

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 514/2021

BETWEEN: **STATE**

PROSECUTION

AND: **SALOTE SEVUTI**

ACCUSED

Counsel: WPC 5006 Maryan Ratucove for Police Prosecution
 Ms. B. Kumari for the Accused.

Date of Sentence: 28 November 2024

SENTENCE

Introduction

1. Ms. Salote Sevuti, on 29 October 2021, you were charged and produced in Court for 1 count of Act with Intent to cause Grievous Harm contrary to section 255(b) of the Crimes Act 2009 and 1 count of Breach of Order Suspended Sentence contrary to section 28(1) of the Sentencing and Penalties Act 2009. The particulars of the offences are:

Count 1
Statement of Offence

Act with Intent to cause Grievous Harm: *Contrary to Section 255(b) of the Crimes Act 2009.*

Particulars of Offence

Salote Sevuti, on the 28th day of October 2021 at Vatulaulau, Ba in the Western Division with intent to do some grievous harm to ***Kenona Tokasa*** unlawfully wounded the said ***Kenona Tokasa*** with a kitchen knife.

Count 2
Statement of Offence

Breach of Order Suspending Sentence: *Contrary to Section 28(1) of the Sentencing and Penalties Act 2009.*

Particulars of Offence

Salote Sevuti, on the 28th day of October 2021 at Vatulaulau, Ba in the Western Division during the operational period of suspended sentence of imprisonment vide Ba CF 140/20 committed another offence of Act with Intent to cause Grievous Harm punishable by imprisonment.

2. As Count 1 was an indictable offence, the matter was transferred to the High Court on the same date you were produced in Court.
3. After various adjournments in the High Court, on 31 December 2021, Information was filed in the High Court and on 3 February 2022, you entered a plea of Not Guilty to both Counts and on the same date, the matter was remitted to the Magistrates Court under extended jurisdiction.

4. After various adjournments, Trial was set for 7 November 2024. On the date of Trial, the Court was informed that you were wanting to take a progressive approach in the matter.
5. As such, the charge was read and explained to you in your preferred language of itaukei and once you confirmed you understood the same, you entered Guilty pleas to both counts.
6. I am satisfied that you have fully comprehended the legal effect of your plea and that your plea was voluntary and free from influence, I now convict you and proceed to sentence you for both offences.

Circumstances of the offending

7. According to the Summary of Facts you admitted in Court, you and the Complainant are biological sisters and on 28 October 2021 at about 8:30am at Tarivo Road, Vatulaulau, Ba, the Complainant was in the living room with Sabina Valentina ('Ms. Valentina') when an argument between you and the Complainant started regarding the wall curtain.
8. You were in your bedroom which was beside the living room when the Complainant asked for the curtains and other belongings from you. You got angry and said in a loud voice "you want it" and then proceeded to tear the curtains from the wall.
9. You then picked up a kitchen knife which was grey in colour from your bedroom and tried to stab the Complainant on her stomach. At the time, the Complainant had been lying down on her back (facing upwards). The Complainant turned around to save herself when the knife landed on her left leg. Ms. Valentina and a Kevurueli Koroi ('Mr. Koroi') ran and stopped you. Mr. Koroi took the knife away from you and placed it near the washing area and later on it was handed to the Police.
10. The Complainant was taken to Ba Mission Hospital and then the matter was reported by the staff nurse. The Complainant was attended to by Dr. Jason Jend who noted the injuries as per the Medical Report.
11. You were then arrested and brought to Ba Police Station where you were interviewed under caution and you admitted to the offence.
12. Upon further investigations it was discovered that you had a previous conviction for the offence of Failure to Comply with Orders as per case file 140/20 in which the sentence delivered on 26 April 2021 was for 6 months imprisonment but suspended for 2 years. By virtue of committing the offence of Act with Intent to cause Grievous Harm, you had breached your suspended sentence.
13. You were then charged for this matter.

Medical Report

14. The Medical Report of the Complainant which was tendered by Prosecution, highlights the following specific medical findings:
 - i. A large, 6cm long cut is noted on the posterior aspect of the left leg just overlying the calf muscle. It is deep with underlying fascia, muscle and subcutaneous tissue visible.
 - ii. A superficial 3cm cut is noted just lateral to the above mentioned.
 - iii. Another superficial 3cm cut is noted on the mid posterior aspect of the left thigh.

Objective Seriousness

15. Act with Intent to cause Grievous Harm is one of the more serious forms of offence against a person. Hence, I find the objective seriousness of this matter is high.

Sentencing Regime

16. The maximum penalty for the offence of Act with Intent to cause Grievous Harm is an imprisonment for life.
17. The tariff for this offence is 6 months to 5 years imprisonment (vide State v Mokubula Criminal Appeal No. HAA0052J.2003S (23 December 2003)).
18. The maximum penalty for the offence of Breach of Order Suspending Sentence is a fine not exceeding \$10,000 and in addition the court must restore the sentence or part sentence held in suspense and order the offender to serve it which is pursuant to section 28(4) of the Sentencing and Penalties Act 2009.
19. There is no set sentencing preference or tariff for the offence of Breach of Order Suspending Sentence.

Level of Culpability

20. Further, it is evident that you reacted angrily and violently when the Complainant had made a request to you. As such, I find that your level of culpability is materially significant.

Mitigating and Aggravating Factors

21. The Court notes that mitigation offered on your behalf by your counsel, however, personal circumstances and family background holds very low mitigatory value.
22. The Court is aware that you took a guilty plea which highlights your remorse for your actions which is also reflected by your cooperation with the Police at the time of your arrest and during the time of your interview.
23. Further, the Court was informed that you had a Previous Conviction for Failure to Comply with Orders for Ba CF 140/20 where you were sentenced on 26 April 2021 to 6 months imprisonment suspended for 2 years.
24. You have not provided the Court with any evidence of any significant contributions made by you to your community. As such, considering section 5 of the Sentencing and Penalties Act 2009, the Court is unable to provide you with any discount for your previous character.
25. The aggravating factors are that you breached the trust of the Complainant, who is your biological sister and there was no provocation of the part of the Complainant when you committed this offence.

Sentence

26. Considering the objective seriousness and the level of culpability, I accordingly select 14 months as the starting point. I will then add 12 months for the aggravating factors making it a total of 26 months imprisonment

27. For your mitigation, I will consider your guilty plea which highlights your remorsefulness for your actions, I accordingly deduct 10 months, leaving you with a balance of 16 months imprisonment.
28. Section 26(1) of the Sentencing and Penalties Act allows a court to make an order suspending the whole or part of the sentence if it is satisfied that it is appropriate to do so in the circumstances whilst section 26(2)(b) provides the Magistrates Court with the discretion to suspend a sentence where the sentence does not exceed 2 years.
29. Considering your chances of rehabilitation with your remorsefulness for your actions, I will suspend your 16-months imprisonment term for a period of 5 years.
30. If you commit any crime during the 5 years, you are liable to be charged and prosecuted for an offending pursuant to section 28 of the Sentencing and Penalties Act.
31. Further, as this incident involves domestic violence, there are sufficient grounds to make an order under the Domestic Violence Act. Accordingly, I grant a permanent domestic violence restraining order (DVRO) against you with standard non-molestation conditions. This DVRO will remain in force until this court or any other competent court varies or suspends it. If you breach the DVRO, you will be liable to be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Act.
32. Now turning to the offence of Breach of Order Suspending Sentence, your counsel submits that you are engaged in domestic duties. Given this the Court finds that it would be inappropriate to impose a fine. After considering the facts and the circumstances of the case herein with the mitigation that you are a single mother with a 3-year-old daughter, who is dependent on you, I will restore part of the sentence held in suspense. Thus, you will need to serve 3 months of your 6 months Sentence as ordered in BA CF 140/20.
33. The Court is mindful that you had been in custody from 29 October 2021 to the date you were bailed which was 23 November 2021 which is 25 days.
34. Considering section 24 of the Sentencing and Penalties Act, 1 month will be considered as time served by you.
35. Thus, your actual sentence to be served is now 2 months.
36. Any party aggrieved with this Sentence has 28 days to appeal to the High Court.


N. Mishra
Resident Magistrate

