



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

(Criminal Jurisdiction)

Criminal Case No: 87 of 2020

**REGINA**

-V-

**JOHN MARK RARABAE**

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

*Mr I Tebakota for the Crown (Police Prosecutions)*

*The Defendant appeared in Person*

Date of sentencing and Mitigation: 13<sup>th</sup> March 2020

Date of Sentence: 31<sup>st</sup> March 2020.

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

**SENTENCE**

**INTRODUCTION**

1. The Defendant Mr John Mark Rarabae pleaded guilty to two counts of Domestic Violence contrary to sections 4(1)(c) and 58 of the *Family Protection Act 2014* ("FPA"), and one count of Breach of Police Safety Notice contrary to section 59(1) and (2) of the FPA.
2. The defendant was asked if he wished to be legally represented and he answered in the negative. He told the court that he wished to take his plea without a legal representation. In such cases, I remind myself that the defendant is not legally represented and it is my duty to make sure that the defendant be afforded a fair hearing as enshrined in the *Constitution*. Hence, he was arraigned and the particulars of the charges were translated to the Solomon Islands pidgin to make sure that the defendant understand the charges. The court also provided minimal assistance by asking certain questions in the Solomon Islands pidgin to assist the defendant with his mitigation.
3. Mr Rarabae pleaded guilty to all the three charges contrary to the provisions of the FPA.
4. I now convict Mr Rarabae for the three counts based on the pleas entered.

5. I also note that a suspended sentence in a previous domestic violence case in Criminal Case Number 784 of 2019 should be taken into account as well because he committed these present offences whilst serving a suspended sentence.

### Antecedent

6. The defendant is Mr John Mark Rarabae, a 50 year old native of Fauala village in Malaita Province.
7. The victims are the defendant's wife Ms Rosina Tabe and his son Mr John Mark Ponisi.

### THE FACTS

#### First Incident-30<sup>th</sup> January 2020

8. On Wednesday 29<sup>th</sup> January 2020, the defendant was drunk and arrived at his house at West Kola in Honiara on Guadalcanal.
9. The defendant was clearly intoxicated and behaved very disrespectful and aggressive towards his wife Ms Tabe upon his arrival. An argument then started between him and his wife.
10. The wife was terrified and feared for her safety and that of her children, and she took her children to a nearby premises and sheltered her children including herself. They were waiting for the defendant to have his rest and ensuring that he is sober when they arrive home.
11. The victim and her children returned home at around 4am and 5am in the early hours on the 30<sup>th</sup> January 2020.
12. When the victim and the children arrived home, the defendant was still awake and this made the defendant very angry. He blurted these words to her in Solomon Islands Pidgin:  
  
*"Yiu fuckeh kam lo wea nao den iu creep kam ia... ..everytaem yiu savei go out lo night....yiu must fuckeh kam naya....hem tru nao.....oketa tangam kaim kan blo yiu finish nao den yiu creep kam ia...".*
13. Basically the words mean, "you must have fucked someone in the night, and he must have licked your vagina, that is why you came in very late this morning".
14. The defendant then took a screw driver and threatened the victim with it by saying the following words:  
  
*"Screw driver ia bae me hidem behind bele blo yiu den bae hem kam out lo asshole blo yiu".*
15. The words mean "I am going to stab you with this screw driver through your belly and it will penetrate and come out of your asshole".
16. The victim screamed with great fear and ran into their son's room Mr Ponisi for her safety.

17. At the time, their son Mr Ponisi was present inside the room and when he saw his father, the defendant, he was also afraid as his father was armed with the screw driver. Mr Ponisi could not do anything to calm his father down.
18. The victim went to the Central Police station in Honiara and filed criminal complaints against the defendant concerning this matter.
19. The defendant was formally arrested and charged with the first count of Domestic Violence contrary to sections 4 and 58 of the FPA.
20. The Police also issued the defendant with a Police Safety Notice and he was released on bail.

### **Second Incident-31<sup>st</sup> January 2020**

21. On the 31<sup>st</sup> January 2020, after he was released on bail, he bought some beers and had them. He was already intoxicated when he arrived back home at West Kola in Honiara.
22. His two sons were present at their home at the time.
23. He aggressively demanded one of his sons Mr Makoni to open the door. Mr Makoni did not respond to his father's demands. The defendant's other son Mr Ponisi then told his father that it was late and he should go and have his rest.
24. When the defendant heard Mr Ponisi speaking to him he again blurted these words in Solomon Islands pidgin to his son:

*"Yiu go fuckem mummy blo yiu...yiufala go out lo house yia....ples ya bae me sellem ya".*

25. The words mean "Go and fuck your mother, piss off from this house as I will sell it".
26. The defendant then damaged the louvers and threw his family members' clothes outside the house.
27. Mr Ponisi was saddened and embarrassed by his father's words. He went and met his mother who was hiding for her safety at a neighbor's house. He told his mother about what had happened.
28. The incident on the 31<sup>st</sup> January 2020 was reported to the Police and he was arrested again.
29. During the interview with the Police, he admitted that he committed the said offences. He said that after he was released on bail earlier on the day, he bought 12 Saratoga beers and drank them. He was intoxicated when he arrived home and committed the other offences on the 31<sup>st</sup> of January 2020.

### **Third Incident**

30. By committing the offence on the 31<sup>st</sup> of January 2020, the defendant effectively breached the Police Safety Notice issued earlier, requiring him not to commit unlawful actions or domestic violence against

his wife and children. Therefore, the third count emanated from the Police Safety Notice that was issued to him upon his release from custody earlier on the same day.

## DISCUSSION AND ANALYSIS

31. 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, that constitutes any of the following-*

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

32. 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>*

33. 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>*

33. Moreover, section 59 of the FPA<sup>5</sup>, provides as follows:

- 59. (1) A respondent for a protection order or police safety notice commits an offence if the respondent breaches the order or notice.*
- (2) The penalty for an offence under subsection (1) is a fine of 30,000 penalty units or imprisonment for 3 years, or both.*
- (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.*

34. In the case of *Regina-v-Jack Tuai*[2020]-CC 827 of 2019, and 964 of 2019 (27 January 2020)<sup>6</sup>, this court provided a brief background as to the FPA as follows:

*“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>7</sup>. The enactment of*

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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, s 59

<sup>6</sup> *Regina-v-Jack Tuai*[2020]-CC 827 of 2019, and 964 of 2019 (27 January 2020),

<sup>7</sup> Family Protection Act 2014, Long Title

*the FPA is a legislative response to the need to protect both men and women, the children, the old, the marginalized and all kinds of people from all walks of life from domestic violence. It must be noted that the most vulnerable people in our communities are the women and children as compared to men, however, nowadays, some men are also victims of domestic violence. In addition to that, the enactment of the FPA is also a culmination of years of campaign by the Ministry of Women, Youth, Children, and Family Affairs, various gender-based and women groups, advocates, various courts' judgments, the media, non-governmental organizations, churches, and many other groups and individuals."*

#### Aggravating features

35. The aggravating factors are as follows:
36. **Maximum Sentence.** The maximum sentence is either a 3 years' imprisonment or a fine of 30,000 penalty units or both. This shows that this is quite a serious offence.
37. **Breach of Trust.** The victim is the defendant's wife and his actions is a breach of trust between a husband and a wife. A female is weaker both physically and mentally, and a vulnerable member of the community. The second victim is his son Mr Ponisi, what he said and did to his son is also a breach of trust between a parent and a child.
38. **Severe Disrespectful words.** In the two incidents, the defendant said very disrespectful words to his wife and his son. In custom, it is forbidden for a father to tell his son to fuck his mother. It is sickening to even think about the words that the defendant said to his wife and son.
39. **Premeditation.** The second incident was committed after he was released on bail, which is an indication of a retaliation, and also it was premeditated. He opted to commit the second offence irrespective of the Police Safety Notice. This is also a breach of the bail conditions as well.
40. **He was armed.** In the first incident, the defendant was armed with a screw driver which is a weapon and threatened to brutally injure his wife with it. In the second incident, he also destroyed the louvers of their house and threw his family members' clothes out of their house.
41. **Fear and Trauma.** His actions in both incidents would definitely affect his wife and son psychologically and mentally. They will live in fear if their father is around.

#### Mitigating Features

42. The mitigating factors are as follows:
43. **Early guilty plea.** The defendant entered an early guilty plea in all the charges which shows that he is remorseful for what he did wrong in this matter. The plea saves the court's time and resources rather than dealing with this matter by way of a trial.

44. *Genuine Remorse.* He regretted what he did and was remorseful for what he did wrong. He personally expressed his remorse for what he did and admitted that when he was under the influence of alcohol, he could not control himself.
45. *Cooperated well with Police.* He cooperated well with the Police by admitting the offences during the caution interviews. This is consistent with the admission of guilt when he was arraigned in all the three charges.
46. *Personal Circumstances.* The defendant is a father of two children. He is a bread winner despite his awful actions. He informed the court that his two sons are still attending school, and he is responsible for them financially.
47. *Time Spent in Custody.* This must be taken into account as well.

### **Sentencing Principles**

48. The sentencing principles such as punishment, deterrence, and rehabilitation must always be taken into consideration in the process of formulating a sentence.
49. It is an established principle or rule that each case must be decided on its own merits, facts and circumstances.
50. The sentencing tariff for domestic violence cases commenced under the FPA depends very much on the severity of the offence. In the past the courts have issued bound over sentences, penalty fines, and custodial sentences of up to around 2 years imprisonment.
51. The maximum sentence is reserved for the worst type of offences which is a question of fact.
52. In the present case, the defendant shall not be sentenced as a first time offender as he has a previous conviction.
53. 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 for all the three counts.

### **Starting Point**

54. I am of the view that a starting point of 24 months is appropriate for the two counts of Domestic violence. I will then consider the mitigating factors and give due allowances.

### **First Count-Domestic Violence**

55. *Early guilty plea.* The defendant entered an early guilty plea. I also note that he was unrepresented. I give him full credit for this and I deduct 7 months.

56. *Genuine Remorse.* He regretted what he did and was remorseful for what he did wrong. I deduct 3 months to reflect this.
57. *Cooperated well with Police.* He cooperated well with the Police in the course of the investigation and I deduct 4 months.
58. *Personal Circumstances.* The defendant is a father of two children. He is a bread winner and has financial responsibilities towards his children. I deduct 4 months as well.
59. *Time Spent in Custody.* This must be taken into account when computing the final sentence.
60. The resulting sentence is therefore 6 months imprisonment for the first incident or count.

### **Second Count-Domestic Violence**

61. *Early guilty plea.* The defendant entered an early guilty plea. I also note that he was unrepresented. I give him full credit for this and I deduct 7 months.
62. *Genuine Remorse.* He regretted what he did and was remorseful for what he did wrong. I deduct 3 months to reflect this.
63. *Cooperation with the Police.* He cooperated well with the Police in the course of the investigation and I deduct 4 months.
64. *Personal Circumstances.* The defendant is a father of two children. He is a bread winner and has financial responsibilities towards his children. I deduct 4 months as well.
65. *Time Spent in Custody.* This must be taken into account when computing the final sentence.
66. The resulting sentence is therefore 6 months imprisonment for the second incident.

### **Third Count- Breach of Police Safety Notice.**

67. In terms of case authorities, there is less or no case authority at all for the breach of a Police Safety Notice contrary to the provision of the FPA, however, I am also of the view that a starting point of 24 months is appropriate for this count.
68. *Early guilty plea.* The defendant entered an early guilty plea. I also note that he was unrepresented. I give him full credit for this and I deduct 7 months.
69. *Genuine Remorse.* He regretted what he did and was remorseful for what he did wrong. I deduct 3 months to reflect this.

70. *Cooperated well with Police.* He cooperated well with the Police in the course of the investigation and I deduct 4 months.
71. *Personal Circumstances.* The defendant is a father of two children. He is a bread winner and has financial responsibilities towards his children. I deduct 4 months as well.
72. *Time Spent in Custody.* This must be taken into account when computing the final sentence.
73. The resulting sentence is therefore 6 months imprisonment for the third count.

### CONCLUSION

74. Based on the number of cases that are reported and ones that were dealt with by the courts, domestic violence cases are arguably increasing in the country despite the awareness programs, campaigns, and other activities spearheaded by the Government, non-governmental organizations, church groups and other institutions and groups, and also the issuance of various judgments and sentences by the courts.
75. I am aware that most of the victims are female partners, girlfriends and wives of the male perpetrators as opposed to male victims. In the present case, his victims are his wife and his son. In a previous case which is referred to above, the son was also assaulted and a 6 months suspended sentence was imposed against him in November 2019. The actions of the defendant shows he has no respect for his wife and children at all. He uttered very disrespectful and disgusting words against his wife and children when he committed these offences. His actions are wrong in custom and the law, and run afoul with religious doctrines and teachings.
76. In *Kunia v Regina* [2005] SBHC 60; HCSI-CRAC 599 of 2004 (21 February 2005)<sup>8</sup>, his Lordship Palmer CJ said as follows:

*On the other hand, there have been instances in which such assaults have resulted in the death of the opposite spouse and a more serious charge including that of manslaughter or murder imposed. As a weaker vessel, women victims are especially vulnerable and the courts have readily come to their protection by imposing immediate custodial sentences as in this case. The fact the incident occurs in a domestic relationship does not justify or minimise its significance. No spouse should be physically abused or attacked for offences caused within the marriage relationship and parties should as much as possible seek to iron out their differences/disputes in a peaceful or controlled manner without having recourse to physical violence and harm to each other. In such situations, nobody wins and more often than not, both become the loser. Where there are children they can be traumatised or affected by such incidents.*

77. In *Regina v Popoe* [2014] SBHC 155; HCSI-CRC 77 of 2010 (6 November 2014).<sup>9</sup> The learned Judge His Lordship Palmer CJ pertinently commented as follows:

<sup>8</sup> *Kunia v Regina* [2005] SBHC 60; HCSI-CRAC 599 of 2004 (21 February 2005).

<sup>9</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.

*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.*

78. His Lordship CJ Palmer's comments in *Kunia* and *Popoe* are still relevant and applicable to the present day and I concur that the courts duty, inter alia, is to enforce the law 'fairly and consistently'.
79. The courts will continue to issue and impose proportionate but heavy penalties, however, that alone will not solve and contain domestic violence. Perhaps the relevant question is how do we collectively and holistically contain the attitudinal problem of domestic violence?
80. The fight against domestic violence should continue to be led by the Government, however, it needs the combined efforts of the relevant stakeholders such as the churches, schools, universities and the non-governmental organizations, government institutions, and more importantly, families and individuals in the country. The court acknowledge the remarkable efforts of the Government to combat domestic violence in the past, however, more planning, investment and resources are needed to do it better. In addition to that, there needs to be a radical change and a revolution in terms of the people's mentality and perception with respect to women and girls in the Solomon Islands traditional context. Men must see women as equals rather than inferior and mediocre.
81. In summary, after taking into account the core principles of sentencing such as punishment, retribution, deterrence and rehabilitation, and having done my own computation as illustrated above, I now sentence the offender Mr John Mark Rarabae as follows:
- 1] Count 1- 6 months imprisonment
  - 2] Count 2-6 months imprisonment
  - 3] Count 3-6 months imprisonment
82. I note that counts 2 and 3 are separate offences, however, by committing the domestic violence in the second incident (second count) against his son on the 31<sup>st</sup> of January 2020, he effectively breached the Police Safety Notice contrary to section 59 of the FPA. This means that the third count was contingent on the second count or incident. When the second incident was committed, the defendant also committed the third offence. This means that counts 2 and 3 arose out of the same transaction, and I am satisfied that they ought to be served concurrently because technically they occurred at the same time and date despite the fact that they are distinct offences by nature. The resulting sentence for counts 2 and 3, is 6 months imprisonment.
83. However, the resulting sentence for counts 2 and 3 (6 months imprisonment) will run consecutive to the sentence for the first count because the first and second incidents occurred on separate days, that is

on the 30<sup>th</sup> and 31<sup>st</sup> January 2020 respectively. In *Regina v Hoka* [2012] SBHC 152; HCSI-CRC 159 of 2011 (10 December 2012)<sup>10</sup>, Pallaras J, held that the sentences for the charges of an attempted rape occurred on different days separated by time over two years should be ordered to be served consecutively. I understand that the victim in the first incident is the wife and the victim in the second incident is his son. In other words, there were two different victims in the two incidents that occurred on two separate days which justified that the sentences for both incidents are to be served consecutively. Hence, the final sentence for this present case is 12 months imprisonment or 1 year.

Figure 1: The computation of Sentences

**Count 1: 6 months + [Count 2: 6 months + Count 3: 6 months=Counts 2 and 3 are concurrent sentences] therefore the resulting sentence is =6 months to be added with 6 months for the first count. The total sentence is: 12 months or 1 year imprisonment.**

84. In addition to that, I am aware that during the commission of these present offences, the defendant was serving a sentence of 6 months imprisonment that was suspended for 2 years in the Criminal Case Number 784 of 2019 dated 21<sup>st</sup> November 2019. The pronouncements of the conviction in this present case, requires the automatic reinstatement of the said suspended sentence. Hence, the 6 months imprisonment shall be reinstated or added to the sentence for the present case. Therefore, the total sentence that will be served by the defendant is 18 months or 1 year and 6 months imprisonment.
85. The total sentence imposed is to show the court's condemnation of the offence of domestic violence which is arguably prevalent in the country today and must be aggressively curtailed and contained. After having due regard to the totality principle, I do not think that the sentence will have a crushing effect on the defendant and this should teach him a good lesson.
86. I also do not think the defendant deserves a suspension of his sentences in this present case as well given the fact that he reoffended whilst serving a suspended sentence.

### ORDERS

87. The orders of the Court are as follows:

**1) The offender Mr John Mark Rarabae is sentenced as follows for the two counts of Domestic Violence contrary to sections 4 and 58 of the FPA as follows:**

- 1) Count 1-6 months imprisonment**
- 2) Count 2-6 months imprisonment.**

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<sup>10</sup> *Regina v Hoka* [2012] SBHC 152; HCSI-CRC 159 of 2011 (10 December 2012)

- 2] The offender Mr Joh Mark Rarabae is sentenced to 6 months imprisonment for one count of Breach of Police Safety Notice contrary to section 59 of the FPA.
- 3] Counts 2 and 3 are to run concurrently as they arose out of the same transaction and it gives a resulting sentence of 6 months, which shall run consecutively with the sentence for count 1. For the present case, the final sentence is 12 months or 1 year imprisonment.
- 4] In addition to that, the sentence of 6 months imprisonment imposed which was suspended for 2 years in the Criminal Case Number 784 of 2019 issued on 6<sup>th</sup> November 2019, shall now be reinstated or invoked and the defendant shall serve it consecutive to the sentence of this present case. This means he will need to serve a total sentence of 18 months imprisonment which is equivalent to 1 year and 6 months imprisonment.
- 5] The final sentence shall be backdated to the date when Mr John Mark Rarabae was first remanded.
- 6] Right of Appeal within 14 days.

  
PRINCIPAL MAGISTRATE FELIX HOLLISON  
THE COURT