

IN THE CENTRAL MAGISTRATES COURT  
OF SOLOMON ISLANDS  
*Criminal Jurisdiction*  
Criminal Case No. 349 of 2023

REX  
V  
MICHAEL WALE TAISIA



*Dates*

Plea: 29 August 2023  
Sentencing Hearing: 8 September 2023  
Sentence: 22 September 2023

Coram: *PM Hilly*

Prosecutions: *Mr John Mark Saugaro (PPD)*

Defence: *Ms Roria Sikua (PSO)*

**SENTENCE**

**Introduction**

- 1) The defendant, Mr Michael Wale Taisia is charged with one count of *Domestic Violence* contrary to sections 4(1)(a) and 58(1) of the *Family Protection Act 2014* ("*FPA 2014*") for physical assault on the victim, Ms Jenny Kwaima.
- 2) He pleaded guilty to the offence as charged and a conviction is entered against him accordingly. He is now before this court to be sentenced.

**Offence and Maximum Penalty**

- 3) Domestic Violence is an offence created in section 58 of the *Family Protection Act 2014*.

"58. (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.*

(3) *It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for committing the act of domestic violence."*

- 4) The maximum penalty for the offence the defendant is charged with 30,000 penalty units, which is equivalent to SB\$30,000 fine or 3 years' imprisonment, or both.
- 5) Section 4 of the *FPA 2014* defines '*domestic violence*' 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.*

*(2) Domestic violence may consist of a single act or a number of acts that form part of a pattern of behaviour, even though some or all of those acts when viewed in isolation appear to be minor or trivial."*

#### **Facts**

- 6) The defendant and victim were once in a *de facto* relationship and separated due to some external marital affairs. Between 6pm and 7pm on 5 December 2022, the victim contacted the defendant to meet up with her at the Anthony Saru Building at Point Cruz. The defendant's cousin brother accompanied him to meet the victim.
- 7) During their conversation the victim accused the defendant of having an extra marital affair with another female. An argument with exchange of words arose that caused the defendant to be angry and used his right leg to kick the left lower abdomen of the victim. The kick caused her pain and as she bent down, she urinated.
- 8) Afterward, the defendant reacted by lifting his right hand, holding a biro and attempted to stab the victim. It was at that point when the defendant's cousin brother intervened and told the defendant to settle the matter. The victim stepped back toward the Parliament fence and left. The victim, being a nurse, treated herself at home with medication to prevent internal infection and pain relief. She continued with the medication till she recovered.

#### **Personal Circumstances**

- 9) The defendant is a 33-year-old man and has two children in his previous relationships. His two children are aged six and four years old. He is currently self-employed doing carpentry work since 2020 till date. Prior to 2020, he worked as a Correctional Officer for seven years. Ms Sikua submitted that the defendant is the sole breadwinner for his two children and pays for their school fees and daily needs.

#### **Mitigating Factors**

- 10) The defendant pleaded guilty to the offence. This saves time and resources the court could have expended if it were to run a full trial. Ms Sikua submitted that the defendant's guilty plea reflects his remorse, an admission of his wrong actions and acceptance of the consequences of his actions. Guilty pleas are usually given weight in

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terms of mitigation and as settled in *Pitamama v Reginam*<sup>1</sup> and *Qoloni v Regina*<sup>2</sup>, they attract a discount in the sentence between one-quarter and one-third.

- 11) The defendant has no prior convictions recorded against him and is therefore a first-time offender. Since the incident, the defendant has tried his best to be a law-abiding citizen and focused on building his career through being self-employed carpenter.
- 12) Ms Sikua on one hand submitted that after the incident, the defendant and victim reconciled in December 2022. The reconciliation saw the defendant and victim concluded their relationship and parted ways. They apologised to each other and are now in speaking terms. Due to the active status of this case, the defendant had done his best to avoid any contact with the victim on the victim's contact initiatives. Prosecutions on the other hand, submitted there was no reconciliation done between the victim and the defendant. The lack of evidence to verify this position leaves me with no choice but to not consider this as a mitigating factor.
- 13) The defendant was initially charged in March 2023 and discharged by the court then. Prosecutions were given the liberty to recharge and they did in May 2023. The defendant. Ms Sikua submitted that there was a delay of 5 months for this matter to be concluded. The courts records show that the delay is not to be blamed on one party alone in the proceedings as there is no unreasonable delay.

**Aggravating features**

- 14) There are aggravating features noted in this case. I also consider some of the features noted in section 62 of the *FPA 2014*:
  - a. ***Seriousness of the offence***: The maximum penalty of \$30,000- or 3-years imprisonment, or both, for the offence of Domestic Violence shows that it is a very serious offence, one that must be dealt with in accordance with the intention of the relevant legislation (the *FPA 2014*) and its own set of facts.
  - b. There is a presence of trust to a certain degree required in the relationship between the defendant and victim at the time of the offending. A trust that each party in the relationship would protect each other from any form of harm or danger. The trust was breached when the defendant assaulted the victim at that material time of offending.
  - c. Prosecutions submitted that there was use of weapon in the commission of the offence. The facts as they are shows that on the actual assault, the defendant used his leg to kick the victim's lower abdomen. There were no weapons used. However, the facts also show that after the kick, the defendant held onto biro in

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<sup>1</sup> [2005] SBCA 45

<sup>2</sup> [2005] SBCA 73

his right hand and lifted it up in striking manner attempting to stab the victim with it. He was intervened at that point and did not proceed on to assault the victim with it. I find that he did not use the biro at any point to assault or stab the victim as charged.

- d. **Prevalence:** Domestic Violence cases remains high in most communities today. It is a result of disagreements and ill-feelings amongst those in *domestic relationship*<sup>3</sup>. Since its enactment in 2014, there were more than 200 cases recorded for Domestic Violence – Physical Abuse under the *FPA 2014*, specifically from 2018 till present, a total of 196 cases recorded as per the Justice Information Management System (JIMS) under this category. This data shows that this type of offending is prevalent in our communities today.

#### Sentencing Principles and Consideration

- 15) *Domestic Violence* is a serious offence as shown in the maximum penalty of \$30,000 fine or 3 years imprisonment. It has been constantly remarked by the courts that sentences imposed on defendant must serve the purpose of *deterrence, restitution and rehabilitation*. *Ti'i v R'* has adopted this position when the court of appeal remarked that *sentences should be crafted in such a way that will attain the goals of punishment, deterrence and rehabilitation*.<sup>4</sup> I adopt what the court in *Veen v The Queen*<sup>5</sup> remarked regarding the principles of sentence as follows:

*"sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions."*

- 16) I must consider the relevant sentencing principles when determining the appropriate sentence in this case. However, each case must be decided on its own unique set of facts when deciding the appropriate sentence. The reliance on past cases can be of significant assistance so that consistency and soundness in decisions are achieved. Past cases can only be used as a guide and sometimes can be of little value, as resonated in *Sahu v Regina*<sup>6</sup> as follows:

<sup>3</sup> Section 5, *FPA 2014*: 5. A person is in a "domestic relationship" with another person if— (a) they are or have been family members; or (b) they are the parents of a child or are persons who have or have had parental responsibility together for a child; or (c) they are or were in an engagement, courtship or customary relationship, including an actual or perceived intimate or sexual relationship of any duration; or (d) one person is a domestic worker in the other person's household.

<sup>4</sup> [2017] SBCA 6

<sup>5</sup> (No 2) (1988) 164 CLR 465

<sup>6</sup> [2012] SBHC 122

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*"It is well accepted that the technique of comparing sentences imposed in different cases is of limited assistance and provides only imperfect guidance as to the appropriate sentence in any given case."*

- 17) The intention of the legislators at the enactment of the *FPA* was to ensure protection of those in a domestic relationship from domestic violence in all forms. Therefore, the sentence imposed must deter the defendant from committing further offending in the future and that he is rehabilitated. It should teach him a lesson that the courts will not tolerate those who resort to any form of violence in a domestic relationship. Furthermore, it should also deter other potential offenders from offending in similar nature. Our communities are not safe when victims of domestic violence suffer violence at the hands of perpetrators who are their so-called intimate partners, especially those in a boy/girl or marital relationship.

#### Sentencing Regime

- 18) I have considered the cases cited by Parties.

- a. The case of *R v Foster*<sup>7</sup> highlights the consequences of resorting to violence in a domestic setting. The defendant was charged with one count of *Intimidation* contrary to section 261(1) of the *Penal Code* and two counts of *Domestic Violence* contrary to sections 4(1)(a) and 58 (1) of the *Family Protection Act 2014*. He was sentenced to 5 months for *Intimidation*, 5 months for the first incident of *Domestic Violence* and 6 months for the second incident where he physically abused his wife who was the victim on all three counts. In the first domestic violence incident, the defendant used a piece of wood to shoot the victim that landed on her right hand. The victim's right hand was swollen, and she felt pain. At the same time, the defendant attempted to shoot the victim with a stick, but it missed her. On the second incident of domestic violence, the defendant argued with the victim and used a cooler to shoot her, but it missed. He proceeded on to punch, kicked and squeezed her neck using both of his hands. Each sentence was ordered to be served concurrently. The defendant was sentenced to a final sentence of 6 months imprisonment.
- b. In *R v Ramat*<sup>8</sup> the defendant was sentenced to **5 months imprisonment**. He was charged with 2 counts of *Domestic Violence*. He psychologically and physically abused his wife. On the first incident, the defendant uttered murder threats to the victim that he would cut her into pieces. It was clear from the facts that it was not the first time for the defendant to threaten the victim on such threats. The second incident involved a physical attack on the victim by the defendant. The defendant and victim argued that led to the defendant punching

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<sup>7</sup> [2017] SBMC 58

<sup>8</sup> [2019] SBMC 33

the victim and hit her shoulder three times with a stone several times. Luckily the victim's sister intervened to stop further attacks by the defendant on the victim. A starting point of 4 months and 18 months for each count was imposed and the court considered consecutive sentence. A total of 22 months' imprisonment was imposed on him as the starting point. The court took into account the mitigating features including the defendant's guilty plea where a 25% discount was given and further deductions of 10 months to reflect his first-offender status and reconciliation done between the parties.

- c. The court in *R v Sare*<sup>9</sup> sentenced the defendant to 7 months imprisonment for domestic violence by physically assaulting the victim who was his wife using an axe. The axe landed on the victim's shoulder and as a result she suffered nasty wounds. The defendant was drunk at the time of the offending.

19) The above cases involved custodial sentences. However, in a very recent case of *R v Topuhu*<sup>10</sup>, the defendant was sentenced to pay a compensation of \$1000 to the victim pursuant to section 63(1) and (2) of the *FPA 2014*. The court also issued a *Protection Order* pursuant to section 18(1)(b) and (2)(a) of the *FPA 2014*. The facts in this case revealed that the defendant and victim were in a marital relationship. The defendant physically abused the victim by using a stick to whip her on the back and leg several times. The defendant then used his right-hand closed fist and punched the victim on her face several times. The incident arose from an extra marital affairs issue. The defendant and victim are currently living together, they got back together after the incident.

20) The defendant in *R v Ninamu*<sup>11</sup> was sentenced to 8 months imprisonment wholly suspended for two years. The defendant punched the victim, who was his wife and grabbed her hair. He dragged her around several times. The punch to the cheeks caused swelling and laceration around the area.

21) The prosecutions cited the case of *R v Sulu*<sup>12</sup> when comparing the assault on the victim as less severe than the present case which involved a kick to the abdomen. The defendant in *Sulu's* case committed two counts of *Domestic Violence*. On the first incident the victim was ordered by the defendant to give him a torch. While handing the torch over to the defendant, the defendant slapped the victim on her face using his right hand. He then used his closed left hand fist and punched the back of the victim's head. The victim got dizzy and fell on the floor with bleeding nose.

22) Palmer CJ in the High Court appeal case of *Kiriau v R*<sup>13</sup> substituted a sentence of 18 months' imprisonment to a fine of 500 penalty units on the defendant. The court further

<sup>9</sup> [2020] SBMC 6

<sup>10</sup> Unreported Criminal Case No. 500 of 2023

<sup>11</sup> [2019] SBMC 31

<sup>12</sup> [2020] SBMC 3

<sup>13</sup> [2020] HCSI-CRC 262 of 2020

imposed a bound over order under section 32 of the *Penal Code* to keep the peace and be of good behaviour for 12 months. The defendant argued with the victim, his wife in their garden. The argument resulted in the defendant slapping and scratching the victim's chest and shoulder. There were no major injuries noted on the victim. The court considered that the sentence of 18 months' imprisonment was manifestly excessive in the circumstances of the case.

- 23) When comparing the present case to the above cited cases, the lack of medical report in the present case makes it difficult to make a fair distinction as to the extent and severity of the injury sustained. However, there is a clear distinction as to the nature of the assault. Most of the cases involved punching on the head or slapping the face of the victims whilst the present case involved a single kick to the lower abdomen amounting to physical assault. Force applied to the head, a crucial part of the body that accommodates the brain can easily cause concussion as opposed to the lower part of the body. I find that the present case falls between the lesser and midrange on a scale of less serious to more serious. The only aggravating feature I find in terms of the assault, is that it had caused the victim to urinate during the attack in a public place. The defendant's kick may have landed on the bladder resulting in the victim urinating. It most definitely was an embarrassing experience in public for her added onto the physical pain she was experiencing at the material time.

*Starting Point*

- 24) The entire circumstance of the present case is one that I must consider very carefully to determine the appropriate sentence. The defendant has made effort to rehabilitate himself by creating a job through carpentry. I am not satisfied that he is the sole breadwinner for his two children, I am satisfied that he supports them financially. I find that the appropriate sentence is one of fine and set a starting point of 2000 penalty units or SB\$2000.00
- 25) I make allowance for a 25% discount of the starting point to reflect the guilty plea. I further deduct 500 penalty units or SB\$500.00 from the balance for being a first-offender. I also consider the aggravating features thereby increasing 500 penalty units or SB\$500.00 from the balance.
- 26) The defendant is therefore sentenced to a fine of 1500 penalty units or SB\$1500.00. The fine must be paid by close of business on 6 October 2023. Any default of the fine sentence will result in an imprisonment of 2 months.

**Orders of the Court:**

- 1. The defendant Mr Michael Wale Taisia is convicted on one count of *Domestic Violence* contrary to sections 4(1)(a) and 58(1) of the *Family Protection Act*.**
- 2. The defendant is sentenced to a fine of 1500 penalty units or SBS\$1500.00 to be paid within 14 days from today and is due on 6 October 2023. In default, 2 months' imprisonment must be served at the Rove Correctional Centre.**
- 3. Right of appeal applies to any aggrieved party within 14 days from today.**
- 4. Order Accordingly.**

Dated 22 September 2023

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Elma Veenah Rizza F... Magistrate

