

IN THE CENTRAL MAGISTRATES COURT  
OF SOLOMON ISLANDS  
*Criminal Jurisdiction*  
Criminal Case No. 538 of 2022



REX

V

HENCE GAPU

Date Plea taken: 4 May 2023  
Date of Sentencing Hearing: 4 May 2023  
Date of Sentence: 19 June 2023

Prosecutions: *Ms Florence Hiroshachi (PPD)*  
Defendant: *Ms Emy Pisihania Rusi (PSO)*

**SENTENCE**

- 1) The defendant was initially charged with two counts of *Domestic Violence* as follows:
  - a. Count 1: *Domestic Violence: Physical Abuse* contrary to section 4(1)(a) and section 58(1) and (2) of the *Family Protection Act*.
  - b. Count 2: *Domestic Violence: Psychological Abuse* contrary to section 4(1)(c) and section 58(1) and (2) of the *Family Protection Act*.
- 2) On 12 June 2023, Prosecutions moved an application pursuant to section 190(2)(b)(ii) of the *Criminal Procedure Code* to withdraw Count one of the charge against the defendant. I granted the Application and acquit the defendant on one count of *Domestic Violence: Physical Abuse* contrary to section 4(1)(a) and section 58(1) and (2) of the *Family Protection Act*.
- 3) The defendant pleaded guilty to one count of *Domestic Violence: Psychological Abuse* contrary to section 4(1)(c) and section 58(1) and (2) of the *Family Protection Act*. The victim in both counts is the defendant's biological father. He now appears for his sentence today.

**The Law on Domestic Violence**

- 4) Domestic Violence is an offence created under section 58(1) of the *Family Protection Act 2014* which provides as follows:

"58. (1) A person commits an offence if the person commits domestic violence."

- 5) The prescribed penalty is stipulated under section 58(2) of the *Family Protection Act* as follows:

"... (2) The penalty for an offence under subsection (1) is a fine of 30,000 penalty units or imprisonment for 3 years, or both."

6) The penalty of 30,000 penalty units, equivalent to \$30,000 shows the seriousness of this offence. It further shows that the Parliament was serious about regulating domestic actions that amounts to violence between those who are in a domestic relationship.

7) Domestic Violence is defined in section 4(1) of the Act as follows:

*"4(1) "Domestic Violence" is 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;*
- (d) Economic abuse.*

8) The defendant committed psychological abuse which is a *conduct that degrades or humiliates a person* as defined in section 3 of the *Family Protection Act 2014*. It includes any of the following –

- (a) Insults, ridicule or name calling*
- (b) Obsessive possessive or jealousy; which constitutes a serious invasion of the person's privacy, liberty, integrity or security;*
- (c) Harassment;*
- (d) Stalking;*
- (e) Intimidation.*

9) The defendant and victim are in a domestic relationship as father and son. Domestic relationship is defined in section 5 of the *Family Protection Act 2014* to include *inter alia*, family members and parents of a child.

#### **Facts**

10) The agreed facts revealed that the defendant is a 20-year-old male from Keremaniu village in Guadalcanal Province. He resided at Rifle Range Area with his parents at the time of the incident. Between five o'clock and six o'clock in the evening on 28 October 2022, the victim arrived home. He was informed by his wife that their son, the defendant, opened their kitchen door lock using an iron bar. Upon hearing this, the victim approached the defendant and asked him why he had broken their kitchen door lock. The defendant responded to the victim by swearing at him in pidgin language by uttering the words *"fuckim mummy and daddy blo u, u nanali."*<sup>1</sup> The victim felt offended and became angry at the defendant.

11) The victim angrily grabbed the defendant's shirt to his neck. The defendant was still holding on to the iron rod that had mistakenly hit the victim's right wrist. The victim felt pain so he left the defendant.

<sup>1</sup> Paragraph 5, Agreed Facts, filed 4 May 2023.

### Mitigating Factors

- 12) Ms Rusi, of Counsel for the defence and Ms Hirosachi for the Prosecutions submitted in agreement on two factors. Firstly, the defendant's early guilty plea is a mitigating factor in favour of the defendant. I agree that pleading guilty saves the courts time and resources. Secondly, this is the defendant's first brush with the law, being a first-time offender with no previous conviction recorded against him is a mitigating factor also in his favour. I also agree with that. The defendant is young person with a long way to go in life. He had spent over five months in custody pre-sentence.

### Aggravating Features

- 13) The disrespect shown by the defendant to the victim who is his biological father is uncalled for. The words that were used that offended the victim can be translated as *"have sex with your mother and father, you masturbate."* It is insulting and such a lewd utterance to a parent is the filthiest thing that a child can do to the very person who is the reason for their existence. Psychological abuse also includes *"insult"* which is defined in the Oxford English Dictionary to mean *"a remark or an action that is said or done in order to offend someone."* The maximum penalty prescribed for this offence of 30,000 penalty units or 3 years' imprisonment is classified as a serious offence.
- 14) Defence and Prosecutions both submitted on the defendant's cooperation with the police. Ms Rusi submitted that the defendant cooperated with the police. The prosecutions submitted otherwise. I will not rely on either side because I have not been provided with any evidence to support their submissions on this issue.

### Tariff and Sentencing Consideration

- 15) It is important that I consider the relevant principles of sentencing in this case. Deterrence is a crucial aspect of sentencing a defendant. The fact that he was arrested and appear in court to answer to this offence, together with the penalty that I will impose on him should serve as a punishment that will teach him a lesson for the offence he committed. We have a strong legal, cultural and religious system that governs our conducts in each community that we belong to, including our families. Respect for parents is not only biblical but is part and partial of our cultural upbringing in the Solomon Islands context. The biblical aspect as seen in Ephesians 6:1-3, speaks about a child's place in a home and I quote: *"Children, obey your parents in the Lord: for this is right. Honour thy father and mother, which is the first commandment with promise. That it may be well with thee, and thou mayest live long on earth."* It further puts parents in their place and I quote; *"And, ye Fathers provoke not your children to wrath, but bring them up in the nurture and admonition of the Lord."*<sup>2</sup>
- 16) The sentence that I will impose on the defendant must serve as deterrence that will discourage him from further offending and to be serious about living a life in his community as a law-abiding citizen. It should also serve as a general deterrence to the

<sup>2</sup> Ephesians 6:4, King James Version, Bible

wider community, especially to dissuade likeminded persons, especially children, who think it is acceptable to use such obscene language to their parents. It is not acceptable and is wrong on so many levels. This court will not tolerate such a vulgarism and must therefore impose a sentence that is fitting for the offence committed. I adopt what the court in *R v Radich*<sup>3</sup> stated in relation to deterrence:

*“...If a Court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences. On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender; and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment.”*

17) The rehabilitation of the defendant is another important aspect that will not only help the defendant in his reintegration to his community but also the protection of the community. The sentence this court will impose must help the defendant to rehabilitate himself.

18) The offence of *Domestic Violence* that the defendant is charged with carries a maximum penalty of \$30,000.00 or three-years imprisonment, or both. The maximum penalty shows that the offence is a serious offence. However, I am mindful that for any sentence imposed, each case must turn to its own facts and circumstances. There is no mathematical rule involved in sentencing, as expressed in *R v Simpson*:

*“Sentencing is neither a science nor a mere exercise in creative mathematics. Sentencing is an art ...”*<sup>4</sup>

19) The defendant in *R v Dawea*<sup>5</sup> was sentenced to good behaviour bond for one year in his own recognisance in the sum of \$300 after he pleaded guilty to two counts Domestic Violence under section 4(1)(c) which is Psychological Abuse. He was ordered to pay compensation of \$500 to his father, sister and niece for insulting and threatening them and smashed a bottle in front of his niece. He committed this offence whilst he was drunk.

20) In *R v Rarabae*<sup>6</sup> the defendant was sentenced to 6 months imprisonment each for two counts of domestic violence, psychological abuse and 6 months for one count of *breach of Police Safety Notice*. The defendant was abusive toward his wife and swore at his wife and children on two occasions causing psychological abuse.

<sup>3</sup> [1954] NZLR 86 (CA)

<sup>4</sup> (2001) 126 A Crim R 525 (NSW CCA)

<sup>5</sup> Unreported, Criminal Case No.

<sup>6</sup> Unreported, Criminal Case No. 87 of 2022

- 21) The defendant in *R v Mae*<sup>7</sup> pleaded guilty to two counts of domestic violence, physical abuse and psychological abuse. He was aggressive at the time of offending and used words that made the complainant feel humiliated. He was sentenced to 8 months imprisonment for the psychological abuse count and 10 months for physical abuse. The psychological abuse sentence was to run concurrently with physical abuse count. Four months was deducted to reflect his early guilty plea. He therefore spent 6 months in custody.
- 22) In *R v Was*<sup>8</sup> the defendant was sentenced to a fine of \$1000, in default, 40 days imprisonment for psychological abuse on his brother. He swore at his brother and threatened to kill.

### **Discussion on Sentence**

- 23) *Psychological abuse* is recognised in the *Family Protection Act* as a form of *domestic violence* that exists within a *domestic relationship* setting. The purpose of this piece of Legislation is to protect families from domestic violence and further to promote safety, health and wellbeing of victims of domestic violence.<sup>9</sup> Victims may include parents or children who are in a domestic relationship as in this case. Therefore, it is the duty of this court to ensure that it also achieve the purpose of this legislation through the sentence imposed on defendants.
- 24) The sentence that I will impose must deter the defendant from further offending of similar nature or other offences. It also serves as a general warning for other likeminded persons who think psychologically abusing others, especially their parent is acceptable when it is not. By now the defendant should learn from his mistake and its consequences.
- 25) It is unclear on the facts whether the defendant is in school or employed, or unemployed. Regardless, the defendant is a young person who still has a long future ahead of him. He should be doing something worthwhile with his life rather than being an abuser toward his parents whilst living under their care.
- 26) The sentence imposed by courts in this jurisdiction for this offence as discussed above ranges from Fine to bound over, to imprisonment. I fix a starting point of twelve months as appropriate in this case. I consider the defendant's guilty plea to the charge and deduct a third of the starting point, which is 4 months. I further deduct one month for being a first-time offender with no previous conviction. I add a month to reflect the aggravating features, particularly the disrespect he had shown to his father. He is therefore sentenced to 6 months imprisonment. The defendant has been in custody to this date for six months. I order that the defendant be released at the rising of the court.

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<sup>7</sup> Unreported, Criminal Case No. 54 of 2020

<sup>8</sup> Unreported, Criminal Case No. 504 of 2019

<sup>9</sup> Family Protection Act 2014.

**Orders:**

- 1) I convict the Defendant, Mr Hence Gapu for one count of *Domestic Violence* contrary to section 4(1)(c) and section 58(1) and (2) of the *Family Protection Act 2014*.
- 2) The convict is sentenced to six months imprisonment. Time spent in custody is to be taken into account. He is to be released at the rising of this court.
- 3) Right of appeal applies to any aggrieved party within 14 days from today.
- 4) Order Accordingly.

Dated 19 June 2023



Elma Veenah Rizzo Hilly – Principal Magistrate