

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

**AT HONIARA**

(Criminal Jurisdiction)

Criminal Case No: 119 of 2020

**REGINA**

-v-

**MAKIVA KASIANO**

*Presiding Magistrate:* Hollison F (Principal Magistrate)

Appearances:

Ms Geitaba Cleda G Waletofe, Senior Legal Officer, Office of the Director of Public Prosecutions, for the Crown

Mr Ben Alasia, Principal Legal Officer, Public Solicitors Office, for the Defendant

*Date of sentencing: 12 March 2021*

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

**SENTENCE**

**INTRODUCTION**

1. The defendant, Mr Mikiva Kasiano, was charged with one count of unlawful wounding contrary to section 229 of the *Penal Code* [Cap 26]. He pleaded guilty to the said charge and I now enter a conviction against him. The defendant initially entered a not guilty plea in 2020 and this matter was set for trial. However, he changed his plea when the trial was about to start few weeks ago.

**FACTS**

2. The defendant's name is provided above and he is from Obo'obo village, Central Guadalcanal in the Guadalcanal Province.
3. The complainant in this matter is Joses Tara also from Guadalcanal Province.

4. On the 12 February 2020 at around 3pm, the complainant was travelling up to their home village from Honiara with three others.
5. At around 6pm on the said date, they turned left onto the road leading to Oboobo village. Whilst on the road leading to Oboobo village, the defendant walked over to the complainant and wounded his (complainant's) left hand with a small bush knife.
6. The complainant sustained an injury on his left arm which was about 5 centimeters in length and 1 ½ centimeters in depth.
7. The knife is approximately 53.34 centimeters in length. The defendant was intoxicated at the material time.
8. The defendant and the victim had reconciled on the 2<sup>nd</sup> March 2020 at their home village in the Guadalcanal Province which was witnessed by chiefs, elders and the Police.

### **DISCUSSION AND ANALYSIS**

9. Section 229 of the Penal Code [Cap 26]<sup>1</sup> provides as follows:

*229. Any person who unlawfully, wounds another is guilty of a misdemeanour and shall be liable to imprisonment for five years.*

#### **Aggravating features**

10. The aggravating factors are as follows:
11. **Maximum Sentence.** The maximum sentence is 5 years which shows that this is a fairly serious offence.
12. **Use of Weapon.** The defendant used a weapon to wound the complainant.
13. **The victim sustained injuries.** The victim sustained an injury as shown in the facts. The wound although not a life threatening one but it was still serious to an extent, and the defendant ought to have suffered pain as well.
14. **Intoxication.** The defendant was intoxicated and drunk during the time of the offending which must be considered as an aggravation.

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<sup>1</sup> Penal Code [Cap 26], s229

### Mitigating Factors

15. On the other hand, the mitigating factors such early plea, no previous conviction, cooperation with the police, reconciliation and the personal circumstances of the defendant are addressed later in this ruling.

### Sentencing Principles.

16. The sentencing principles such as punishment, retribution, deterrence and rehabilitation must always be considered when in the process of formulating any sentence.

### Comparative Sentences.

17. In *Regina v Nguyen Van Thang* [2013] SBHC 26; HCSI-CRC 150 of 2011 (27 March 2013)<sup>2</sup>, the defendant was convicted after a trial and was sentenced to 4 and ½ years imprisonment, which was ordered to run concurrent with the murder conviction.
18. In *Regina v Asuana* [1990] SBHC 52; HC-CRC 34 of 1990 (12 October 1990)<sup>3</sup>, CJ Ward reviewed the initial sentence of the Magistrates Court and increased the 12 months imprisonment to one of 2 ½ years imprisonment.
19. In *Regina v Funifaka* [1997] SBHC 31; HC-CRC 033 of 1996 (6 June 1997)<sup>4</sup>, the three defendants were charged for a number of offences including unlawful wounding. The defendants were sentenced to 2 ½ years imprisonment for unlawful wounding. A weapon was used.
20. In *Regina v Taniamae* [2017] SBMC 32; Criminal Case 165 of 2016 (31 July 2017)<sup>5</sup>; the accused pleaded guilty to one count of unlawful wounding and one count of escape from lawful custody. The accused stabbed the victim on his head with a weapon. The defendant was sentenced to 1 ½ years' imprisonment.
21. In *Regina v Gere* [2013] SBHC 19; HCSI-CRC 8 of 2008 (8 March 2013)<sup>6</sup>, the defendant was charged with one count of manslaughter and one count of unlawful wounding in which he pleaded guilty to. The defendant used a weapon to inflict the fatal wounds on the deceased.

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<sup>2</sup> *Regina v Nguyen Van Thang* [2013] SBHC 26; HCSI-CRC 150 of 2011 (27 March 2013)

<sup>3</sup> *Regina v Asuana* [1990] SBHC 52; HC-CRC 34 of 1990 (12 October 1990)

<sup>4</sup> *Regina v Funifaka* [1997] SBHC 31; HC-CRC 033 of 1996 (6 June 1997)

<sup>5</sup> *Regina v Taniamae* [2017] SBMC 32; Criminal Case 165 of 2016 (31 July 2017)

<sup>6</sup> *Regina v Gere* [2013] SBHC 19; HCSI-CRC 8 of 2008 (8 March 2013)

The defendant was sentenced to 3 years imprisonment for manslaughter and 18 months for one count of unlawful wounding which were served concurrently.

22. It must be noted that most of the cases referred to above are far more serious than the present case in terms of the severity of the injury.
23. However, the use of the weapon in the offending in my view must still attract an immediate custodial sentence.

### **Starting Point**

24. After having considered the relevant factors and the circumstances of the present case, I am of the view that a starting point of twenty four (24) months imprisonment is appropriate for this present case. As is required of me, I will now consider the mitigating factors and give due allowances.
25. The defendant had entered an early guilty plea which is a sign of remorse. The guilty plea was entered shortly before the commencement of the trial, however, it still saves the court's time and resources and I deduct 4 months. The defendant is a first time offender and has no previous conviction and I deduct 2 months. He cooperated with the Police during the investigation stage and I deduct 2 months. The defendant and the complainant had reconciled between themselves which was witnessed by the Police and I deduct 2 months. I note his personal circumstances especially his age and his high chance of rehabilitation and I deduct 2 months.
26. After having considered both the aggravating and the mitigating factors, and after having done my own computation as shown above, I am satisfied that twelve months (12) months of imprisonment is appropriate for this present case.
27. Section 44(2) of the *Penal Code* [Cap 26]<sup>7</sup> is very clear and any custodial sentence imposed cannot be suspended. In *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011).<sup>8</sup>, the Court of Appeal held 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.*

### **CONCLUSION**

28. It must be made clear that taking the law into one's own hands will lead to further problems and issues in which a person may regret. An individual must take the initiative to solve whatever problems that he or she has with another person in a peaceful and lawful manner.

<sup>7</sup> *Penal Code* [Cap 26], s 44, suspended sentence provisions

<sup>8</sup> *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

Inflicting a wound to another person unlawfully cannot not be tolerated under any circumstance and this case should be a demonstration of the court's denunciation of such crimes.

29. Having said that, and after balancing the core sentencing principles such as punishment, deterrence and rehabilitation, I now sentence the defendant Mr Kasiano to an imprisonment term of twelve (12) months for one count of unlawful wounding contrary to section 229 of the *Penal Code* [Cap 26].
30. The pre-sentence custody period shall be taken into account and must be duly deducted. The court's record shows that the defendant was remanded on the 14<sup>th</sup> February 2020 and was later released on bail on the 8<sup>th</sup> April 2020.

### **ORDERS**

31. The orders of the Court are as follows:

- [1] The defendant Mr Makiva Kasiano is sentenced to twelve (12) months (equivalent to 1 year) imprisonment for one count of unlawful wounding contrary to section 229 of the *Penal Code* [Cap 26].**
- [2] The time previously spent in custody must be duly deducted.**
- [3] The defendant is entitled to receive his cash bail.**
- [4] Right of Appeal within 14 days.**

  
PRINCIPAL MAGISTRATE FELIX HOLLISON  
THE COURT