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BETWEEN:

R E X

- Prosecution

AND:

SAMI LIKILIKI FISILAU

- Accused

BEFORE THE HON. JUSTICE CATO

Counsel: Ms. T. Kafa for the Prosecution

Accused appeared in person

SENTENCE

[1] The Prisoner, Sami Fisilau pleaded guilty to one count of serious bodily harm contrary to sections 107(1), (2) (c) and (3) of the Criminal Offences Act, and one count of Domestic Violence under sections 4(a) and (b)(i) of the Family Protection Act.

[2] The facts were serious. The victim was the prisoner's wife, a 44 year old female. On or about the 8th September 2017 in the evening the victim, who had returned to Vaini with her boyfriend, and went back to her home where plainly her relationship with the prisoner was breaking up. There were three children who had been left at home with the prisoner. The victim asked to ring her boyfriend and used the prisoner's phone to do so. There was some talk about the victim wanting to continue drinking alcohol and smoking cigarettes. The prisoner agreed to this. The victim then indicated that she wanted to take the two older children, her daughters, to her sister's house. The prisoner disagreed and told her to go the next day. They then had an argument and the prisoner proceeded to try to punch the victim. She ran away but he grabbed her hand. The two girls were crying and the prisoner then calmed down.

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- [3] The prisoner then asked the victim to go into another room where they could talk. The victim took the children into the room and they watched a film. The prisoner told the children to go outside and locked the door. He told the victim to sit on the bed and she commenced to apologise, scared that he might do something to her. The prisoner walked towards a table inside the room and grabbed an iron bar. He raised it at the victim's head. She held up her youngest daughter to block him. She attacked the prisoner and the iron bar fell down. She tried to get the iron bar but the prisoner inserted his fingers into her eye. She felt a lot of pain and bit his hand but he kept on trying to insert his fingers into her eyes. The victim held onto her daughter and the prisoner hit her left leg with the iron rod. She fell to the floor and felt a lot of pain on her leg. She then saw that her leg was bleeding.
- [4] People who were passing by heard the commotion and intervened. An ambulance was called and the victim was taken to hospital. The prisoner admitted his offending to the police. The victim had an open wound to her leg of 1-1.5 cms. The Doctor found there was an open fracture to the proximal tibia and she had periorbital swelling with conjunctival redness. She was in hospital for several days.
- [5] The fact that the relationship was plainly failing with a third party involved I accept to be a motivating factor for the prisoner's apparently uncharacteristic violence. However, he had no excuse for taking an iron rod to the victim or in grabbing her eyes, and exacting his own form of retribution even if, as the probation report states, his wife had been having affairs for a long time and was continuing to do so when this incident arose. I am told she has left Tongatapu and the children behind with the prisoner. When I questioned the prisoner today about the children, it transpired that he, being on bail pending sentence, had made no efforts to arrange care for the children during the period of any imprisonment that was to follow. For this reason, I postponed his sentencing until Monday morning so that arrangements can be made for their care. I am told by him today that arrangements have been made for their care.
- [6] The maximum sentence for serious harm is 5 years imprisonment. Causing an injury such as this could also qualify for a more serious offence namely causing grievous bodily harm, an offence which carries a maximum sentence of ten years. The Crown submitted that a starting point of two years was appropriate taking into account his early guilty plea and the fact he is a first offender. I consider that the starting point when a weapon is used, initially it seems aimed at the head and then used with

sufficient force to the leg of the victim to cause a fracture and a serious wound as well as causing trauma to her eyes from which the victim was hospitalized for several days means the offending is in the upper level of serious harm. The starting point I fix as 4 years imprisonment, the protection of women from domestic violence, condemnation and deterrence being the sentencing principles that are important here. The message communicated by this Court is that domestic issues are no justification or excuse for violence and domestic abuse will be met with firm penalties.

- [7] The prisoner is aged 52, is a first offender and having read the probation report, I formed the view he was struggling to keep his marriage together and look after his children in what must have been a difficult period. He works in a plantation. He earned a living from this kind of work. His children are teenagers with one the youngest aged 5.
- [8] He has been co-operative with the police and has pleaded guilty. He expresses regret for his actions.
- [9] I consider that his guilty plea, expression of regret and the fact that he a first offender who has for long had to cope with a difficult domestic situation justifies 18 months mitigation of sentence. The sentence I impose upon him for serious harm is two and half years imprisonment backdated to the date of his remand in custody for this offending.
- [10] I am aware however that he has three children now dependent on him. I think it unlikely that he will reoffend now that his wife is no longer living with him. He is a first offender, and, as a man now in his fifties, that is an important factor to consider. I am going to suspend the final 21 months of his sentence on the following conditions;
- a. He is not to commit any offences punishable by imprisonment during the period of suspension;
 - b. He is placed on probation to live where directed. Should his wife return to the home, his probation officer is to make arrangements for him to live elsewhere. He is not to live with his wife for the period of his suspension even if the parties attempt to achieve reconciliation. In

the Court's view, a cooling off period is required as well as education for the prisoner on domestic abuse and dealing appropriately with what would seem to be a relationship marred by his wife's infidelity.

- c. He is to attend a course on domestic violence and domestic relationships under the direction of probation and the Woman's Crisis Center

- [11] I have considered whether in the circumstances I should fully suspend the sentence but I do not think that the public interest today in Court's taking a strong stand on domestic violence would allow this.
- [12] He is warned that he must comply with the conditions of his suspension or risk being returned to serve the balance of his sentence of imprisonment.
- [13] I would ask that this judgement be placed before the Solicitor- General, Mr Sisifa for him to urgently confirm by way of a report that satisfactory arrangements have been made for the support of the children and their welfare until their father is released from prison or other suitable arrangements are made for their care and protection.
- [14] On the domestic violence charge he is convicted and sentenced to 8 months imprisonment concurrent with count one.

NUKU'ALOFA: 26 November 2018



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

C. B. Cato
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