



**IN THE CENTRAL MAGISTRATE'S COURT)
OF SOLOMON ISLANDS)**

(Criminal Jurisdiction)

Criminal Case No. 957 of 2018

REGINA

-v-

BERNARD KWATO'O MAELASI

Prosecution: Mr. L. Adifaka of Police Prosecutions Office
Defence: Mr. W. Kadi of the Public Solicitors Office
Hearing dates: June 15th, 2018
Sentence: June 18th, 2018

SENTENCE

The charge

1. The accused person; Bernard Kwato'o Maelasi pleaded guilty to the following charges:
 - 1.1. Common Assault, contrary to section 244 of the *Penal Code*;
 - 1.2. Simple Larceny, contrary to section 261 (1) of the *Penal Code*;
 - 1.3. Consumption of Liquor in certain public places, contrary to section 65 of the *Liquor Act*;

Agreed summary of facts

2. It is agreed that the victim herein common assault charge is the accused person's biological Mother. For the simple larceny charge, the victim (Ms. Doreen Kwato'o) is also a relative of the accused person.
3. For the common assault charge, it is agreed that on 28th August 2017 at around 7:00pm, at papaho area, the accused person's biological mother asked him to fetch some water at his sister's home. However, in response he swore at her and told her to eat shit and that her hair is like a toilet. The accused person further went, got hold of a broom made of sago palm and beat her with it. The broom landed on her shoulder and right side

face causing her pain. Thereafter, he told her to go and sleep in the toilet. The matter was reported to police and the defendant was arrested and charged accordingly.

4. For the simple larceny charge, it is undisputed that on the 1st of September 2017, between 3:00am and 4:00am at Papaho area, central Honiara. The accused went into the house where the victim “Doreen Kwato’o” lives and stole her grey mobile phone which was placed on their table.
5. For the consumption of liquor in certain public places, it was on 9th January 2013, Police officers on foot beat patrol sighted the accused and his friend Mari sitting at the far end of the wharf exchange a Szeba bottle contained mixed kwaso with pop drink. Both of them used their right hands to pass on the Szeba bottle contained kwaso, one after the other, lifted to their mouth and drink from it. Officers then approached them, apprehend them to central watch house. At the watch house they were formally arrested.
6. It is a norm in this jurisdiction and around the world that every children ought to render love, respect and care towards their parents, more needed when they are in their old age. This stems or emanates from this basic principle that, without them we would not be in this world today, this shows their importance in our lives. I must say that some children do not have the privilege to have either parents in their lives, while you have one, make use of this opportunity and privilege. You will only regret it when they’re gone.
7. I do not agree that because of the unstable relationship between your parents that you should treat your mother like that, no one should ever do that to his or her own mother, she is in her 50’s and you are a grown man in your 30’s, learn to resolve issues in a more rightful, proper and lawful way, other than, recourse to violence, because soon as you embark on the route of violence, you are making your way to this court to face justice – no one is above the law.
8. In the case of *R v Ramosala*¹ His Worship Aulanga stated in paragraph 7 of his sentence;

“...They are your greatest gift from God and you in return should cherish every single moment you have with them while they are still alive... make them happy with your achievements in life; these things can help you take their blessings, which is the real asset of your life. You will not achieve anything if you run with the world without their blessings.”

¹ R v Harry Tonny Ramosala [2016] SBMC 8; Criminal Case 1297 of 2015 & 27 of 2016

9. I have perused the agreed summary of facts and considered the following as the aggravating factors for this matter:
- 10.1. For the common assault charge, the victim was his own mother, clearly, a vulnerable and elderly woman in her 50's. Undoubtedly, the force used was not proportional, hence, outnumbered her strength.
 - 10.2. A broom made of sago palm was used by the accused to assault his Mother. Given the fact that the broom does not form part of his human body, I accept that it is a weapon and that it is capable of producing injuries when used by a person like the accused.
 - 10.3. For the Common assault and simple larceny charge, I consider it aggravating the fact that both of these offences committed at night, of course it poses greater risk to life when it happens in the dark or at night time.
 - 10.4. The fact that he was intoxicated with alcohol when he committed these 2 offences, common assault and simple larceny is clearly, aggravated in nature.
 - 10.5. These offending were unprovoked.
11. For the accused person, I have considered the following to be his personal and mitigating factors:
- 11.1. He is first time offender – meaning that this is the first time in his life he committed a crime. Therefore, it is well recognized that for first time offenders, they should be sentenced in a more moderate scale compared to repetitive offenders.
 - 11.2. He entered guilty pleas to these offences which undoubtedly saved much of the court's time, resources and the strains of having the witnesses testified in court. Of course, the court always impose a discount sentence for guilty pleas compared to not guilty plea matters. 20% reduction for early guilty plea alone, as in *R v Qoloni*.²
 - 11.3. He appeared deeply remorseful in Court which clearly shows that he has regretted the inappropriateness of his actions. His lawyer stated that he has learnt that life in prison is not good.

² [2005] SBHC 73; HCSI-CRC 076 of 2005

11.4. For the simple larceny charge, he assisted the police and returned the mobile phone, hence, the victim did not suffer much loss or injury to his action.

Sentencing range

12. The maximum penalty for the Common Assault Charge is 1 year imprisonment, for Simple larceny, 5 years imprisonment and consumption of liquor in public places, ranges within bound over, fine and custodial. Of course the maximum penalty is only reserved for the worst or serious case.
13. For the Common Assault charge, the appropriate case is *Regina v Ramosala*³ the facts are that the accused was drunk and approached her mother at their residence and asked her \$15.00. His mother told him that she didn't have any money and walked out from him. He followed her and started to threaten to assault her. She was frightened and asked him not to hit her. Despite her request, he instead kicked her and as a result she fell to the ground. Whilst he were there, he uttered abusive and threatening words. The court imposed 5 months imprisonment for the common assault charge.
14. For the simple larceny charge, the appropriate case is *Eapa v Reginam*⁴, The appellant pleaded guilty to simple larceny. He stole a CD player from his friend's house. He was sentenced to 9 months imprisonment by LTM. On appeal Kabui J, as he then was upheld the sentence of 9 months but suspended it for 2 years because the CD player was recovered. His Lordship further averred that simple larceny is a fairly serious offence.
15. I have considered the above two cases and noted that for *Ramosala's* case cited, it falls below or is less serious than the present case, it involved a kick to his mother, in this present case, the accused used a weapon "broom" made of sago palm to assault his mother with, thus, makes it falls at the upper scale of common assault. For *Eapa's* case, I am of the view that the facts of the case is somewhat akin. Hence, the level of culpability falls at the moderate scale.
16. I take due consideration to the fact there is no medical evidence to show the severity of the harm or any injury suffered by the victim. The absence of this prevents the court to know with certainty whether or not the assault is thoughtful. The facts relied upon by the prosecution was that the accused whipped her with the broom, without further evidence to prove whether she suffered any thoughtful harm or injury.

³ Above n. 1

⁴ [2001] SBHC 77; HC- CRC 248 of 2001 (2 November 2001)

17. For common assault in this present case, I find that the accused persons' level of culpability falls in the upper range of the tariff of common assault.

Sentencing principle

18. In terms of sentencing, the cardinal principle is simple, that is, each case has to be decided on its own unique set of facts. Past cases can only be used as a guide and sometimes can be of little value. In *Sahu v Regina*⁵ the Court stated:

"It is well accepted that the technique of comparing sentences imposed in different cases is of limited assistance and provides only imperfect guidance as to the appropriate sentence in any given case." However, to ensure uniformity and coherence, past cases can be of significant assistance.

19. Considering the seriousness of this offence, the level of culpability and balancing them with the mitigating and personal circumstances, the appropriate starting point in my view as follows:

19.1. Bernard Kwato'o Maelasi

19.1.1. Common Assault charge – 8 months imprisonment.

19.1.2. Simple Larceny charge – 6 months imprisonment

19.1.3. Consumption of liquor in public places – \$200 fine is appropriate

20. I hereby reduce 1 month accordingly for the common assault charge and 1 month for simple larceny charge to reflect his early guilty plea as provided in *R v-Qoloni*⁶ and the fact that he is a first time offender and other mitigating factors. The resulting sentence therefore is that he will serve 7 months imprisonment for common assault charge and 5 months for Simple larceny charge.

21. Having considered the circumstances of offending, the absence of a medical report and due consideration to principle of totality, for common assault he is to serve 7 months imprisonment, for the simple larceny, the fact that the mobile phone has already received, I decide to invoke section 44 of the Penal Code and suspend the 5 months imprisonment hereof. For the Consumption of liquor in public places, since it is an aged matter of 2013, I agree with prosecution and sentence the accused person under section 32 of the Penal Code as instead of any imprisonment term for him to be bound over to be of good behaviour and to keep peace for 6 months in the sum of \$600.

⁵ [2012] SBHC 122

⁶ [2005] SBHC 73; HCSI-CRC 076 of 2005

SENTENCING ORDERS OF THE COURT

22. I sentence each of them as follows:

22.1. Bernard Kwato'o Maelasi

- ◇ Common Assault, contrary to section 244 of the *Penal Code* – 7 months imprisonment.
- ◇ Simple Larceny, contrary to section 261 (1) of the *Penal Code* – 5 months imprisonment.

Having considered the circumstance of offending, the fact that the mobile was retrieved and the principle of totality, I hereby order that the 5 months imprisonment to be fully suspended for 2 years as of today on the condition that he will not commit any offence during the suspension period. A breach of this bond will result in the automatic reinstatement of the term suspended.

- ◇ Consumption of liquor in certain public places contrary to section 65 of the *Liquor Act* – Bound over sentence for 6 months to keep peace and of good behavior in the sum of \$600.

23. Taking due consideration to section 44 (5) of the *Penal Code*, I direct that the sentence term of 7 months imprisonment shall run concurrent with the suspended sentence.

24. Time spent in custody to be taken into account.

25. 14 days right of appeal applies.

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THE COURT
Leonard B Chite – Principal Magistrate

