

**IN THE CENTRAL MAGISTRATES COURT
IN THE SOLOMON ISLANDS**



In the Criminal Jurisdiction

BETWEEN: REX
V
AND: DAVID KUMUA

Prosecutions: Police Constable Florence Hiroshachi

Defence: Mr Donation Houa (PSO)

Date of sentencing submissions: 20th of January 2025

Date of sentence: 24th of January 2025

SENTENCE

1. Mr David Kumua, you are charged with one count of Domestic Violence- Physical Abuse, contrary to section 58 (1) of the Family Protection Act.
2. I arraigned you on the 20th of January 2025 and thereafter recorded a guilty plea on your part.
3. The victim in this matter, is your wife, whom you have been living separately from since the year 2019.
4. There are four children born to this said marriage, all of whom are living under your care and supervision.
5. The agreed facts signed and tendered to the court shows, that on the 9th of August 2024, the victim visited your residence at the Geology area for the first time in four years. On that day, members of your family, including the victim, have all gathered to welcome your nephew, who had just returned from Australia, after seasonal work.
6. Alcohol was consumed throughout the night until the morning of August 10, 2024. An argument then broke out between you and the victim regarding the separation.
7. You became frustrated and took out a bush knife. Upon seeing the bush knife, one of your children intervened and removed the bush knife from you. you then punched the victim on the mouth with your right-hand closed fist.
8. The Police were called to the scene and you were escorted to the Central Police Station.

9. Hence, having entered a guilty plea, and having admitted to the facts tendered, I hereby enter conviction against you.
10. The Maximum penalty for this offending, is 30,000 penalty units, or 3 years imprisonment or both¹. Maximum penalties are indicators of how serious our legislators view offences created by law. They can also be seen as a warning sign, or a caution to what one would expect if he or she is found guilty for engaging in acts of violence within the family setting.
11. In terms of the mitigating factors involved, I am asked to consider the fact that you have entered a guilty plea at your earliest convenience. Further to that, I am told that you have cooperated with the Police during the course of investigations, which has assisted in progressing this matter to court.
12. Furthermore, I was told, that you are deeply remorseful for your actions, hence the guilty plea you entered. In my view, being remorseful is a factor that can only be assessed from your behaviour and character, after you are sentenced by the court.
13. Moreover, I am also told, that you have a medical condition that I should be taking note of. As part of his submissions, Counsel for the defence, has tendered a letter dated on the 26th of September 2024, from one Dr Aiapu Andrew. The letter outlines, that you have been diagnosed with Diabetic type II and uncontrolled Hypertension for over 10 years². Furthermore, it also states, that you recently suffer from complications and that you are undergoing doses deemed vital in controlling your situation³.
14. The letter therefore asks that assistance be given to you in whatever you are persuading, due to the underlying condition that is present with you. In this given circumstance, a conviction has been entered against you for the offence of domestic violence. Facts show that you were under the influence of alcohol when the incident occurred.
15. As a diabetic patient, and whilst I am not a medical practitioner, it is common knowledge that someone in your position should refrain from consuming large amounts of alcohol. I can confidently say, that the involvement of alcohol at the material time, was the primary trigger. There is no point in asking me to consider the fact that you are sick, when you yourself are engaging in activities that are significantly aggravating to your medical condition.
16. I am also asked to consider the circumstances of the offending, where you were said to have been very angry upon seeing her on that day. You were said to have tried asking her to return but all attempts were unsuccessful.
17. You also state, that you never gave her permission to come to your house. It was then that you confronted her about the separation. Unfortunately, it so happened that you were drunk when you saw her, hence resulting in the offending. From this explanation, my view is that, alcohol was not the sole cause of what had happened. The alcohol was just a trigger, while the real cause, is the power imbalance between you and your wife.
18. When I say power imbalance, I am referring to the common understanding instilled in many Solomon Islanders, that men are more superior than women, and that they are entitled to do whatever they want, whether it be directing commands on those subject to them or inflicting serious harm as a form of discipline.
19. In terms of the aggravating factors, I note that you were previously convicted for a similar offence in the year 2021. Upon conviction, you were sentenced to a fine of \$700⁴. This tells me, that you have already come before the court, and is well aware of what might happen, if you are to reoffend.

¹ Section 58 (1) (2) of the Family Protection Act 2014.

² Letter authored by Dr Aiapu Andrew, tendered by the defence.

³ Above n 2.

⁴ Record on JIMS for Criminal Case No: 831 of 2021.

Furthermore, your previous conviction should have guided your actions given the consequences that might also affect your children, whom you claim are all under your care and protection and depending on you financially.

20. I also note that alcohol was involved at the material time, making this offending quite serious.
21. Furthermore, a bush knife was said to have been pulled out, but was quickly removed by one of your children. I can infer, that had it not been for the intervention of this child, you would not have hesitated to use it.
22. At this stage, I must address the issue of previous convictions, on whether or not, it should increase the type of sentence to impose.
23. In the case of **R v Su'umania**, CJ Ward, as he was then, highlighted the following:
"When sentencing persistent offenders, the court must make protection of the public the principal consideration in determining the length of sentence."
"It is well settled however that even in such cases the sentence must be still be appropriate to the offence and the court must be careful not to sentence the accused for his previous convictions as was explained by Spreight JA in Kaboa v. R (1980/81) SILR 43 at 46. Thus, whilst previous good character may reduce a sentence, previous bad character cannot increase it beyond the proper term but the court can and should consider previous convictions in assessing the character of the man before it and the likelihood of him changing his ways (underlined mine⁵).
24. From the case cited, you would note, that previous convictions are a factor that should be used to assess the character of an offender and the probable chances that he or she might turn away from engaging in unlawful actions or behaviours.
25. In this particular case, you were sentenced to a fine of \$700 dollars in 2022, when you used a 2-meter timber to shoot the victim's forehead. I also note, that the victim in your previous matter, is the same victim in this current case. This tells me, that your previous offending occurred when the both of you were living separately. It can also be implied, that the victim has been hesitant to return to you as she is well aware of what you are capable of doing, this can be seen from the incident on the 10th of August 2024.
26. Domestic violence, is everyone's business. This is legally backed, by the enactment and enforcement of the Family Protection Act 2014. Had Parliament viewed this as just a household issue, it would not have wasted the time used to debate the FPA during the bill stage, as well as the substantial amounts of tax payer's money used.
27. I was also referred to cases previously dealt with by the court to ensure minimizing objectional disparity. On the other hand, it is fair and just to have cases dealt with based on their own set of facts and circumstances. The cases of **Joel Likilia & Allen Kokolobu v R**⁶, and **Sau v R [1982] SILR 65**⁷, are worth noting in this regard.
28. With the circumstances provided, I am of the view that a sentence of fine is appropriate. With a maximum penalty of 30,000 penalty units, I will consider a range from \$2000 to \$3000. From this range, I will pitch my starting point at \$2,500. I add the amount of \$800 to reflect the concerns raised with respect to the aggravating factors resulting in the amount of \$3,300. I further deduct the amount of \$800 being the 1/3 credited for the guilty plea entered ($3,300 - 88 = 2,500$), moreover, the amount of \$500 is further deducted to reflect the remaining concerns with respect to the mitigating factors involved ($2,500 - 500 = 2,000$).

⁵] (Unrep. HCSI-CRC 00287)

⁶ [1988 – 89] SILR 148.

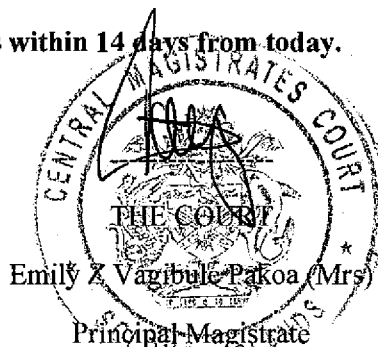
⁷ [1982] SILR 65.

29. During the sentencing submissions, there was no appearance by Ms Hiroshachi, who appears for Prosecutions. She however, provided a copy of her submissions later that day.
30. In her submissions, she asked that section 18 (2) (a) of the FPA be invoked in addition to the sentence the court will impose.
31. Defence Counsel did not have the opportunity to address the section cited, however, and for purposes of this sentence, section 18 (2) of the following states as follows:
S18 (1) This section applies if—
(2) The court may, of its own motion or on an application by or on behalf of an affected person—
(a) make a protection order for the protection of the affected person⁸.
32. The section highlighted, provides two options for the court to consider with respect to the granting of protection orders. Firstly, the court can move at its own motion, and secondly an application can be made by or on behalf of the affected person. In this case, the victim is deemed as the affected person.
33. Having had the opportunity to assess the entirety of this matter, I believe that it is fair a proper, that a order pursuant to section 18 (2) (a) of the FPA be granted at my own motion.
34. Mr Kumua, the conclusion received following the overall assessment in this regard, aims to address the need for both specific and general deterrence, rehabilitation, retribution and prevention. It is with this, that I now order as follows:

Orders:

- (i) **Mr David Kumua, for the offence of Domestic Violence-Physical Abuse, you are hereby sentence to a fine of S2,000.00 which must be paid by 30th of January 2025;**
- (ii) **In default of payment, you are to serve a term of imprisonment for 2 months;**
- (iii) **A Protection Order is also issued against you, pursuant to section 18 (2) (a) of the Family Protection Act 2014;**
- (iv) **This protection order is effective as of this date, and will continue to be in force for the next 5 years;**
- (v) **A breach to this Protection Order will result in 30,000 penalty units or 3 years imprisonment; and**
- (vi) **Right of appeal applies within 14 days from today.**

Dated this 24th day of January 2025.



⁸ Section 18 (2) of the Family Protection Act 2014.