

**IN THE CENTRAL MAGISTRATES' COURT
OF SOLOMON ISLANDS**

Criminal Jurisdiction
505 of 2018

Criminal Case No.

On the 2nd day of the month of June 2019
Before Ricky Iomea, Deputy Chief Magistrate



For the Prosecution: Ms. Tabepuda P.
For the Accused: Mr. Kwalai D.

BETWEEN: REGINA Complainant/State
AND: LISTA ARAMBOLA Accused/Defendant

SENTENCE

Ms. Arambola you have been charged with six (6) counts of Domestic violence in the form of Physical Abuse contrary to section 4 (1) (a) and section 58 of the Family Protection Act¹ and also one (1) count of Domestic violence in the form of psychological abuse contrary to section 4 (1) (c) as read with section 58 of the Family Protection Act².

You had earlier, in the course of the proceeding, pleaded guilty to Count 5 which is also Domestic violence - physical abuse contrary to section 4 (1) (a) and section 58 of the Family Protection Act.

You were found guilty after trial on counts 3, 4, 6 and 7.

THE FACTS

The Complainant was about 9 years old when the offences were committed against her. You are the step-grand-mother of the Complainant. You were and are in a domestic relationship with the Complainant as you are the partner of her biological grandfather.

The Complainant was living with you and her grandfather between 1st January and 8th May 2018 during which the offences in counts 3, 4, 5, 6 and 7 were committed.

The Court found in count 3, that at Sali Primary School Compound on a date unknown between 1st January and 8th May 2018, you physically abused

¹ These are numbered as counts 1 – 6 on the charge sheet

² This is numbered as count 7 on the charge sheet.

Lisia Tati who is your step grand-daughter by doing a conduct that caused her bodily pain to wit hitting her head and right eye-brow with a piece of timber and hitting both her legs and hands with a guava stick.

In count 4, the Court found that that also at Sali Primary School, on another occasion on a date unknown between 1st January 2018 and 8th May 2018, you also physically abused Lisia Tati who is your step grand-daughter by doing a conduct that caused her bodily pain that is, hitting her backside with a hammer.

For Count 5, you pleaded guilty to the charge. The particulars are that at Taoganivao village, on an unknown date between 30th April 2018 and 8th May 2018, you physically abused Lisia Tati who is your step granddaughter by doing a conduct that caused her bodily pain to wit hitting both her legs, her hands and back neck with a stick. It is agreed that that on that unknown date, the Complainant was playing with her friends at Taoganivao village when you came looking for her. You then beat the Complainant with a magari stick on both of her legs, hands and neck.

You are convicted on your own guilty plea to that count.

In relation to Count 6, the Court found on the evidence that also at Sali Primary School on another occasion on a date unknown between 1st January 2018 and 8th May 2018, you physically abused Lisia Tati who is your step grand-daughter by doing a conduct that caused her bodily pain to wit hitting her private part with a piece of timber and hitting her chest with your hands.

Finally, in Count 7, the Court found as established on the evidence beyond reasonable doubt that at Sali Primary School on a date unknown between 1st January and 8th May 2018, you psychologically abused Lisia Tati who is your step grand-daughter by doing a conduct to wit intimidating her, with words to the effect "your granny assaulted me so I will assault you too".

THE ISSUE

The issue is what will be the appropriate sentences to be imposed in relation to the charges you were convicted on after trial and the one you had pleaded guilty to on arraignment.

THE STATUTORY MAXIMUM PENALTIES

The offence of Domestic violence for which you were charged and convicted is a serious offence. The seriousness of this offence was recognized by the Legislators when they set the maximum to 3 years imprisonment and or a fine of up to \$30,000.00.

It is a well-established principle that the maximum penalty is reserved only for the worst type of offending of this nature (i.e., domestic violence). In this case, I do not think that the circumstances of each of the offendings warrants imposition of the prescribed maximum penalties.

AGGRAVATING FEATURES

The victim of your offences is your step-grand-daughter who was living with you and your partner, her grandfather. It can be inferred from the circumstances that you were entrusted by her mother to look after her and care of for. Instead, you betrayed that trust by repeatedly abusing her on five different occasions.

The offences of physical abuse were committed with the use of hard instruments/objects and as a result, the child had suffered pains to her body as result of your uncaring and unlawful actions.

The Victim Impact Statement of the Complainant indicates that she has been traumatised as a result of your unlawful actions against her. I hope that one day as she grow up, she will fully recover from what she had experienced.

SENTENCING TARIFFS

The Crown has submitted three domestic violence cases to indicate the range of sentences imposed by two of my colleague Magistrates in past cases.

In *R v Foster* [2017] SBMC 58; Criminal Case 148 of 2017 (27 November 2017), the defendant was charged with two counts of domestic violence - physical abuse contrary to section 4 (1) (a) and section 58 of the Family Protection Act. He pleaded guilty to the charges.

A piece of wood was used in count 1 to assault the complainant, his wife, resulting in the Complainant sustaining a swollen right hand and suffered pains. A sentence of 5 months imprisonment was imposed. In the second count of domestic violence - physical abuse, the defendant punched, kicked and squeezed the neck of the Complainant. He was sentenced to 6 months imprisonment. The sentences were served concurrently.

In *R v Lomulo* [2019] SBMC 19; Criminal Case 9 of 2019 (19 April 2019), the defendant was charged with two offences. One was Domestic violence, physical abuse contrary to section 4 (1) (a) of the Family Protection Act. The defendant physically abused the Complainant who was his partner by punching the Complainant's head with his right hand

closed fist. The effective sentence imposed after weighing various factors including mitigating factors was 7 months imprisonment.

In *R v Tamana* [2017] SBMC 56; Criminal Case 131 of 2017 (14 November 2017), the defendant was sentenced to 1 month imprisonment for throwing a broom at the Complainant. The Complainant was his former partner.

Past cases served as useful sentencing guidelines. They tend to show sentencing attitude of the courts and the range of sentences that are ordinarily been imposed in similar offences. However, not two cases are the same. Each case has its own set of facts and therefore must be decided on those facts.

In the present case, a factor that is apparent and distinguishes this case from the above cases is that, the victim in the present case was about 9 years old at the time the offences were committed. There is an age disparity between her and the defendant. This aggravates the offending.

The above cases show that the type of sentence usually imposed Domestic Violence cases is one of custodial sentence.

MITIGATING FEATURES

In terms of mitigation, I am satisfied that the defendant is a first time offender. She has spent four days on remand and I noted from the Medical Report of Dr. Arnold Nguduamae, Medical Officer, Guadalcanal serving at the Good Samaritan Hospital that the defendant has asthma. She was diagnosed with the condition since 2009.

In *Rujumana v Regina*³, Ward CJ made the following comments when referring to the medical condition of a person to be sentenced;

“In general terms, the health of a person who is liable to be sentenced to imprisonment may be a matter to take into account when deciding whether and how long to imprison him. Any medical condition is a matter of general mitigation. However, an appellate court will only interfere with a sentence on these grounds where the condition is so severe that it will mean his life is endangered or for other reasons of mercy it considers it appropriate. Such cases must be extreme and exceptional and should be supported by clear medical evidence.”

I am of the view that although I view the condition of the present defendant as not serious to amount to life threatening, it cannot be totally ignored in the sentencing process.

³ High Court of Solomon Islands, Criminal Case No. 16 of 1990

SENTENCING REMARKS AND CONSIDERATION

The attitude of the courts so far as reflected in the sentences imposed is that custodial sentences are more likely to be imposed.

As stated above, past decided cases served as useful sentencing guidelines. They tend to show sentencing attitude of the courts. However, it is well established principle that not two cases are the same. Each case has its own set of unique facts and therefore must be decided on its own unique facts. This in my view, also include the type of sentence to be imposed whether a custodial sentence or non-custodial sentence.

The important consideration is whether the sentence that will be imposed is the appropriate sentence to be imposed in the circumstances of the case.

In offendings against young children, I think parents, grand-parents as well as members of the public should continue to be reminded of the importance of children to us and our responsibilities to them. Children are gifts to parents and even grand-parents. They are our future leaders. It is our duty to care for them and bring them up and not to abuse them.

The objective of the Family Protection Act is to provide for the protection of families from domestic violence and to promote the safety, health and wellbeing of victims of domestic violence and for related purposes.

It is incumbent on the sentencing court to recognise and give effect to that objective by imposition of appropriate sentences that that will not only punish and deter the offender from committing similar offences in the future but the sentences should also deter members of the public who might be thinking of abusing anyone they are in a domestic relationship with, especially children.

I am of the view, having weighed the various factors and considering the fact that the defendant is a first time offender and is suffering from Asthma, a non-custodial sentence is appropriate in the circumstances.

I will impose fines in relation to the charges with a slight reduction in the amount for count 5 to reflect the guilty plea entered and a slight addition for the subsequent offences (counts 4 and 6) from the amount to be imposed in count 3 because subsequent offending of a similar nature is an aggravating factor and a reflection of the repetitive nature of the offending.

I believe that a hefty fine will still serve as an adequate and appropriate punishment and will still carry with it the message of deterrence both specific and general.

SENTENCE ORDERS

Count 3 - Fine of \$1,000.00

Count 4 - Fine of \$1,100.00

Count 5 - Fine of \$800.00

Count 6 - Fine of \$1,100.00

Count 7 - Fine of \$1,000.00

Total fine to be paid is \$5,000.00. In default, six months imprisonment. The total fine must be paid at the Court Registry by close of business on 17th June 2019.

I order that \$1,000.00 of the total fine paid is to be paid as compensation to the Complainant. The Central Magistrates' Court Cashier will facilitate this.

THE COURT

