

SENTENCE**Regina v Amelia Kabui****(CRC: 776/2017)***Coram: J.K. Numapo**Prosecution: Sgt. E. Konle**Defence Counsel: A. Radclyffe***Brief Background**

The defendant Amelia Kabui aged 22 of Manakwai village, Malaita Province was charged with four (4) separate counts as follows:

- (i) Assault on Police Officer – contrary to section 190 of the Police Act 2013,
- (ii) Obstructing a Police Officer in the due execution of his duty – contrary to section 247 (b) of the Penal Code,
- (iii) Intimidation and Molestation – contrary to section 231 (1) of the Penal Code, and
- (iv) Behave in a disorderly manner in the Police Premises to wit Police cell (Watch House) – contrary to section 193 (c) of the Police Act 2013.

Prosecution made an application pursuant to section 190 (2) (b) (i) of the Criminal Procedure Code (CPC) to withdraw the charge of intimidation and molestation (count no. 3) before plea was taken. Application was granted and the charge was formally withdrawn. This reduced the total number of charges to only three (3). Defendant was arraigned and pleaded guilty to all three (3) charges.

Brief Facts of the Case

On the 30th June, 2017 at around 11:00pm a Police Patrol Unit sighted a vehicle (black in colour) bearing the registration number MA 7734 travelling along the Prince Philip Highway in the westerly direction towards the city centre. The vehicle was travelling at a high speed and was criss-crossing the lane swaying from left to right posing great danger to other motorists. The Police Patrol gave chase and after few attempts managed to stop the vehicle at the Town Council roundabout. When the Police Officers came out to investigate the vehicle the defendant confronted them and started scolding and swearing at the Police Officers and became very abusive and threatened to report them to her father, the Governor-General to have them all sacked from the Police Force. The defendant uttered words to this effect; *“yu no save lo me daughter blo Head of State...yu save me blo Tobaita? Bae mi busaem yu and outim intestine blo yu...yufala Police waka blo yufala useless...bae me talem daddy blo me Governor-General sackim yufala..”* The shouting and argument went on for a while and caused a bit of scene which attracted curious on-lookers and other by-standers within the vicinity. Defendant directed her anger particularly towards a Policewoman by the name of June Gorae and punched her on the chest. The argument continued and it was during that time that the driver of the vehicle escaped unnoticed. The defendant was eventually apprehended and taken to the Central Police Station. At the Police Station the defendant continued with the barrage of abusive

and threatening words directed at all the Police Officers including those manning the station by saying; *"yufala Police mother fucker, fuckem yufala"* Defendant was eventually arrested and charged and placed in the Watch House at the Police Station.

Sentencing

I start on the premise that an attack on a police officer is an attack on the authority and the rule of law and therefore, a person 'can expect an immediate custodial sentence' (emphasis mine) as in the words of Palmer CJ in *Fafunua v Regina [2004] SBHC 131*. His Lordship went on to say that; *"Police Officers are representatives of the State in the administration of the rule of law and should be respected when they arrive at any scene of crime. They must be allowed to perform their duty in ensuring that peace and normality is restored whether it be in a public place or in a private home.....They have no personal agenda or interest to fulfil when attending a crime scene and therefore should never be treated with hostility.....An immediate custodial sentence must be expected when any police officer is attacked"*.

Police Officers are law enforcement officers responsible for upholding the rule of law, protect lives and property and maintaining peace and order in the community. They represent the authority of the State when performing their duties. Respect accorded to a police officer is a respect accorded to the rule of law. Police Officers must be allowed to perform their duties freely and without any fear of being attacked. It is not an easy task to work in odd hours of the day and night to keep the community safe and for that reason the community must show some appreciation and respect for the police officers.

Section 2 of the *Police Act 2013* (hereinafter the 'Act') categorized attack on police officers as a very serious offence and this is reaffirmed further by the penalties provided under section 190 of the same Act which carries a substantial fine and maximum imprisonment term of five years. The penalty has increased substantially and almost double to that provided under the old offence under section 247 of the Penal Code. The intention of the Parliament in this new Act is therefore, very clear in that anyone who assaults a police officer must be punished severely. Having said that, I must also state here that the *Fafunua's* case does not make it mandatory that an assault on a police officer is an automatic imprisonment. The legislation would have said so if custodial sentence is mandatory but it didn't and makes provision for a fine as well custodial sentence or both. In addition, there is this judicial discretion of the court to impose an appropriate sentence that fits the crime.

The law itself and the case laws in this jurisdiction clearly laid down some guidelines on sentencing that the court must take into consideration when deciding the appropriate sentence to maintain some degree of parity and consistency in sentencing hence the expression 'like cases must be treated alike'. The established common law principles on sentencing also provide some guidance on sentencing to achieve certain objective, purpose or outcome such as deterrence, rehabilitation, restitution and retribution. On the other hand there is this unfettered discretion of the presiding magistrate or judge that is exercised solely and exclusively based on his or her own assessment of the facts and circumstances presented before him. In general however, any sentence imposed by the court must be appropriate, fair and reasonable taking into account all relevant factors and circumstances. It must also reflect the views of the society regarding the type of the offence and things such as prevalence of a particular type of offence are also taken into account. At the end of

the day, however, each case must be decided on its own merits having regards to the nature of the offence itself and the circumstances under which the offence was committed.

Sentencing is a stage where combination of factors are taken into consideration such as the: entire and special circumstances and/or features of the case itself, the relevant applicable law; individual interest versus the public interest; interests of the individuals concerned – the offender and the victim, are all considered, weighed up and contrasted against each other. With all these the Court must ensure that the sentence it imposed is just, fair and reasonable to all parties concerned.

The main issue for this Court now is; what is the appropriate punishment for the defendant Amelia Kabui for the offences she has been charged with? In order to answer this question, the Court must address the following pertinent issues:

- (i) What are the relevant facts or the particular circumstances in which the offence was committed?
- (ii) What is the nature of the offence with which the offender has been charged with and its relevant sentencing trend within the jurisdiction?
- (iii) What are the aggravating and mitigating factors and circumstances?
- (iv) Are there any special features of this case that would require the attention of the court?
- (v) After considering all the relevant facts and circumstances, what should be the appropriate sentence? And
- (vi) Whether the sentence should be custodial sentence, a fine or suspended sentence?

I will now consider the issues outlined above:

- (i) **What are the relevant facts and circumstances in which the offence was committed?**

The relevant facts and circumstances are already stated above (Facts of the Case) and I do not wish to repeat it. I will simply refer the reader to the above.

- (ii) **What is the nature of the offence with which the offender has been charged with and its relevant sentencing trend within the jurisdiction?**

The defendant pleaded guilty to the following charges:

- (1) Obstructing police officers in execution of duty – contrary to section 247 (b) of the Penal Code
- (2) Assault on police officer – contrary to section 190 of Police Act 2013 and,
- (3) Offensive behaviour on the police premises – contrary to section 193 (c) of Police Act.

The sentencing trend as reflected in the case laws has been one of custodial sentence as an immediate consideration but options are also available for a fine and non-custodial sentence as well.

- (iii) **What are the aggravating factors and mitigating factors and circumstances?**

In my view, the aggravating factors against the defendant were that:

- (a) she was very aggressive towards another person without good cause or reason

- (b) She reacted to an unprovoked situation that is totally unwarranted
- (c) She used foul and offensive language towards another person
- (d) She threatened to kill a police officer on duty at the time
- (e) She obstructed and prevented the police officers from carrying out their duties, and
- (f) She was very abusive towards the police officers that continued even at the Central Police Station in front of other police officers as well.

The mitigating factors in defendant's favour are:

- (a) Defendant pleaded guilty to all the charges thereby saving the Court time and resources
- (b) She was very remorseful and apologized to the police officers for her behaviour. A formal letter of apology to the police was tendered into Court.
- (c) She has paid compensation to the Police woman Constable June Gorae whom she assaulted in accordance with the prevailing customs of the Malaita people.
- (d) The attack was not a violent one and the policewoman has not suffered any injuries
- (e) She is a first time offender with no prior convictions
- (f) She is a student doing her final year at the University of South Pacific in Suva, Fiji,
- (g) She has already suffered considerable shame and embarrassment brought upon herself and her family because of public humiliation.

- (iv) After consideration all the relevant facts and circumstances, what would be the appropriate sentence for defendant Amelia Kabui?**

This is the main issue for determination in this case. A consideration of this question requires the Court to carefully consider and weigh the factors operating for and against her. Based on her guilty plea, I accept that Amelia Kabui has committed a serious offence by assaulting a police officer as prescribed by law of which custodial sentence can be expected. I also accept that her action(s) is a direct challenge to the authority of the State and undermines the rule of law. But I also accept that the nature of the offence including the facts and circumstances of the case itself places the case at the lower end of the scale. Furthermore, the mitigating factors I outlined above substantially mitigate the severity of the offence.

- (v) Whether sentence should be a custodial sentence, a fine or suspended sentence?**

Having considered all the relevant facts and circumstances including aggravating and mitigating factors, I consider that a non-custodial sentence is the most appropriate form of sentence for this case. Defendant was charged with three separate offences and combination of fines and suspended sentence will also be considered.

To The Defendant

Your actions and conduct on that night in question was totally uncalled for and unwarranted, to say the least. You acted irrationally towards an unprovoked situation. Being drunk is not a good excuse and is not a defence in court. You brought this upon yourself and should take full responsibility of your own actions. As an intelligent University student you should know the consequences of your action and behave responsibly and set an example for others. Your unruly behaviour has brought

shame and embarrassment not only to yourself but also to your family and to your people given the standing of your family in the country.

We are fortunate to live in a country where police officers exercised restraint and performed their duties according to law. In other countries police officers would have reacted strongly and with brutal force if one of them is attacked and you don't have to look far to know what I am talking about.

I have a choice between sending you to prison or consider other non-custodial penalties. Today, you can thank your lucky stars because I have decided not to give you a custodial sentence and I am doing that based on the following reasons:

1. You pleaded guilty early to the charges saving the court valuable time and resources.
2. You expressed remorse and unreservedly apologized for your behaviour to the police officers and this was evidenced in a written apology tendered to the Court.
3. You have paid compensation to the policewoman you alleged to have assaulted and reconciliation has taken place according the prevailing customs of the Malaita people.
4. The case itself was widely publicized and attracted a lot of media attention which caused you and your family great embarrassment. In my view, you and your family have suffered considerably from public humiliation as a result of this incident. I do not wish to prolong this suffering further.
5. Finally, as fallible human beings we are bound to make mistakes and cross that red-line at some stage of our lives and learn from those mistakes and change for the better and become good citizens of our country. I want to give you that opportunity to change for the better and I am confident that you will become a good law abiding citizen after this experience and with your University education contribute meaningfully to the development of your country.

Court Order

Count 1 – Obstructing Police Officers in execution of duty – section 247(b) of the Penal Code

- Defendant sentenced to twelve (12) imprisonment to be wholly suspended at the rising of the Court

Count 2 – Assault on Police Officer – contrary to section 190 of Police Act 2013

- Defendant to pay a fine of \$5000 in default twelve (12) months imprisonment

Count 3 – Offensive behaviour on Police premises – contrary to section 193(c) of Police Act 2013

- Defendant is sentenced to two (2) months imprisonment and to be wholly suspended at the rising of the Court.

I order that the fine is to be paid forthwith

I further order that the Defendant enter into a Good Behaviour Bond for a period of twelve (12) months with a surety of \$1000 effective as of today. The suspended sentences are to be served concurrently. I also order the Defendant's passport be given back to her forthwith.


John Numapo
Chief Magistrate

Entered this 14th July, 2017



Sighted
[Signature]
1.3.2018