IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case **No: 493 of 2019**

REGINA

-V-

ISAAC PALAKONINA

(CONSOLIDATED WITH)

Criminal Case No: 69 of 2020

REGINA

-v-

ISAAC PALAKONINA

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr John P Teula for the Police Prosecutions

Mr Augustine Rose, for the Defendant in both matters (CC No. 493 of 2019, and 69 of 2020)

Date of sentencing and Mitigation: 21 February 2020

Date of Sentencing: 11th March 2020

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

SENTENCE

INTRODUCTION

1. The Criminal Case Number 493 of 2019 ("CC No. 493 of 2019") and Criminal Case Number 69 of 2020("CC No. 69 of 2020)" were consolidated for the purposes of sentencing Mr Isaac Palakonina.

2. In CC No. 493 of 2019, Mr Palakonina was charged with two counts of demanding with menaces contrary to section 295 of the *Penal Code* [Cap 26].

3. In CC No. 69 of 2020, Mr Palakonina was charged with one count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26].

4. Mr Palakonina pleaded guilty to all the charges in both CC No. 493 of 2019 and CC No. 69 of 2020. I now pronounce his conviction for the charges in both matters based on the pleas entered.

AGREED FACTS

MC-CC No. 493 of 2019-Demanding with Menaces

5. The victims in this matter are two Asians who were employees of the Macolu Solomon Limited at the time of offending.

6. The incident occurred on the 24th of April 2019 at Lahoruka logging site in East Guadalcanal on Guadalcanal in Guadalcanal Province.

7. On that day Mr Gunadi and Mr Bin Yallim who were bulldozer and excavator operators respectively were working with one local Mr Stephen Suvalua.

8. On that same day, the defendant and his men planned to halt the company's logging operation at Lahoruka area. The defendant and his men were very concerned that the company was operating an illegal logging operation.

9. There were two groups who were prepared to halt this illegal logging operation. In that morning, one of the two groups of men assembled at Surapau Market. One of the men approached Mr Luke Vulachai and told him that they were waiting for Mr Palakonina. While they were still waiting for Mr Palakonina, an informer approached them and told them that the defendant and his other men have already arrived at the said logging site so the other group left immediately to meet up with the other group at Lahoruka.

10. At around 10:00am, the men arrived at the site joining the defendant's group. At the material time some of the men including the defendant were armed with weapons of all sorts. About five men approached Guandi and Stepehn Suvalua and demanded them to stop working under the direction and command of Mr Isaac Palakonina. The rest of the group including the defendant approached Mr Yallim at the excavator.

11. Following the command, Gunadi drove down the Bulldozer to where the excavator was while Stephen Suvalua was on his way down on foot. Upon his arrival, he saw Mr Isaac Palakonina talking to the two Asians. The defendant told them they were okay and the problem was with their bosses. The defendant and his men told the operators to drive those machines to an area called Valevale. They complied as instructed. His men jumped onto the machines, and some of them were still armed while Mr Palakonina walked on foot. They did not harm the operators nor damaged the machines.

12. On their arrival at Valevale, the men took the key from the Bulldozer driver and the defendant told the excavator driver to park the excavator and then give him the keys.

13. Later that day the victims and the other employees of the company returned to the logging camp on a vehicle arranged by the defendant.

14. The matter was then reported to the police. On the 27th of April 2019, the Machines were returned safely without any damage. The defendant was charged accordingly with two counts of demanding with menaces contrary to section 295 of the *Penal Code* [Cap 26].

MC-CC No. 69 of 2020-Common Assault

15. The defendant Mr Palakonina went home for the Christmas Holiday after a few of his initial bail conditions in the CC 493 of 2019 were varied to allow him to travel outside of the Honiara town boundary.

16. On the 28th of December 2019, Mr Selestine Hando went for bath at a nearby river in East Guadalcanal on Guadalcanal. After having his bath, he made his way to Vatubulu area. Upon his arrival he met two persons namely Masodu and Clifton who invited him to have a can of beer with them. After he consumed his can of beer, Mr Masodu gave him SBD 150 and instructed him to buy more beers. Whilst on his way to buy more beers, he saw a vehicle which came to assist the Police to load beers that were purportedly illegally sold at the area.

17. When Mr Palakonina came close to the said vehicle, he recognized Mr Hando who had not kept his promise not to allow the Macolu logging Company to log further in land.

18. Mr Palakonina opened the cabin door and shouted at him and said these words in Solomon Islands pidgin: *You nao wanfala con man* which means 'you are just a liar' and he came out and threw his closed right hand with the intent to punch Mr Hando on his forehead. Mr Hando fortunately missed the hit, but because of the force, Palakonina went crushing onto him which forced him to the ground. While Mr Hado was on the ground, Mr Palakonina then hit him on the forehead with a closed right hand fist.

19. Mr Hando stood up and went home.

20. Mr Palakonina was later charged with one count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26]. It is understood that Mr Hando had requested to settle the matter by way of reconciliation and had asked Police to drop the matter.

DISCUSSION AND ANALYSIS

SENTENCING PRINCIPLES

21. In sentencing, the classic principles such as punishment, deterrence and rehabilitation must always be considered.

22. Each case ought to be determined in accordance with its own set of facts, merits and circumstances.

CC No. 493-TWO COUNTS OF DEMANDING THINGS WITH MENACES

23. Section 295 of the *Penal Code* [Cap 26][1] provides as follows:

> ***Demanding with menaces things capable of being stolen***
> *16 of 1987, s. 5*
>
> *295. Any person who with menaces or by force demands of any person anything capable of being stolen is guilty of a felony, and shall be liable to imprisonment for five years.*

24. Demanding with menaces is a felony and the maximum sentence is five years imprisonment.

25. The maximum sentence is usually reserved for the worst cases.

FACTORS TO BE CONSIDERED

Aggravating features

26. The aggravating factors are as follows:

27. **The offence was committed together with other persons.** This is in itself serious and an aggravating feature.

28. **Premeditation.** The offence was premeditated on the part of the defendant. The defendant Mr Palakonina planned the incident. A group of men cannot just gathered together unless they were told and I am satisfied that it was premeditated.

29. **Fear and humiliation.** The complainants experienced fear and humiliation at the time of the offending given the fact that they were confronted by a number of men. Moreover, at least two of the victims are Asians and foreigners, and being confronted by a group of men in a foreign country would definitely cause fear to them.

30. **Financial loss to the Company.** The machines were not used for two days, and this is a loss to the Company in terms of its work and revenue collection.

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[1] Penal Code [Cap 26], s 293

31. **Use of weapon.** The defendant and his group of men were armed.

32. On the other hand, the mitigating factors as follows:

33. ***Early guilty plea.*** The defendant entered a guilty plea which shows that he is remorseful and he takes responsibility of the wrongs he committed. This saves the court's time and resources.

34. ***First time offender.*** He is a first-time offender and has no previous conviction.

35. ***Cooperation with Police.*** He cooperated well with the Police. The machines were kept safe and returned safely without any resistance.

36. ***Personal Circumstances.*** The defendant has a large family and has parental responsibilities, and in effect a bread winner in his family.

COMPARATIVE SENTENCES AND SENTENCING TARRIF:

37. In ***Fa'afunua v Regina*** [2004] SBHC 131; HCSI-CRAC 296 of 2004 (10 September 2004)[2], the defendant Mr Fa'afunua was convicted for a number of offences in the Magistrates Court, including a count of demanding money with menaces in which he was sentenced to 3 years imprisonment. The total sentence imposed by the Magistrates Court including other offences committed by the defendant was 5 years. Upon appeal to the High Court, the High Court did not change the 3 years imprisonment for demanding with menaces, however, it partially allowed the appeal with respect to the other offences, and the total sentence was 4 years, 2 months and 2 weeks. In this case, the victim Mr Lamani was told to go and see the Appellant at a Ranadi Workshop owned by a well-known Malaita Eagles Force militant leader. Mr Lamani then paid the sum of SBD 5000 to the defendant. Mr Lamani said although he was Malaitan, he felt intimidated as the men were armed and at the same time members of the now defunct Malaita Eagle Force.

38. In ***Regina v Kemakeza*** **[2008]** SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008[3], the respondent, Sir Allan Kemakeza was convicted by the Magistrates Court on three counts; that of demanding with menaces, intimidation and stealing. He appealed against conviction but his appeal was dismissed by this court. He was sentenced by the Magistrates Court to imprisonment on each count for five months to be served concurrently and a fine of $2,500.00 on each count to be paid within three months failing which he would be sentenced to three months imprisonment. Three of the five months were suspended for twelve months. However, the High Court allowed the DPP's appeal on sentence and imposed a sentence of 18 months imprisonment for the offence of demanding with menaces which was ordered to be served concurrently with the other offences, and the total sentence was 18 months. Palmer CJ stated in the case of *Regina-v-Kemakeza* as follows:

> *A lot of responsibilities are placed on the shoulders of leaders and the public expects much from them, a fortiori, from a leader in his crucial position at that time. Whether in good times or bad*

[2] *Fa'afunua v Regina* [2004] SBHC 131; HCSI-CRAC 296 of 2004 (10 September 2004).

[3] Regina v Kemakeza [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008

times, leaders are expected to uphold the rule of law at all times. There were equally many leaders around at that time who could have bent their knees to the idols of lawlessness, violence and greed that prevailed at that time, but did not. To whom much is given, much is required, to whom men have committed much, of him they will ask the more [11].

39. In ***Regina v Mae*** [2005] SBHC 10; HCSI-CRC 120 of 2004 (7 September 2005)[4], the defendants were each sentenced to 30 months (or 2 and half years) for demanding with menaces and 25 months for the theft of the vehicles. His Lordship CJ Palmer ordered that the sentences be served concurrently, and the resulting sentence is 30 months imprisonment. In the course of committing the offence of demanding with menaces, a furniture was thrown to a member of the SOL-LAW law firm, and death threats were made against some partners who are foreigners that if they did not leave the country, something bad could be done to them. The theft was committed later that day with Mr Mae being armed with a gun and threatened to shoot anyone. These offences were committed during the height of the ethnic tension. This case is related to the case of ***Regina-v-Kemakeza*** cited above[5], as these men were ordered to commit the offences against the properties of SOL-LAW law firm by the former prime minister.

40. In ***Ahi v Regina*** [2005] SBHC 53; HCSI-CRAC 124 of 2005 (29 March 2005)[6], the defendant pleaded guilty to one count of demanding with menaces contrary to section 295 of the *Penal Code* [Cap 26]. The appellant held a high powered rifle in which he pointed at Aloisio Sikwa'ae demanding Aloisio Sikwa'ae to tell Patrick Alasia to come and see him. The appellant then cocked his rifle and ordered that no one should move or else he would shoot anyone who dared to move against his order. The Magistrates Court sentenced Mr Ahi the Appellant to two years and six months imprisonment. Kabui J dismissed the appeal against sentence in the High Court and confirmed the sentence of the Magistrates Court. Kabui J also made these observations:

These are the facts which make this appeal different from the facts in the cases cited by Counsel. As far as Rodney Alasia was concerned, death to him was imminent. It does not matter whether the appellant's weapon was loaded or not. A rifle is a lethal weapon and when it is pressed against one's chest and cocked, death is assured unless the trigger is not activated. When that happens, it sends a chill through one's spine. The law and the community will not sit back and allow a lenient sentence to be passed and send the wrong signal to the community at large.

41. In ***Tahiuru & Periporo v Regina*** [2005] SBHC 161; HCSI-CRAC 125 of 2005 (27 September 2005)[7], the appellants/defendants in that case were two former police sergeants Charles Tahiuru and John Periporo who had been found guilty of demanding with menaces by the Magistrate Court in 2004. The Magistrates Court sentenced Periporo to imprisonment for three and half years and Tahiuru for two years and three months respectively. Each of them has appealed against his conviction and sentence. The sentence for both offences were quashed by the High Court and both men were sentenced to 15 months and 10 months imprisonment respectively. The defendants were armed with rifles. His Lordship Kabui J said as follows:

It is also irrelevant for them to raise the application of the Amnesty Act, 2001 because the offence they committed had nothing to do with any operations against the Isatambu Freedom Movement before 7th February 2001. The offence was committed against a civilian in a village on Malaita. Whilst it might

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[4] *Regina v Mae* [2005] SBHC 10; HCSI-CRC 120 of 2004 (7 September 2005)

[5] *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008

[6] *Ahi v Regina* [2005] SBHC 53; HCSI-CRAC 124 of 2005 (29 March 2005)

[7] *Tahiuru & Periporo v Regina* [2005] SBHC 161; HCSI-CRAC 125 of 2005 (27 September 2005).

have been necessary to carry arms when crossing the sea to Malaita and that they were police officers, they did not investigate the case they said they had gone to investigate. The fact that Periporo had told the Magistrate that he had taken statements from some women and that the file went missing was not believed by the Magistrate. Whilst their motive might have been what they said, they behaved unlike police officers. They were not in uniform and had been drinking the night before. It was not their duty as police officers to demand compensation from Lino Rahauro in the manner they did. At least, Periporo was still intoxicated when he demanded the payment of $2,000.00.

42. In this present case, the defendant and the other men were armed with some weapons as opposed to guns and rifles. The machines were never damaged and the victims were never harmed or assaulted. The victims were transported safely to the logging camp based on arrangements made by the defendant on the day that these incidents were committed. This clearly shows that Mr Palakonina had no intention to do harm or damage to the machines and the victims and I take this into consideration. Hence, these two counts of demanding with menaces should receive a lesser sentence compared to the cases of ***Regina v Mae*** [2005][8], ***Ahi v Regina*** [2005][9], ***Regina v Kemakeza*** [2008] and ***Tahiuru & Periporo v Regina*** [2005][10] which were committed during the height of the ethnic tension days, and mostly the defendants were armed with rifles and guns.

43. As per the Agreed facts, there were no direct threat made against the victims except the fact that they were told to halt the operations and also to drive the machines to a nearby area called Valevale. This does not mean that the victims were not threatened by the presence of men including the defendants, and the weapons they possessed. In so far as all the cases cited above are concerned, the sentencing range **for demanding with menaces ranges from 10 months up to 3 years imprisonment.** As alluded to above, the other cases cited above are far more serious than the present case.

STARTING POINT

44. After having considered the aggravating factors and other circumstances of the demanding with menaces charges, I am of the view that a starting point of 30 months imprisonment is appropriate for each of the counts.

45. ***Guilty plea.*** I note that the defendant pleaded guilty to the offence of demanding with menaces in the course of the trial already. However, it still saves the court's time and resources. In ***Qoloni v Regina*** [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)[11], CJ Palmer quoted the passage in *R. v. Thompson* (2000) 49 NSWLR 383; 115 A Crim R 104 (CCA - a full bench) per Spigelman CJ, as follows:

(iii) The utilitarian value of a plea to the criminal justice system should generally be assessed in the range of 10-25 percent discount on sentence. The primary consideration determining where in the range a particular case should fall is the timing of the plea. What is to be regarded as an early plea.

46. Hence, I deduct 7 months to reflect the guilty plea taken.

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[8] *Regina v Mae* [2005] SBHC 10; HCSI-CRC 120 of 2004 (7 September 2005)
[9] *Ahi v Regina* [2005] SBHC 53; HCSI-CRAC 124 of 2005 (29 March 2005)
[10] *Tahiuru & Periporo v Regina* [2005] SBHC 161; HCSI-CRAC 125 of 2005 (27 September 2005)
[11] ***Qoloni v Regina*** [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)

47. ***First time offender.*** The defendant is a first-time offender and has no previous conviction. I deduct 4 months to reflect this.

48. ***Cooperation with Police.*** I note that the defendant cooperated with the Police in the course of investigations. When the machines were retrieved, there were no resistance by the defendant and his men, and the machines were kept and returned safely. I deduct 3 months to reflect this.

49. ***Personal Circumstances.*** The defendant has a large family and has parental responsibilities, and in effect a bread winner in his family. Some of his children are students at the Solomon Islands National University and other schools in the country. [12]I deduct 4 months to reflect the fact that he is a breadwinner and his other personal circumstances.

50. Hence, I am satisfied that an imprisonment of 12 months (which is equivalent to 1 year) is appropriate for each of the count for the demanding with menaces contrary to section 295 of the *Penal Code* [Cap 26].

51. **Pre-Sentence Custody.** This shall be taken into account as well.

52. In essence, the next issue is whether the sentences for the two counts of demanding with menaces should be served concurrently or consecutively. The principal issue or test is whether or not the offences occurred or arose out of the same transaction.

53. In ***Bade v Reginam*** [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988)[13], His Lordship Ward CJ stated that:

> *When considering sentence for a number of offences, the general rule must be that separate and consecutive sentences should be passed for the separate offences. It is trite to point out that a man who commits, say, five offences should receive a heavier sentence than a man who only commits one of them.*
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> *However there are two situations where this rule must be modified. The first, that where a number of offences arise out of the same single transaction and cause harm to the same person there may be grounds for concurrent sentences, does not concern this appeal save to say that the learned magistrate correctly applied this principle in ordering a concurrent term for the malicious damage caused to Solo Lae's house during the burglary.*
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> *The second occasion for modifying the general rule arises where the aggregate of sentences would, if they are consecutive, amount to a total that is inappropriate in the particular case. Thus, once the court has decided what the appropriate sentence for each offence is, it should stand back and look at the total. If that is substantially over the normal level of sentence appropriate to the most serious offence for which the accused is being sentenced, the total should be reduced to a level that is " just and appropriate" to use the test suggested in Smith v. R [1972] Crim.L.R. 124. Equally, if the total*

[12] In this regard, I take into account the Sworn Statement of the defendant filed on 21st February 2020; and sworn statement of Ms Rebecca Masodo dated 21st February 2020.

[13] ***Bade v Reginam*** [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988

sentence, although not offending that test, would still in the particular circumstances of the person being sentenced, be a crushing penalty, the court should also consider a reduction of the total.

54. The prosecution submitted that the sentences should be served consecutively because there were two different victims in this present case and falls under the exceptions enunciated in the *Bade-v-Reginam.*

55. On the other hand, the defence submitted that the two counts of demanding with menaces arose out of the same transaction and ought to be served concurrently. In the case of *Regina-v-Mae*[14] cited above, his Lordship Palmer CJ stated as follows:

In determining the right sentence for these offences a number of matters must be considered. The first matter is whether the two offences should be considered as part of a series of offences that are really one and the same. The demands were made in an attempt to steal the vehicles. The vehicles were eventually stolen. The victims were the same people, namely the partners in Sol Law. They were the ones who were threatened and they were the ones who owned the vehicles and suffered the loss of those vehicles. The time between one event and the next was short, everything happened during the same day. In those circumstances I think it would be perfectly proper to consider that this is really one course of conduct split into two distinct stages or events.

The decision to treat these offences as part of a series of similar offences against the same victim committed over a short period of time suggests that any custodial sentences imposed should be concurrent.

56. In ***Angitalo v Regina*** [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005)[15], the Court of Appeal of Solomon Islands stated that:

The fundamental underlying principle is that a sentence should reflect the true criminality involved in the offences, without on the one hand punishing the offender more than once for the same or essentially the same criminal conduct or, on the other hand, failing to punish the offender for committing a crime. This will almost always be a matter of fact and degree, requiring the exercise of judicial discretion. The fundamental rule is the Court should ensure that both the end result does not exceed what is the appropriate punishment for the offender's criminal conduct, considered as a whole, and that result adequately punishes the offender for the crimes actually committed. It should be observed, moreover, that the language adopted by Ward CJ is indicatory rather than mandatory.

Brown J referred to Bade, his Lordship's judgment in R -v- Lauta (unreported [2004] SBHC 100; HC-CRC 384 of 2004), Public Prosecutor -v- Kerua (1985) PNGLR 85 and Thomas, Principles of Sentencing (2nd ed) 53-6 and concluded –

> *"..... while the Court must follow the principle or rule [that concurrent sentences are appropriate where the offences arise out of a single transaction], the second rule allows a court discretion to sentence cumulatively when the offences are different in character or in relation to different victims."*

[14] *Regina v Mae* [2005] SBHC 10; HCSI-CRC 120 of 2004 (7 September 2005)
[15] In *Angitalo v Regina* [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005)

57. According to the Court of Appeal in ***Angitalo***[16], the courts should ensure that the punishment for the offender's criminal conduct commensurate with the gravity of the offence. More importantly, the Court of Appeal said that the language adopted by Ward CJ in the *Bade case* is *indicatory* rather than *mandatory*. This means that just because there is more than one victim in a case does not necessarily mean that the sentences should always run consecutive. The Court of Appeal concluded in the *Angitalo case* as follows:

We consider that, with respect to the learned magistrate and the learned sentencing judge, in the particular and exceptional circumstances here, the offences of going armed in public (which only occurred in the courtroom) and assaulting the court officer on the one hand and stealing the court papers on the other could not properly be regarded as separate offences. The immediate victims were, of course, different but that this was so merely reflected different aspects of the same transaction. Putting it another way, the degree of overlapping involved in the commission of the two offences was so great that they were in the relevant sense part of the same or single transaction. We would observe that, even if it was right to regard the violence offences and the theft as separate offences, the very substantial degree of overlapping could not have justified the mere aggregation of the two sentences that were passed on each offender. The overall sentence that was passed necessarily involved a marked degree of double counting and must have been wrong in law for this reason, if for no other. It is unnecessary for us to deal with this issue further since we have we have concluded, with respect, that the learned Magistrate and Brown J must have misdirected themselves as to a material consideration to have concluded as they did.

It follow that the appeals must be allowed and the sentences ordered to be served concurrently.

58. I take into account the comments of Palmer CJ in ***Regina-v-Mae*** in which he said "....*The time between one event and the next was short, everything happened during the same day. In those circumstances I think it would be perfectly proper to consider that this is really one course of conduct split into two distinct stages or events."*[17] The relevant facts of this were that Mr Isaac Palakonina was seen talking to the two Asians. He told them they were okay and the problem was with their bosses. The defendant and his men told the operators to drive those machines to an area called Valevale. This shows that the demand to halt operations by the defendant was done at the same time to the two Asians and to adopt the expression in ***Angilato-v-Regina,*** I am satisfied that the "the degree of overlapping involved in the commission of the two" counts of demanding with menaces "was so great that they were in the relevant sense part of the same or single transaction." In ***Regina-v-Mae***, the demanding with menaces occurred earlier, and the theft was committed later on the same date against more than one person from the same law firm in Honiara and his Lordship Palmer CJ regarded the offences as 'one course of conduct split into two distinct stages or events'.

59. Having said that, it is my considered view that the two counts of demanding with menaces are directly and inextricably linked and related to each other, and arose out of the same transaction, despite the fact that there were two victims who were employees of the logging company, but as per the ***Angilato case***, this was so merely reflected different aspects of the same transaction. In other words, the two counts of demanding with menaces should be regarded as one and to use the words of Palmer CJ in ***Mae***[18], it "...would be perfectly proper to consider that they are really one course of conduct..." because they

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[16] [16] In *Angitalo v Regina* [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005)

[17] *Regina v Mae* [2005] SBHC 10; HCSI-CRC 120 of 2004 (7 September 2005)

[18] *Regina v Mae* [2005] SBHC 10; HCSI-CRC 120 of 2004 (7 September 2005)

occurred at the same time, and date. It is understood that the two machines are owned by the same logging company as far as business and ownership is concerned.

60. Hence, I am satisfied that the two counts of demanding with menaces arose out of the same transaction and that their sentences should be served concurrently.

MC-CC 96 of 2020-COMMON ASSAULT CHARGE

61. Section 244 of the *Penal Code* [Cap 133][19] provides as follows:

244. Any person who unlawfully assaults another is guilty of a misdemeanour, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, shall be liable to imprisonment for one year.

Aggravating Factors

62. The aggravating factors are as follows:

63. The defendant assaulted the victim. He assaulted the victim with closed fist and aimed for his forehead which is a vulnerable part of the body.

64. He assaulted the victim even though the victim was already on the ground and was in a vulnerable and helpless position.

65. He breached his bail conditions after they were being varied to allow him to travel to his home village in East Guadalcanal for the Christmas holiday towards the end of 2019.

Mitigating Factors

66. The mitigating factors are as follows:

67. **Guilty plea.** Mr Palakonina entered an early guilty plea.

68. ***No previous conviction.*** He is a first time offender.

69. ***Cooperation with Police.*** He cooperated with the Police and made his admission quite early. This is an indication of remorse.

70. ***Personal Circumstances.*** He has parental responsibility and is a bread winner in his family.

[19] *Penal Code* [Cap 25] S 244

SENTENCING TARIFF

71. The sentencing tariff for common assault in Solomon Islands ranges from penalty fines, non-custodial, and custodial sentences up to seven months.

72. In this case, the punching of the victim with a closed fist warrants a custodial sentence.

STARING POINT

73. After having considered the circumstances of the case especially the aggravating features of the present case, I am satisfied that a starting point of ten (10) months is appropriate for this present case.

74. **Guilty plea.** Mr Palakonina entered an early guilty plea. I deduct 3 months to reflect this.

75. ***No previous conviction.*** He is a first time offender and has no previous conviction and I deduct 2 months to reflect this.

76. ***Cooperation with Police.*** He cooperated with the Police and made his admission quite early. This is an indication of genuine remorse and I deduct 1 month.

77. ***Personal Circumstances.*** He has parental responsibilities, amongst others, and is a bread winner in his family and I deduct 1 month.

78. The resulting sentence is therefore 3 months.

79. I am aware that Mr Hado, the complainant in the Common Assault charge had asked the Police to withdraw the charge and for them to sort out the matter by way of reconciliation and this is an indication that the victim and the defendant are willing to reconcile.

80. After having taken into account the sentencing principles such as punishment, deterrence and rehabilitation, I am satisfied that three (3) months imprisonment is proportionate to the severity of the offence he committed with respect to the common assault charge.

81. As noted, one of the aggravating features is the fact that he committed the said offence whilst he was on bail which effectively breached the condition that he shall not commit any offence. This means that he is not a good candidate for bail, and has no respect for the conditions imposed by the court.

CONCLUSION:

82. I note that for both cases, the incidents were said to have stemmed out of frustrations because of land ownership issues and logging operating on certain customary lands on Guadalcanal that were under dispute.

83. The defendant might have genuine grievances and concerns, however, his actions in both cases are unacceptable and cannot be tolerated in this country.

84. The courts have time and again, reminded us to solve grievances and disputes in an amicable and peaceful manner but not certainly by demanding the workers of a logging company to stop their operations as shown in these matters. That is illegal and contrary to the law.[20]

85. The businesses and companies are a source of revenue for the government in terms of collecting taxes and they must be afforded respect and protection of the law at all times. Similarly, assaulting someone because of land ownership issues is wrong. Even in custom, the actions of the defendant are wrong.

86. I note that counsel for the defendant urged the court to suspend the sentence with respect to the demanding with menaces charges for a number of reasons including the fact that the defendant has an ageing mother to look after, and other parental responsibilities. However, this should not overshadow the level of his criminality, culpability and his conduct. My powers to suspend a sentence is not enlivened when the offence involves the use or possession of a weapon as per section 44(2) of the *Penal Code* [Cap 26]. In ***Kemahaku v Regina*** [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011).[21], the Crown appealed to the High Court against the sentence that was imposed by the Magistrates Court on the basis that the learned magistrate erred when he imposed a suspended sentence in breach of section 44 (2) of the *Penal Code* [Cap 26] and sought an order 'that the suspended sentence be substituted with a custodial sentence'. The High Court held that that the order to suspend the sentence was in breach of section 44(2) which prohibits the suspension of a sentence of imprisonment where the offence involved the use or possession of a weapon. However, his Lordship Apaniai J held that he was unable to remit the case to the Magistrate's Court for re-sentence; and also to substitute another sentence for the sentence imposed by the Magistrate's Court. So it was further appealed to the Court of Appeal. The Court of Appeal in *Kemahaku-v-Regina*[22], also found that the Magistrates order for suspension of the sentence was an "*....error....* "and commented as follows:

Any person who uses a weapon to assault an unarmed victim must expect to receive a sentence of immediate imprisonment.

87. Hence, I will not suspend the sentence with respect to the demanding with menaces charges in CC No. 493 of 2019. However, it is still within my discretion whether or not to suspend the sentence pertaining to the common assault charge.

88. The defendant is a mature person who is presently in his middle age, a chief and a leader and should be in a positon to make a better judgment.

89. The sentences in these matters should send a deterrent message to the members of the Public that such actions will not be condoned by the court.

90. In CC No. 493 of 2019, and with respect to count 1, I hereby sentence the defendant Mr Palakonina to 12 months imprisonment for one count of demanding with menaces contrary to section 295 of the *Penal Code* [Cap 26]. With respect to count 2, I sentence the defendant to 12 months imprisonment for one count of demanding with menaces contrary to section 295 of the *Penal Code* [Cap 26]. Both sentences arose out of the same transaction and they are to be served concurrently. The resulting sentence is 12 months imprisonment (or 1 year).

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[20] *Penal Code* [Cap 26], s295
[21] *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)
[22] *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

91. In CC No. 60 of 2020, I sentence the defendant to 3 months imprisonment for one count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26].

92. The sentence in CC No. 493 of 2019 and CC No. 60 of 2019 are to be served consecutively, and the final sentence is 15 months imprisonment (or 1 year and 3 months).

93. After having due regard to the totality principle, I am satisfied that the imprisonment of 15 months(1 year and 3 months) reflects the overall criminality of the offences committed by the defendant in both cases, and I do not think it will have a crushing effect on the defendant.

ORDERS

94. The offender Mr Isaac Palakonina is sentenced as follows:

[1] In CC No. 493 of 2019, and with respect to count 1, the defendant Mr Palakonina is sentenced to 12 months imprisonment for one count of demanding with menaces contrary to section 295 of the *Penal Code* [Cap 26]. With respect to count 2, the defendant is sentenced to 12 months imprisonment for one count of demanding with menaces contrary to section 295 of the *Penal Code* [Cap 26].

[2] Both sentences for both counts in CC No. 493 of 2019 arose out of the same transaction and they are to be served concurrently. Therefore, the resulting sentence for CC No. 493 is 12 months imprisonment.

[3] In CC No. 60 of 2020, the defendant is sentenced to 3 months imprisonment for one count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26].

[4] The sentence in CC No. 493 of 2019 and CC No. 60 of 2019 are to be served consecutively.

[5] Hence, the final sentence for both cases is 15 months (1 year and 3 months) imprisonment.

[6] The time spent in custody shall be deducted accordingly.

[7] Right of Appeal within 14 days.

PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT