his actions were deliberate and premeditated consistently with his pleas. The probation report throws some light on the offender and the nature of the relationship between he and his wife. It would seem, although initially a happy relationship, it had deteriorated over the years. The prisoner's drinking and controlling nature is mentioned in the report and also the fact that from time to time

there appears to have been some domestic violence. The complainant also had extramarital affairs according to the probation report which appear to have been corroborated by a close relative. The complainant had attended a course of study in Vanuatu in about 2009 and it is suggested also that matters deteriorated after that. It seems plain that this marriage was unhappy and at times violent. Alcohol seems to have played a part and no doubt any marital affairs that the complainant became involved with contributed also to this discord. Mr Tu'utafaiva stated that the prisoner had arisen to find an email to a male friend of the complainant which he asserted was the trigger for the events of that morning.

- [4] I consider an appropriate starting point for deliberately splashing boiling water on his wife must be in the upper range of the ten year maximum period. Mr Tu'utafaiva accepted that this was so. His actions placed the complainant on life support for five days and a victim impact report states that she was in hospital for a month after that. She was obviously in great pain and the report indicates that not only she has residual physical effects from the incident but she has suffered understandingly marked psychological effects as well. It must have been a terrifying experience for her. Sadly, it would seem some of the children in the large family of nine seem to have taken the side of the father despite the cruel nature of their father's offending. This is probably because he has been the principal breadwinner in the family. The complainant feels unable to return to the matrimonial home although the prisoner is in custody, and plainly the actions of Mr Naufahu have had a very destructive effect upon her. I am told she has 4 of the children still requiring support with her and plans to file for divorce. I consider the sanctions of the prisoner, although perhaps motivated or triggered I suspect, by a long period of domestic discord, were both callous and very cruel. They were plainly premeditated.

[5] There is evidence in the probation report and in other documents from his family who have obviously been under great stress, his church and others of a person who has made a contribution to the community. He was in the armed forces for many years and ran what seems to have been a reasonably successful electrical business which is being carried on by members of his family. It seems the prisoner may display a personality that in public is at variance with that encountered by his wife in their private life, more commonly known as a Jekyll and Hyde personality, particularly, I suspect where alcohol has been involved. The principal sentencing rationale in cases like this is the protection of victims of violence, deterrence of the prisoner and others in the community from this kind of offending towards women, denunciation of callous and cruel actions like this, and appropriate retribution. Afterwards, I observe, he took no action to relieve her distress or assist her in any way. An appropriate starting point, in my view, is 8 years imprisonment. Had the injuries been any more serious, I would have been inclined to an even higher starting point. I do not think, and Mr Tu'utafaiva did not press this, that any marital infidelity or suggestion of this on the part of the complainant, reduces the objective seriousness of the offending, and I do not take this into account this in reducing the starting point.

[6] By way of mitigation I take into account the early guilty plea which has saved his wife the ordeal of giving evidence. I also take into consideration the fact he is a first offender, aged 54 and some in the community have spoken well of him. He has served Tonga in his capacity as a member of the armed services for a long time including overseas service on two occasions. He is involved with his Church. He has, it seems, provided as well as he could for his family (as their letter to the Court evidences) although their lives must have been adversely affected by his

behaviour and drinking and no doubt occasions of domestic violence over the years. He has, it is said, in the probation report made an apology which has been accepted, although I rather doubt, having read the victim impact report, that this is really so. His wife seems to be very scared of him and has sought protection. I allow him two years and a half by way of mitigation. The sentence I pass on him is 5 and a half years imprisonment for grievous bodily harm backdated to the time of his remand in custody.

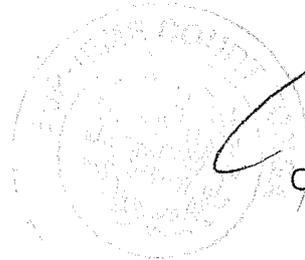
[7] I consider, however, because of his early plea, his age, and the fact he is a first offender and probably can be rehabilitated he is deserving of some measure of his sentence being suspended. In his case, I suspend the final 18 months of his sentence on the following conditions;

- a. He is not to commit any offences punishable by imprisonment for two years;
- b. He is during the time of his suspension to reside where directed by his probation officer;
- c. He is not to communicate with or physically approach the complainant unless she has made it first known to his probation officer that she is willing to see him;
- d. He is not to consume alcohol during the period of his suspension;
- e. He is to attend a course under the direction of the Salvation Army and Probation on alcohol and drug abuse;

f. He is to attend a course on domestic violence and abuse under the direction of probation and the Women's Crisis Centre.

[8] He is warned that a failure to comply with any of these conditions may well see him returned to prison to serve the balance of his sentence.

[9] On the offence of domestic violence he is convicted and sentenced to 10 months imprisonment concurrent with count one.



A handwritten signature in black ink, appearing to read "C. B. Cato", is written over the seal.

C. B. Cato
Judge

DATED: 23 May 2016.