

PUBLIC PROSECUTOR

v

ZEPHERIN MALESU

Date: 27th February 2024
Before: Magistrate P. Toaliu
Counsel: Aru. J for the Public Prosecutor
Karu. K for the defendant

SENTENCE

A. Introduction

1. Mr. Malesu was charged with four counts of Domestic violence:
 - a) Count 1: domestic violence contrary to section 4(1)(a) and 10(1) of the Family Protection Act.
 - b) Count 2: domestic violence contrary to section 4(1)(a)(g) and 10(1) of the Family Protection Act.
 - c) Count 3: domestic violence contrary to section 4(1)(f) and 10(1) of the Family Protection Act.
 - d) Count 4: domestic violence contrary to section 4(1)(f) and 10(1) of the Family Protection Act.
2. He pleaded guilty to all counts of offences and was accordingly convicted on his own plea and admission to the facts.
3. Let me thank counsels for their submissions.



B. Facts

4. The events of violence that Mr. Malesu is charged with stretches far back to 2020 with the most recent being in 2023.
5. In 2020, Mr. Malesu arrived at his partner's place of employment armed with a pair of scissors and screaming for her to come forth. He managed to find her started hurling profanities to her and proceeded to slap her on her face.
6. With the scissors in his hand, he attempted to stab Fatima, but a security guard intervened at the last moment and disarmed him. He reacted by once again slapping Fatima in the face.
7. In 2021, the defendant was upset when he could not find any match sticks in the kitchen. His frustration was taken out on an electric rice cooker and kettle. Armed with a knife, the defendant cut off their power cords.
8. In 2023, the defendant went to his cousin's house at Freshwota 6 to look for food. He became angry when it became apparent that there was no food in the kitchen. This time, he took his anger out on the bush kitchen. Armed with a machete, he attacked the kitchen posts and iron sheet roofing causing damage to them.

C. Sentence Start Point

9. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
10. The maximum sentence for the offence of Domestic violence is and imprisonment term of 5 years or a fine not exceeding 100,000VT or both.
11. The following are the aggravating factors:
 - The offendings were unprovoked.
 - There was a breach of trust.
 - The repetitive nature of the offending in count 1.
 - The offending caused distress to the complainants.
 - The multiple victims involved
 - The offending (Counts 3 & 4) happened in a domestic setting/ family home where the complainants should always feel safe.
12. In mitigation, I find that there was no serious bodily harm caused and no evidence was provided to suggest otherwise.
13. In consideration of the starting point, I was provided by the cases of *PP v Fransisco Batick* [2020] and *PP v Hosea Rarua* (2023). I will explore the distinction between the two cases.
14. In *PP v Fransisco Batick* the learned Magistrate set a starting point of 18 months imprisonment where the leading offence was Intentional Assault contrary to section 107(b) of the Penal Code [CAP 135]. The nature of the offending was serious in that the defendant had forcefully pushed the complainant's head into a bucket full of water while assaulting her. She fell unconscious as



a result. He later threatened her via mobile phone. The learned Magistrate adopted a starting point of 18 years imprisonment.

15. In *PP v Hosea Rarua*, the defendant had physically attacked multiple victims. He squeezed his son's neck and that of his girlfriend, slapped her head, threatened another with a knife and slapping another daughter in the face with the impact causing her to fall. The Court opted for a 12-month global starting point.
16. In this case, Mr. Malesu slapped his spouse on one occasion on her face but did so twice. I was told there were some bleedings but that is all that is known about the nature of the injuries sustained. On separate occasions in 2021 and 2023, the aggressive behaviors were not directed at anyone but rather a burst of frustration that were taken out on innocent pieces of furniture.
17. I consider the offending in this matter to be at the lower scale of seriousness hence I set a starting point 10 months imprisonment for this offending.

D. Personal Factors

18. Mr. Malesu is a 32-year-old single male from Nguna.
19. He is unemployed and lived at Freshwota 6 with his cousin before his arrest and remand into custody on 6th December 2023.

Guilty plea

20. Mr. Malesu pleaded guilty at the first available opportunity. I deduct 2 months from the starting point for Mr. Malesu's early guilty plea.

Mitigation

21. He is remorseful.
22. He has since moved on from Fatima Urleless (complainant in counts 1 & 2).
23. The delay for charges to be laid.
24. For mitigation, I deduct 1 month.

E. End sentence

25. The sentence I will impose today will:
 - a. Adequately punish Mr. Malesu.
 - b. Promote a sense of responsibility for the harm done.



- c. Denounce the conduct.
 - d. Send a message of deterrence to the community from this type of behavior.
 - e. Protect the community.
26. I sentence Mr. Malesu to 7 months imprisonment.
27. Having spent 2 months and 22 days in prison means Mr. Malesu has effectively served part of his sentence and now has 4 months and 9 days remaining to serve.
28. I have considered the mitigating factors of this matter and section 58 of the Penal Code [CAP 135] and order that the remaining sentence period of 4 months and 9 days be suspended for 2 years.
29. Mr. Malesu is warned that if he re-offends within this 2-year period starting today, he will be immediately arrested and incarcerated and will serve the remainder of his sentence in custody.
30. You have 14 days to appeal the sentence.

Dated at Port Vila this 27th day of February 2024

BY THE COURT

P Tealin

[Signature]

Magistrate

