



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

**AT HONIARA**

(Criminal Jurisdiction)

Criminal Case No: **785 of 2019**

**REGINA**

-V-

**TONY HARRY RAMOSALA**

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

*Mr A Maelanga for the Crown (Police Prosecutions)*

*Mr A Weago, Senior Legal Officer, Public Solicitors Office, for the defendant*

Date of sentencing and Mitigation: 28<sup>th</sup> February 2020

Date of Sentence: 2<sup>nd</sup> March 2020.

Notice: *This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication.*

**SENTENCE**

**INTRODUCTION**

1. Mr Tony Harry Ramosala pleaded guilty to one count of Domestic Violence contrary to sections 4(1) (a) and 58 of the *Family Protection Act 2014* ("FPA").
2. I now convict Mr Ramosala based on the plea entered.

**Antecedent**

3. The defendant Mr Tony Harry Ramosala is a native of Malaita Province.
4. The complainant is Mr Harry Ramosala, who is the defendant's dad.

## THE FACTS

5. On the 22<sup>nd</sup> July 2019, the defendant arrived back at their house at Zion area in the outskirts of Honiara and demanded his mother to give him some money. His mother Mrs Faye Ramosala did not respond quickly to his request so the defendant started to destroy the veranda of their house. He behaved in a disorderly manner and he used very abusive words against his parents. He blurted these words to his father in Solomon Islands pidgin: “*iu kakaim siti blo me*” which simply mean ‘eat my shit’.
6. The argument escalated and attracted other neighbors and the public to come and watch as the defendant continued to act in a disorderly behavior and committed this offence.
7. He was later arrested and charged by the Police with one count of Domestic Violence contrary to sections 4 and 58 of the FPA.

## DISCUSSION AND ANALYSIS

8. Section 4(1)(a) of the FPA defines domestic violence as a:

*“...conduct committed by a person (“the offender”) against another person with whom the offender is in a domestic relationship, or the threat of such conduct, the constitutes any of the following-*

- a) Physical abuse;*
- b) Sexual abuse;*
- c) Psychological abuse; and*
- d) Economic abuse.<sup>1</sup>*

9. It *“...may consist of a single act or a number of acts that form part of a pattern of behavior even though some or all of those acts when viewed in isolation appear to be minor or trivial.”<sup>2</sup>*

10. Section 58 of the FPA provides as follows:

- 1) A person commits an offence if the person commits domestic violence.*
- 2) The Penalty for an offence under subsection (1) is a fine of 30, 000 penalty units or imprisonment for 3 years or both.<sup>3</sup>*
- 3) It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for engaging in the conduct that resulted in the breach.<sup>4</sup>*

12. The FPA is “an Act to provide for the protection of families from domestic violence and to promote the safety, health and wellbeing of the victims of domestic violence...”<sup>5</sup>.

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<sup>1</sup> Family Protection Act 2014, s 4

<sup>2</sup> Family Protection Act 2014, s 4

<sup>3</sup> Family Protection Act 2014, s 58

<sup>4</sup> Family Protection Act 2014, s 58

<sup>5</sup> Family Protection Act 2014, Long Title

13. The FPA is a mixture of criminal and civil law, and that it “prohibits conducts, or threats of such conduct, committed by a person against another person” which include “physical, sexual, psychological, and economic abuse”.<sup>6</sup>
14. The main objective of the FPA is to protect all the people from domestic violence. I note that the most vulnerable are the women, children and also the old people. The defendant’s father and mother are elderly persons and the FPA is a legislation designed to protect such people and generally the marginalized.

#### Aggravating features

15. The aggravating factors are as follows:

- 1) The maxim sentence is either a 3 years’ imprisonment or a fine of 30,000 penalty units or both.
- 2) The victim is his own very father. It would appear that his mother was also affected. He demanded money from his mother and then said very disrespectful words against his father.
- 3) He also damaged part of the veranda of the house. He could have easily been charged for malicious damage for damaging their veranda.
- 4) He was also drunk during the commission of the offence.

#### Mitigating Features

16. The mitigating factors are as follows:

- 1) *Early guilty plea.* Mr Ramosala pleaded guilty in the first available opportunity. This saves the court’s time and resources.
- 2) *High Chance of Rehabilitation.* The defendant is 30 years old and should still be given the chance to rehabilitate.
- 3) *Time Spent in Custody.* This must be taken into account as well.

#### **Sentencing Principles**

17. The sentencing principles such as punishment, deterrence, and rehabilitation must always be taken into consideration in the process of formulating a sentence.
18. It is an established principle or rule that each case must be decided based on its own merits, facts and circumstances.

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<sup>6</sup> UN Women: Global Database on Violence against Women “Family Protection Bill (Solomon Islands)” (2014) <https://evaw-global-database.unwomen.org/en/countries/occeania/solomon-islands/2014/family-protection-bill> (seen January 2020).

## SENTENCING TARIFFS

19. In *Regina v Popoe* [2014] SBHC 155; HCSI-CRC 77 of 2010 (6 November 2014)<sup>7</sup>, His Lordship Palmer CJ made these observations concerning domestic violence as follows:

*This type of violence occurs within the confines of the home and family setting, for which over the years women groups, family groups, churches, non-Government organisations, including the Police have been very vocal about and repeatedly urged that this type of violent offending be curtailed. It is not something, which cannot be controlled, rather it is within the power of the perpetrator to stop and desist from. It has been pointed out so many times that this is more an attitudinal problem than cultural or anything else. Domestic violence cases are a phenomenon the world over. It occurs in almost every country not only in Melanesia and many organizations and stakeholders have actively sought to highlight this problem so that it is addressed aggressively by everyone in the community and not swept under the carpet. The courts too, not only in this country but in other jurisdictions have duty to ensure that the law which denounces this type of conduct is enforced firmly, fairly and consistently.*

20. I note that domestic violence cases that were commenced under the FPA in the recent years have attracted bound-over sentences, fines, non-custodial and custodial sentences ranging from a few months up to less than 3 years imprisonment.
21. After having considered both the aggravating and mitigating factors, and the circumstances of the case, I am satisfied that an immediate custodial sentence is appropriate.

### **Starting Point**

22. It is my considered view that a starting point of twelve (12) months is relevant for this present case. I will then consider the mitigating factors and give appropriate deductions.
23. **Early guilty plea and Genuine Remorse.** The defendant entered an early guilty plea. I deduct 4 months to reflect this.
24. **High Chance of Rehabilitation.** The defendant is 30 years of age and has a high chance of rehabilitation. I deduct 3 months to reflect these factors.
25. **Pre-Sentence Custody.** The sentence shall be backdated to the date of first remand.
26. Therefore, the resulting sentence is five (5) months imprisonment.

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<sup>7</sup> *Regina v Popoe* [2014] SBHC 155; HCSI-CRC 77 of 2010 (6 November 2014). The *Popoe* case is a manslaughter case, however, it is relevant because the death of the victim occurred as a result of domestic violence.

## CONCLUSION

27. The frequency of domestic violence in the country is alarming and must be robustly curtailed and contained at all costs.<sup>8</sup> It is everyone's responsibility to combat against this attitudinal problem of domestic violence. It can destroy a family and in its worst form, permanent injury may occur both physically and psychologically, and also fatality. In this present case, the defendant directed the abuse and committed the violence against his own father and mother.
28. The actions of the defendant and the words spoken during the commission of the offence on the 22<sup>nd</sup> July 2019 are shameful and must be condemned. The Scripture says "*Honour thy father and thy mother: that thy days may be long upon the land which the LORD thy God giveth thee.*"<sup>9</sup> The defendant must learn to respect his own parents. Respect for others should be cultivated in our very own homes, and only on that basis it will enable a person to show respect for other members of the community, and more importantly to become a useful and law abiding citizen of the country.
29. I must remind Mr Ramosala that he is now in a stage where he should be able to take care and protect his parents. He is presently 30 years old. He should now reciprocate the care and love that his parents rendered to him since birth until he reached his adulthood.
30. In summation, after taking into account the core principles of sentencing such as punishment, retribution, deterrence and rehabilitation, I am satisfied that five (5) months imprisonment is proportionate to the severity of the offending.
31. In view of the above, I sentence the offender Mr Ramosala to five (5) months imprisonment. The sentence shall commence retrospectively from the date of first remand.
32. This should also be a lesson to the defendant, and should send a message of deterrence to the members of the public.

## ORDERS

33. The orders of the Court are as follows:
- 1] The offender Mr Tony Harry Ramosala is sentenced to five (5) months imprisonment for one count of Domestic Violence Contrary to sections 4 and 58 of the FPA.
  - 2] The sentence shall be backdated to the date when Mr Ramosala was first remanded.

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<sup>8</sup> This is based on my own observations and the many cases that I have dealt with since June 2019 up to the present. See also past reports such as Secretariat of the Pacific Community, 2009. *Solomon Islands Family Health and Safety Study: A Study on violence against women and children*, <https://pacific.unfpa.org/sites/default/files/pub-pdf/SolomonIslandsFamilyHealthandSafetyStudy.pdf> (Accessed January 2020).

<sup>9</sup> Exodus Chapter 20: v 12 (Kings James Version) <https://quod.lib.umich.edu/cgi/k/kjv/kiv-idx?type=DIV2&byte=304502> (Accessed 28 February 2020).

3] Right of Appeal within 14 days.



PRINCIPAL MAGISTRATE FELIX HOLLISON  
THE COURT