

**IN THE SOLOMON ISLANDS MAGISTRATES' COURT  
AT HONIARA**

Criminal Case No. 190 of 2023

**REGINA**

**v.**

**STEVEN HAUKUI**

Mr. Abuo. S for the Prosecution.

Mrs. Rusi. E for the Defence

Date of Sentencing & Mitigation: 19<sup>th</sup> of January 2024

Date of Sentence: 2<sup>nd</sup> of February 2024

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**SENTENCE**

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**Introduction**

1. The defendant Mr. Steven Haukui pleaded guilty to one count of domestic violence and upon his own guilty plea, I now enter conviction against him. Today the defendant appears before me for his sentence.

**Agreed facts**

2. The agreed facts before me shows that on the 22 February 2023 at about 1900hr, the defendant sent the complainant, his wife to buy them plastic. The complainant went and did as told. On her way back, his brother sent her again to buy him plastic, and she followed as requested. However, when she returned, the defendant was angry at her because customers are waiting for plastic at their market. He then said to her in pijin, "*u shud stay for osem nomoa for pipol sendim u olsem go lo store*", and pushed her.
3. The complainant was afraid, ran and hide at his brother in-law's house until morning. The next day, the defendant came to her and told her to go back home however, she did not do so, and then the defendant went and drink beer at a canteen near the house. Next morning, the defendant went again looking for her and when he finds her, he told her to return home with him but she refused. The defendant then slapped her twice on the cheek with an open palm and as a result, the complainant cried because it was painful. The complainant then sat on a hammock and the defendant took a hand saw, cut loose the hammock and she felt to the ground. The

matter was reported to white river police and the defendant was charged with one count of domestic violence-physical abuse under the FPA 2014.

### **Maximum penalty**

4. The maximum penalty for domestic violence – physical abuse contrary to section 4(1)(a) and 58(1)(2) of the Family Protection Act 2014 is 30,000 per units or 3 years imprisonment or both.
5. The maximum penalty speaks for itself that violence against women or girls is serious under the FPA 2014. However, I must remind myself that it is trite law that the maximum penalty is reserve for worst type of offending and each case must dealt according to its own set of facts.

### **Aggravating factors**

6. The **aggravating factors** which I can see in this case is: -
  - 6.1 First, the defendant was under the influence of liquor when he committed the offence.
  - 6.2 Second, when he committed the offence, he was in possession of weapon. I note the defendant used a hand saw to cut loss the hammock and as a result, the complainant felt to the ground. I must say that what the defendant did to his wife is serious because it can cause serious injury. Fortunately, when the complainant felt to the ground, she did not hit any object otherwise, it would be a sad day for her.
  - 6.3 Thirdly, the defendant committed the offence against his own dear wife. Women are known as weaker vessel in the society. The complainant is the defendant's own wife. She should be treated with love and respect however, what he did to her is the opposite. I must say that is not acceptable.
  - 6.4 Finally, I note that the defendant slapped the complainant twice on the cheek with his open palm. Using a strong open palm to slapped the wife's cheek is very painful. Sometimes, if worst it can lead to serious injury or dislocation of the jaw.

### **Mitigating factors**

7. On the other hand, the court take into account the following mitigating factors on behalf of the defendant:
  - 7.1 He entered an early guilty plea at the first available opportunity which serves court's time and resources.

7.2 He has no previous conviction.

7.3 He has reconciled the matter before coming to court. I note he paid a sum of \$500 to his wife as compensation. This shows genuine remorse and forgiveness.

7.4 The court also take into account the personal circumstances of the defendant that he is 23 years of age, married and his wife is currently pregnant as told by counsel. All these mitigating factors will be factored in my sentence.

#### **Case comparison**

8. In terms of sentence comparison. I have relied on few cases above to assist me in reaching a just and fair sentence.
9. In *Regina v Sulu*<sup>1</sup>, the defendant is charged with two counts of domestic violence. On the first incident, the defendant was intoxicated and slapped the victim on her face using his right hand. Later he landed his close fist behind the victim's head result in dizziness and bleeding of nose. On the second incident, the defendant moved towards the victim with an open palm and slapped the victim on her forehead. The court sentence the accused to 6 months imprisonment.
10. In *Regina v Tamana*<sup>2</sup>, the defendant is charged with two counts of domestic violence and other offences. The defendant spent 18 days in custody. The court sentence the defendant to 18 days imprisonment and released him on the rising of the court and imposed bound over for domestic violence offences with other offences.
11. In *Kiriau v Regina*<sup>3</sup>, the defendant is charged with two counts of domestic violence. First incident, the Appellant assaulted the complainant as a result, she loss her teeth. Second incident, he assaults the victim by slapping and scratching on the chest and shoulder. No major injuries were caused and incurred by the victim. The court sentence the accused to 2 years 8 months imprisonment. However, the matter was appeal and High Court quashed the sentence and imposed a fine of \$500 and bound over under section 32 of the Penal Code.
12. By carefully considering the cases above, it appears that sentence range for domestic violence range from bound over, fine to custodial sentence depending on the circumstances of the offending.

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<sup>1</sup> [2020] SBMC 3; Criminal Case 8 of 2019 (6 February 2020).

<sup>2</sup> [2017] SBMC 56; Criminal Case 131 of 2017 (14 November 2017).

<sup>3</sup> Criminal Case: 262 of 2020.

## Discussion

13. The next question for this court to consider is what would be the appropriate sentence for this case?
14. In terms of sentencing, prosecution submit for this court to impose a fine of \$700 to \$900 on the defendant or alternatively, a bound over sentence. On the other hand, defence submit for this court to consider a non-custodial sentence to be imposed on the defendant.
15. In *Kiriau v Regina*<sup>4</sup>, CJ Palmer states at paragraph 23;  
*“...the maximum penalty that can be imposed for a person charged with domestic violence under the FPA is a fine of 30,000 penalty units or imprisonment for 3 years or both, effectively placing it midway between a common assault and an assault causing actual bodily harm, that does not necessarily mean that for any similar fact situation the penalty to be imposed should necessarily be higher or harsher. Each case will have to be considered on its merits, the circumstances of the offender and the circumstances of offending, taken into account. These will include such factors as the age of the offender, any previous criminal history of domestic violence, assault, provocation, whether a weapon was used, persistence of the attack, vulnerability of the victim and their relationship”<sup>5</sup>.*
16. I had the opportunity to carefully consider the circumstances of the offending and I could say the offending is a bit serious. From the facts before me, I note the defendant commits the offence when he was under the influence of liquor. He was drunk when he assaulted the complainant twice on the cheek. Further to that, the court too also see the violence committed by the defendant is repetitive against the complainant. The defendant first commits the offence by slapping twice on the complainant’s cheek using his open palm and later he took a handsaw and cut off the hammock where the complainant sat on it and as a result, she fell to the ground. That is a repetitive violence with the use of a weapon occurred against the complainant and it is serious in my view.
17. Whilst, on the other hand, I acknowledge the defendant is a first-time offender. He already paid a compensation of \$500 to the complainant. His personal circumstances that he is 23 years of age whom he is regarded as young, and there is prospect that he can change to a better person in the future. However, the criminality of the

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<sup>4</sup> Criminal Case: 262 of 2020.

<sup>5</sup> Ibid, n 1.

defendant or the violence committed against the complainant is unacceptable in my view.

18. I am of the view that any sentence impose on the defendant by this court must strongly deter the defendant to know that what he did to the complainant was unacceptable, and not to commit the offence again in the future. Not only that, it must also send plain message to the public that court will not tolerate any forms of violence against women or girls in the society.
19. In *Kunia v Regina*<sup>6</sup>, Lordship Palmer CJ states at paragraph 4:  
*“In domestic violence cases the courts should be mindful of the effect of a custodial sentence and should always bear in mind that in some cases a short sharp sentence may be as effective in rehabilitating the Appellant and deterring others. Where a desire for reconciliation has been expressed and or the parties have reconciled and are living together again that should have bearing on the length of sentence to be imposed. An overly lengthy sentence may do more harm to their marriage relationship in the long run”.*
20. For this case, I think a short sharp sentence is appropriate in this case. I think a starting point of 2 months imprisonment is appropriate in this case.
21. In terms of sentence consideration, I note the defendant entered an early guilty plea at the first available opportunity. As stated in *Qoloni v Regina*<sup>7</sup>, I will deduct 1-month imprisonment to reflect 25% discount for his early guilty plea. Therefore, the resulting sentence would be 1-month imprisonment.
22. The next question for this court to consider more is whether or not the sentence should be suspended? I believe section 44(1) of the Penal Code provides for suspended sentence. In other words, the court has a discretion to suspend sentence pursuant to section 44(1) of the Penal Code. Unfortunately, with careful consideration of section 44(2) of the Penal Code, it did not allow me to suspend the sentence since weapon was used during the commission of the offence. Therefore, I am afraid to suspend the sentence but it will remain as it is. The custodial sentence of 1 month’s imprisonment is remain as it is.

#### Sentence remarks

23. Let me remind the defendant as I have reminded other defendants in domestic violence cases that came before this court. There are times as husband and wife in a

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<sup>6</sup> [2005] SBHC 60; HCSI-CRAC 599 of 2004 (21 February 2005).

<sup>7</sup> [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005).

domestic setting, we can have arguments and it can be difficult to handle in some circumstances. However, it must note that there are avenues where arguments can be addressed. Just walk out for sometimes if you have an anger problem and after you cool off, go back to your partner and settle things amongst yourselves. Or if not, go to a chief, family elder, community leader, church leader or police if you have a problem rather than taking the law into your own hands. Today, I note you will have to leave your wife to serve your sentence because of what you did to her. Take this as a lesson learnt and mend your path to be a law-abiding citizen and a loving husband to your wife in the future.

24. Having say this and taken into account the circumstances of the offending, the aggravating factors, mitigation factors and your personal circumstances, I will now make these following orders:

**Sentence Orders:**

1. I hereby sentence the defendant Mr. Francis Leni to 1 month's imprisonment;
2. Enter conviction against the defendant;
3. 14 days right of appeal; and
4. Order accordingly.

**Dated: 2<sup>nd</sup> of February 2024**

