

IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)

Criminal Case No. 342 of 2021

REGINA

-v-

FRANK TUITA

Date of plea: September 3, 2021
Date of hearing: September 6, 2021
Date of sentence: September 13, 2021

Ephraim Pitasua for the Police Prosecution
Emy P. Rusi for the Defendant

SENTENCE

1. The defendant, Mr. Frank Tuita, is charged with two counts of *Domestic Violence – Physical Abuse* contrary to section 4 (1) (a) as read with section 58 (1) and (2) of the Family Protection Act, and two counts of *Domestic Violence – Psychological Abuse* contrary to section 4 (1) (c) as read with section 58 (1) and (2) of the Act. The defendant pleaded guilty to all counts on arraignment, and criminal conviction was thereby entered against him. I had deferred the sentence until today for my deliberation, I shall now do so.
2. The facts show that the defendant and victim were in a defacto relationship during the dates of offence. On November 25, 2020 at around 11:00pm, the defendant questioned the victim over a Facebook chat conversation. In fear of defendant being armed with a knife, the victim remained silent. The defendant insisted and directed her to sit next to him and explain the chat conversation. The victim was terrified but accepted what he said, and sit down next to him. Engulfed with anger, the defendant grab the victim's neck and hit his head against her forehead. Thus, blood came out from her forehead area. The defendant saw this and assisted in compressing the injury with his hand, and it stopped the bleeding.
3. The second incident occurred on December 10, 2020, when the victim was at point Cruz area, opposite bulk shop. She was sitting in a car when the defendant came over to her, and an argument erupted. Fueled with anger, the defendant grabbed the victim's shirt out from the car and wrapped the shirt around her neck. At this time, he pulled out a kitchen knife from his bag. He held it out and pointed to her, and said the words to the effect: *Bae me cuttem you wetem knife ya because you crossim line blo me.*



4. The maximum penalty for the offence of Domestic Violence under s. 58 (1) and (2) is 30,000 penalty units, or 3 years imprisonment, or both. The seriousness of an offence is judged by its maximum term. However, as enunciated in many previous cases, the maximum penalty is only applied in the most awful and worst type of domestic violence offending. Courts assessed each case on their own merits and fundamental facts and circumstances.
5. The defendant did the act of domestic violence against a person who he was expected to love and cherish. He had allowed anger to displace his self-control. Anger that was predominantly driven by trust issues.
6. I have gathered the following to be the aggravating factors. First, the presence of a weapon in both counts. The defendant had with him in his possession a kitchen knife on both occasions, and had used it to threaten the victim with, either with the use of words or merely holding on to it. I acknowledge that the weapon was not used in the assault on the victim. Second, the victim being a physically weaker and vulnerable person. The defendant committed the domestic violence against the partner who was physically weaker and vulnerable. She could not defend herself, but held the pain in herself and allowed the assault, although she was not happy with it. Also, he has breached the trust placed on him as a defacto partner. And finally, the offending was repeated. The defendant did not withdraw from the initial offending, and committed the second offending a month later.
7. I must acknowledge Mrs. Rusi of counsel for the defendant to assist the court in providing similar case authorities, which will help the court in reaching a proper and just conclusion. I was referred to several cases of domestic violence, but must say that, for most of them, they are quite serious compared to this case. That is to say, there were medical reports and clear facts to justify the extent of assault and wound, weapons were used, unprovoked act, and involvement of alcohol as well.
8. I was referred to *Regina v Ramai*¹ ("**Ramai**"), the facts reveal that, the defendant was charged with two counts of Domestic violence-physical abuse, which he pleaded guilty to. On the first incident, he was jealous of his wife and caused her to be enraged, thus, threatened his wife that one fine day he will cut his wife into pieces like a woman who died in a village nearby. It was not his first time to threaten the victim (wife). On the second occasion, the defendant and victim had an argument and he slapped her on the mouth, and used a stone to hit her shoulder three times. The court sentenced him to 5 months' imprisonment.

¹ [2019] SBMC 33; Criminal Case 136 of 2019

9. I was also referred to *Regina v Sare*² ("*Sare*"), the brief facts were that, the defendant came home drunk, got angry and threw an axe at his wife. The axe landed on the victim's shoulder and caused a nasty wound, which was reported by the Doctor, to be approximately 6 – 8cm in length. The Court sentenced him to 7 months' imprisonment.
10. In *R v Foster*³ ("*Foster*"), the defendant assaulted his wife on two occasions. He pleaded guilty and was sentenced to 6 months' concurrent sentence to his other counts of Domestic violence and intimidation. The defendant used weapon to aid the assault on the victim. There was evidence of reconciliation between his wife's family and himself and that his wife desperately needs him back in the family to support and care for their children. The court was tamed to accept that principle of rehabilitation was appropriate to coincide with the need to impose a deterrent sentence.
11. Having outlined the case authorities, it would be plain to state that, the sentencing yardstick for offence of domestic violence ranges from fine to imprisonment, depending on the circumstance of offending, aggravating factors, and mitigating factors. Where the offending involves use of a weapon to assault the victim, alcohol, and the seriousness of the injury, an imprisonment term is inevitable, unless on exceptional circumstances. Here, there were no weapon used on the victim, no medical report to justify the extent of the injury on the head, and no alcohol present. However, because of the physical assault and level of threats on the victim, I see it proper to fix the following starting point.
- **Count 1** – Domestic violence – physical abuse 10/12/2020 – 4 months' imprisonment.
 - **Count 2** – Domestic violence – psychological abuse 10/12/2020 – 2 months' imprisonment.
 - **Count 3** – Domestic violence – physical abuse 25/11/2020 – 4 months' imprisonment.
 - **Count 4** – Domestic violence – psychological abuse 25/11/2020 – 2 months' imprisonment.
12. In addition to the starting points fixed above, I shall increase further 3 months to consider the aggravating factors in this case. As such, the starting points shall be altered to reflect this increase.
13. In considering his mitigation, I consider the following factors. First, credit of 25% discount or 2 months is deducted to reflect his early guilty plea, which is a demonstration of remorse and acceptance to his mistakes. Second, he is a first-offender, thus, a two month is deducted accordingly, and this also includes his cooperation with the police. In total, 4 months is deducted from the head sentences. Separately, for the physical abuse counts, I further deduct a month to consider the fact that the defendant is a young offender

² [2020] SBMC 6; Criminal Case 75 of 2019

³ [2017] SBMC 58; Criminal case 148 of 2017

in his 20's, and that is to reflect his youthfulness, and taking due account of what may be crushing repercussion to his personal life. Therefore, the following are the final head sentences:

- **Count 1** – Domestic violence – physical abuse 10/12/2020 – **2 months' imprisonment.**
- **Count 2** – Domestic violence – psychological abuse 10/12/2020 – **1 month imprisonment.**
- **Count 3** – Domestic violence – physical abuse 25/11/2020 – **2 months' imprisonment.**
- **Count 4** – Domestic violence – psychological abuse 25/11/2020 – **1 month imprisonment.**

14. Since all counts emanated out of the same domestic argument between the victim and the defendant, albeit the separate dates, I must order that the counts 1 to 4 shall be served concurrently, meaning the defendant will serve the 2 months' imprisonment.
15. I shall now deal with the question of, whether the defendant should serve his term in prison. The defendant has demonstrated a clear progress of rehabilitation in his life since the commission of the offences. First, he has moved on with his current partner, who is his Fiancée, and they are now living happily together. Second, he has not committed any offence of similar nature until to date. Third, he is now working as a community facilitator for World Vision serving our communities. Therefore, I am of the view that, if the Court is to send him to prison today, it will not only jeopardize his work, but also his current life, and the progress of rehabilitation that has now demonstrated. On this juncture, I would also think it is equally relevant that the victim and the public at large see that those who commit such offence must face the full force of law, and that justice is served.
16. For his sentence remarks, I wish to reiterate the sentiments shared by this court in *R v Abanikafo*⁴ ("*Abanikafo*"), where the court said (at para. 13 and 15):

"It must now be embedded in the mind of the defendant, and those who wish to practice, domestic violence, that a wife is not a mere object or property to discharge one's anger or frustration on. She is regarded as a man's right rib, which bears a significant meaning of someone who sticks closer and attaches to a man like no other. In marriages, courtships, and relationships so to speak, wife is the husband's companion, and best friend. Thus, demands care, respect, love, and security..."

"We are 'men', and I must speak in bold condemnation against beliefs that wife beating is a cultural principle, this is incorrect. The laws of this nation, the holy

⁴ MMC-Criminal Case 108 of 2021

bible, and cultural principles does not entertain, nor tolerate wife beating or domestic violence. There are rightful, lawful and proper ways and avenues of resolving family issues, and violence is never one of them. In fact, violence would only add more problems to the existing one."

17. Accordingly, having balanced the circumstances and factors discussed above, and being guided with the aim to allow the interest of justice to prevail, after having due regard to that of the victim and defendant. I see it appropriate to exercise my discretion under s. 24 (3) of the Penal Code, and instead of sending the defendant to prison, ordered that he shall pay a fine of \$1,500.
18. The defendant must take this lesson to heart and avoid succumbing to his anger, which would, if not curtailed properly, lead to catastrophic outcomes. The sentence is a reflection of the unique circumstance of this case. Today, I am convinced that a rehabilitative sentence is appropriate for him, and should also serve a strong message to the wider community to desist turning to violence for solution, and instead, consider other peaceful, lawful, and biblical avenues of resolving disputes in a relationship, courtship, or marriage.

Sentence orders

1. I hereby sentence the defendant, Mr. Frank Tuita to a fine of **\$1,500 (One Thousand Five Hundred Dollars)**.
2. The fine must be paid by September 24, 2021 at 4:30pm.
3. In default of payment, 2 months' imprisonment.
4. Right of appeal applies within 14 days of this sentence.
5. Conviction is entered.
6. Order accordingly.

THE COURT

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MR. LEONARD B. CHITE

Principal Magistrate
Central Magistrates' Court

