



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

**(Criminal Jurisdiction)**

**Criminal Case No: 696 of 2021**

**REGINA**

**-v-**

**ELIAH ELIOT MANEHOGO TOBAHOGO**

**Coram: HOLLISON F (PRINCIPAL MAGISTRATE)**

**Appearances:**

**Ms Lethiara Pellie, Senior Legal Officer, Office of the Director of Public Prosecutions for the Crown (ODPP)**

**Mr Paul None, Senior Legal Officer, Public Solicitors Office for the Defendant**

***Date of sentencing: 22 February 2022 at 11am. Delivered via zoom.***

***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 Eliah Eliot Manehogo Tobahogo, 40, is 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 convict him.

**FACTS**

2. The defendant's name is provided above and he comes from Hakama Village, Small Ngella, Central Islands Province.

3. The complainant is Harrison Vèvehe, 16, a native of Voghovavala Village, Big Ngella, Central Islands Province.
4. The defendant is related to the complainant as his uncle.
5. On the 26<sup>th</sup> September 2021, the complainant and his uncle Harrison (Snr) went to dive for beche-de-mer. The two of them then returned to Hakama Village at about 2am on the 27<sup>th</sup> September 2021.
6. Upon their return, the complainant cooked some crabs, ate and then went to sleep in his grandparents' house.
7. While the complainant was sleeping, the defendant went inside the house where the complainant was sleeping and he cut the complainant once on his chest area with a bush knife and he ran away.
8. The complainant woke up and cried because of the great pain.
9. Fortunately, the complainant's aunt who lived next door ran to his aid. The complainant was transported to Tulagi Hospital via an OBM-powered canoe for medical attention on the same night.
10. At the Tulagi Hospital, the complainant was examined by Dr Simon Holara and he referred the complainant to the National Referral Hospital (NRH) for proper assessment and treatment on the same day.
11. The complainant sustained a wound measuring 7cm in length, with a notable depth and there was possible protrusion of the intestines.
12. At the NRH, the complainant was brought into the operating theatre for wound exploration and they noted that the internal abdominal contents were not involved, so they stitched the wound. The complainant was discharged on the 5<sup>th</sup> of October 2021.
13. The incident was reported to the Tulagi Police Station and an investigation was carried out.
14. On the 28<sup>th</sup> September 2021, the defendant was arrested. He participated in a caution interview and fully cooperated with the Police in the course of the investigation.
15. The defendant had suspected that the complainant was having an affair with his wife whilst he was working in Honiara.

#### **DISCUSSION AND ANALYSIS**

16. 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.*

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

### **Aggravating features**

17. The aggravating factors are as follows:
18. **Maximum Sentence.** The maximum sentence is 5 years imprisonment which indicates that this is a fairly serious offence.
19. **Pre-Meditation.** The crime was clearly premeditated. The defendant was suspicious of his nephew (who is also the victim) of having an affair with his wife whilst he (defendant) was in town. The use of the weapon and the infliction of the wound at night on someone who was sound asleep clearly shows that the defendant had intended to inflict serious harm on the complainant.
20. **Offence occurred at night.** The offence was committed in the night on someone who cannot defend himself.
21. **Use of Weapon.** The defendant inflicted the wound using a weapon, that is, a knife. That itself is serious.
22. **The victim/complainant sustained injuries.** The complainant sustained quite a serious injury on his body as per the medical Report.<sup>2</sup> The report noted there was a laceration (knife wound) on the anterior chest wall, including part of the right rib border and epigastric region. It was measured to be 7cm in length, depth noted and there was a possibility of protrusion of intestines. Thus, he was referred to the NRH for further medical diagnosis and proper management. The complainant could have easily died through the discharge of blood at the time.
23. The defendant also breached his duty of care and trust as the complainant's uncle by doing what he did. Suspecting someone of having an affair with one's partner is not the same as proving the allegation is true. The logical thing to do in such circumstances is to properly investigate whether the alleged affair is even true. His attitude indicates that he is someone who is a law unto himself.

### **Mitigating Factors**

24. On the other hand, the mitigating factors are as follows: early guilty plea and remorse, first offender, cooperation with the Police, and personal circumstances.

### **Sentencing Principles.**

25. The sentencing principles such as punishment, retribution, deterrence and rehabilitation must always be considered when in the process of formulating any sentence. Each case must be decided in accordance with its own merits and circumstances.
26. Sometimes, it would be helpful to refer to similar past cases in this jurisdiction for the purposes of comparison.

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<sup>2</sup> Medical Report of Harrison Vevehe by Dr Simon Holara dated 27<sup>th</sup> September 2021.

### Comparative Sentences.

27. In *Regina v Nguyen Van Thang* [2013] SBHC 26; HCSI-CRC 150 of 2011 (27 March 2013)<sup>3</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.
28. In *Regina v Asuana* [1990] SBHC 52; HC-CRC 34 of 1990 (12 October 1990)<sup>4</sup>, CJ Ward reviewed the initial sentence of the Magistrates Court and increased the 12 months imprisonment to one of 2 ½ years imprisonment.
29. In *Regina v Funifaka* [1997] SBHC 31; HC-CRC 033 of 1996 (6 June 1997)<sup>5</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. The victims sustained injuries through the use of weapons such as knives and chisels.
30. In *Regina v Tanlanae* [2017] SBMC 32; Criminal Case 165 of 2016 (31 July 2017)<sup>6</sup>, the accused pleaded guilty to one count of unlawful wounding and one count of escape from lawful custody. The accused stabbed the victim with a weapon on his head. A sentence of 1 ½ years' imprisonment was imposed.
31. In *Regina v Gere* [2013] SBHC 19; HCSI-CRC 8 of 2008 (8 March 2013)<sup>7</sup>, the defendant was charged with one count of Manslaughter and one count of unlawful wounding in which he pleaded guilty. A weapon was used to stab the deceased. The defendant was sentenced to 3 years imprisonment for manslaughter and 18 months for one count of unlawful wounding which were served concurrently.
32. In *Regina v Omea* [2020] SBMC 1; Criminal Case 82 of 2019 (27 January 2020)<sup>8</sup>, the accused pleaded guilty to one count of unlawful wounding. A bush knife was used. The victim suffered laceration on his right forehead, nasal laceration and laceration on his left forearm. The court took into account the guilty plea, no prior conviction, reconciliation, and payment of compensation, and unplanned act. Whilst the aggravating factors are use of weapon, intoxication and injuries sustained. The defendant was sentenced to ten months' imprisonment.

### Starting Point

33. After having considered the relevant factors and the circumstances of the present case, it must attract an immediate custodial sentence. Hence, I am of the view that a starting point of 40 months' imprisonment is appropriate for this present case.

<sup>3</sup> *Regina v Nguyen Van Thang* [2013] SBHC 26; HCSI-CRC 150 of 2011 (27 March 2013)

<sup>4</sup> *Regina v Asuana* [1990] SBHC 52; HC-CRC 34 of 1990 (12 October 1990)

<sup>5</sup> *Regina v Funifaka* [1997] SBHC 31; HC-CRC 033 of 1996 (6 June 1997)

<sup>6</sup> *Regina v Tanlanae* [2017] SBMC 32; Criminal Case 165 of 2016 (31 July 2017)

<sup>7</sup> *Regina v Gere* [2013] SBHC 19; HCSI-CRC 8 of 2008 (8 March 2013)

<sup>8</sup> *Regina v Omea* [2020] SBMC 1; Criminal Case 82 of 2019 (27 January 2020)

34. **Early guilty plea.** The defendant entered an early guilty plea which saves the court's time and resources. This also shows that he is remorseful.
35. **First time offender.** The defendant has no previous conviction which means he was a law abiding citizen for the past 40 years of his life but for this offending.
36. **Cooperation with the Police.** The defendant cooperated with the Police quite well. This eased the investigation.
37. **Personal Circumstances.** The defendant is 40 years old, and he is married. He has parental responsibilities to perform.
38. **Pre-sentence-custody.** He was remanded in custody since the 30<sup>th</sup> September 2021. This ought to be taken into account.
39. I take note of the mitigating factors which include the following: early guilty plea, no previous conviction, cooperation with the Police, and his personal circumstances. I deduct 16 months to reflect all these mitigating factors.
40. After having considered both the aggravating and the mitigating factors, and after having done my own computation as illustrated above, I am satisfied that 24 months (2 years) of imprisonment is appropriate for this present case.
41. Section 44(2) of the *Penal Code* [Cap 26]<sup>9</sup> is very clear on this and my powers to suspend a sentence is not enlivened in the event that a weapon was used in the commission of an offence. In *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011).<sup>10</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

42. The defendant suspected his wife of infidelity and for having an affair with his nephew who is the complainant. The defendant should have asked both the complainant and his wife if the alleged extra-marital affair is true. If so, then they should have solved the issue harmoniously, cordially and in a peaceful manner. The complainant was defenseless at the time as he was asleep and he cannot defend himself. That is a senseless and vicious act which could have cost the life of the complainant.
43. Having said that, and after balancing the core sentencing principles such as punishment, deterrence and rehabilitation, I now sentence the defendant Mr Tobahogo to 24 months (2 years) imprisonment for one count of unlawful wounding contrary to section 229 of the *Penal Code* [Cap 26].

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<sup>9</sup> *Penal Code* [Cap 26], s 44, suspended sentence provisions

<sup>10</sup> *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

44. The sentence is aimed to send a deterrent message to the people who are in this country that wounding a defenseless person using a weapon warrants a custodial sentence.
45. The sentence shall be backdated to the date of first remand in September 2021.

**ORDERS**

46. The orders of the Court are as follows:

- [1] The offender Mr Elliah Eliot Manehogo Tobahogo is sentenced to 24 months (2 years) imprisonment for one count of unlawful wounding contrary to section 229 of the *Penal Code* [Cap 26].
- [2] The sentence shall be backdated or retrospectively commenced on the date of first remand, being the 30<sup>th</sup> September 2021.
- [3] Right of Appeal within 14 days.

  
PRINCIPAL MAGISTRATE FELIX HOLLISON  
THE COURT