

clothes. She screamed and woke her children up. The accused threw her on to a bed in another room and told her to face down. The complainant told her to be careful because she was pregnant. He took off his clothes and she felt his penis on her buttocks but it was not erect. The prisoner aroused himself and told her to place his penis inside her vagina but she could not. Her children were crying out calling her name. The prisoner then pointed a knife at her and told her to face up. She was very scared and did what she was told. He then pointed the knife at her chest and told her to widen her legs and he then inserted his penis into her vagina. Whilst raping her, he tried to kiss her. She pushed him away. He ejaculated. He walked away and put the knife on the table. She then realised that it was one from her kitchen. She took her children to a neighbour's after she left. On the next day, she reported the matter to the police. I have read a victim impact report which evidences that the trauma has seriously affected both the complainant and her husband. No harm however, came to the baby. I have also listened to the complainant in Court, as she bravely recounted her experience and said she forgave the complainant, and indeed asked for leniency for him. Some gifts have been made by the family in the Tongan way.

[3] The prisoner is now 18. He has no previous convictions. He had been drinking. He is the youngest of a large family. His parents work at a plantation and his mother as a domestic. He left school in the fifth form having failed to pass National examinations. He is unemployed. He has expressed regret.

[4] The starting point, assessed objectively, must reflect the aggravating circumstances that are present here and be well above the usual starting point of five years. The Crown cited to me *R v Holani* [2016] TOSC 8, where I had sentenced a young man who had broken into the complainant's residence to four

years and nine months imprisonment suspending the final year on conditions. In that case, the starting point I assessed as being 7 years, because of the aggravating feature that he had broken into the complainant's home in the early hours of the morning and there committed the crime of rape. I expressed the view that a woman was entitled to feel safe in her home. Home invasions accompanied by sexual offending I have found not uncommon in Tonga possibly as a consequence of the limited security many homes have. Holani had no previous convictions. He was drunk at the time of the offending. He also co-operated with police and pleaded guilty. He was given two years and three months mitigation for his early guilty plea, his previous good character and the fact that gifts had been given to the victim.

[5] In this case, the offending was objectively worse. Known to the prisoner, the complainant was pregnant and her two children were nearby. He used a knife to intimidate her which he had obtained from her kitchen after unlawfully entering into the house. The starting point I fix at seven years and nine months imprisonment. The sentence that I impose must reflect the seriousness of this offending and be one that denounces and deters the prisoner and others from this kind of offending, and is protective of women.

[6] From this, I give a substantial discount, however for his early guilty plea, his youth (he was several years younger than Holani at the time of the offending), the fact he is a first offender, his expression of remorse, his apology which was accepted and for the family gifts. I also take into account the complainant's plea for leniency. I allow him two years and nine months discount in mitigation. The sentence I impose upon him is 5 years for rape, backdated to the time he was placed in custody.

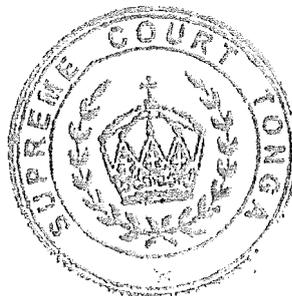
[7] I suspend the final 12 months of this sentence also. He has expressed remorse, has pleaded guilty, and is young. He has accordingly some prospect of rehabilitation. As against this, however, is the predatory and callous nature of his crime which militates in my view against any greater suspension. The conditions of his suspension are;

- a. He is not to commit any offences punishable by imprisonment for a period of two years;
- b. He is placed on probation for the period of his suspension;
- c. He is to live where directed by his probation officer;
- d. He is not to drink alcohol;
- e. He is to attend courses under the direction of probation on drug and alcohol rehabilitation and in relation to the sexual abuse of women.

[8] Should he fail to abide by these conditions, he shall render himself liable to return to prison to serve the suspended portion of his sentence.

[9] On the offence of serious housebreaking, in this case, a home invasion prior to his committing a serious crime, he is sentenced to three years imprisonment to be served concurrently with the rape sentence and backdated.

DATED: 19 JULY 2016



C. B. Cato

**C. B. Cato
JUDGE**