

IN THE SOLOMON ISLANDS MAGISTRATES' COURT  
AT HONIARA

Criminal Case No. 90 of 2023

REGINA

v.

JOHN OGE



Mr. Sura'au, W for the Prosecution.

Defendant – Self Represented.

Date of Sentencing & Mitigation: 20 February 2023

Date of Sentence: 6 March 2023

---

SENTENCE

---

**Introduction**

1. The defendant pleaded guilty to one count of domestic violence - physical abuse and upon his own guilty plea, I now enter conviction against him. The maximum penalty for this offence is 3 years imprisonment or 30,000 per unit or both.

**The personal circumstance of the defendant**

2. The defendant Mr. John Oge is 31 years of age from Kofloko village, Malaita Province.
3. The defendant is married with two children and he is self-employed.

**Summary of facts**

4. The summary of facts before me shows that on the 21<sup>st</sup> of January 2023 at about 2100hr at Nine Ridge, Marble Street, Tuvaruvu at his residence, the defendant held a small yellow knife, walked towards his brother and stabbed him. The complainant managed to defend the knife with his hand and as a result, he got scratches on his neck.
5. The matter was reported to the police and the defendant was arrested, interviewed and admitted that he commits the offence. Police then charged him with one count of domestic violence - physical abuse contrary to section 4(1)(a) as reads with section 58(1)(2) of the Family Protection Act.

**Aggravating factors**

6. These are the aggravating factors which can be seen in this case.
  - 6.1 **Use of weapon** - I noted that during the commission of the offence, the defendant used a small yellow knife to stab the victim. Knife is a dangerous weapon because it has sharp edges design purposely for cutting. To use such a sharp object against someone would be very dangerous because it can cause serious injuries.

6.2 **Unprovoked act.** The Court did not see any reason as to why the defendant stabbed the victim. From the summary of facts, the only thing that I can see is the defendant walked straight to the victim and stabbed him. That is clearly an unprovoked act.

6.3 **Level of culpability.** From the summary of facts, I can see that the defendant has a clear intention to commit the offence. The way he walked straight to the victim and stabbed him, and even not taking time to think about what would be the consequences of his unlawful act, reflects his clear bad intention. Thus, this contribute to make this case serious.

6.4 **The incident occurred at night.** I noted that the incident was occurred at night. I must remind the defendant that offences that were committed at night is aggravating in nature. This is because offenders can take advantage of night to commit the offence and on the other hand, it is vulnerable and risky to the victim.

#### **Mitigating factors**

7. These are the mitigating factors which the Court can see in this case.

7.1 **Early guilty plea** – The defendant had entered an early guilty plea at the first available opportunity. It serves Court's time and resources.

7.2 **First time offender** – The Court also take into account that the defendant is a first-time offender. For the past 31 years, he has been a law-abiding citizen of the country except the moment he commits the offence therefore, I must give credit for that.

#### **Case comparison**

8. In *Regina v Foster*<sup>1</sup>, the defendant pleaded guilty to two counts of domestic violence and one count of intimidation. The violence was committed when the defendant had an argument with the victim and as a result, he picked up a black handle colour knife and threaten to cut the victim.

9. The second incident was occurred a day after where the defendant was drunk, came home, took a cooler and shot the victim. Fortunately, it missed the victim. Later, the defendant walked straight to the victim and punched, kicked and squeezed her neck. The Court sentence the defendant to 6 months imprisonment for the offence of domestic violence.

10. In *R v Lomulo*<sup>2</sup>, the defendant pleaded guilty to one count of domestic violence – physical abuse and malicious damage. The incident was occurred when the defendant came home drunk and assaulted the victim. During the commission of the offence, the defendant was in possession of a knife. However, before he assaulted the victim, he used the knife to tear the victim's police uniform, cap and documents. The Court sentence the defendant to 7 months imprisonment for domestic violence.

---

<sup>1</sup> [2017] SBMC 58; Criminal Case 148 of 2017 (27 November 2017).

<sup>2</sup> [2019] SBMC 19; Criminal Case 9 of 2019 (19 April 2019).

### Sentence tariff

11. Having considered past domestic violence cases that involved use of weapon, it appears that violence cases that involved the use of weapon attract an immediate custodial sentence of 6 months imprisonment and above, depending on the circumstances of the case.

### Discussion

12. Having heard submissions from prosecution and the defendant and also carefully considering the aggravating factors, nature of the offending and circumstances surrounding the case, I must say that the violence committed by the defendant against the victim is serious.
13. The Court acknowledge that in *Foster's* case, the defendant committed the violence when he was in possession of a knife and threatened to kill the victim. Likewise, in the case of *Lomulo* where the defendant assaulted the victim and at the time he was in possession of a knife. However, the Court see that the circumstances in both cases are not serious like the case at hand. In other words, the violence involved possession of weapon but there is no actual stabbing of the victim.
14. In our case at hand, the Court see that the defendant committed the violence by using the weapon (knife) to stab the victim but luckily the victim blocked the knife and got scratches on his neck. I must say that the defendant's level of culpability is very clear that he has the intention to use the weapon purposely to inflict injury on the victim. If accidentally the knife landed on the victim's neck, I am afraid that he might end up with a serious injury at that time.

### Deterrence

15. In imposing any sentence, the Court must make sure that any sentence imposed must deter the defendant from committing such an offence again in the future. Not only that, it must send plain message to the community that using weapon to commit an offence is very serious under the law.

### Starting point

16. Thus, having considered the aggravating factors, mitigating factors, circumstances surrounding the case and the defendant's personal circumstances, in my view the appropriate starting point for this case is 9 months imprisonment.

### Sentence consideration

17. As stated in the case of *Qolon<sup>3</sup>*, I will deduct 3 months imprisonment from the starting point to reflect the 25% discount for the early guilty plea. Therefore, the resulting sentence to be imposed on the defendant is **6 months imprisonment**.

---

<sup>3</sup> [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005).

18. The next issue for this Court to consider is whether or not I should suspend the sentence pursuant to section 44(1) of the Penal Code. Unfortunately, given that the offence involved use of weapon, I am afraid that suspended sentence will not be appropriate in this case.

19. Having saying this, I weighed the circumstances and entirety of this matter, I now make the following orders:

**Sentence Orders:**

1. Sentence the defendant Mr. John Oge to 6 months imprisonment;
2. Time spent in custody to be deducted;
3. Enter conviction;
4. 14 days right of appeal; and
5. Order accordingly.

Dated: 6<sup>th</sup> of March 2023

