

IN THE CENTRAL MAGISTRATES' COURT OF  
SOLOMON ISLANDS

Criminal Jurisdiction

Criminal Case No. 100 of 2018

On the 28<sup>th</sup> day of October 2019

John Wesley Zoze and Patricia Tabepuda for the Crown.  
Daniel Kwalai for the Accused.



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**BETWEEN:** REGINA Complainant  
**AND:** LUKE KEMAKEHA Accused/Defendant

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**SENTENCE**

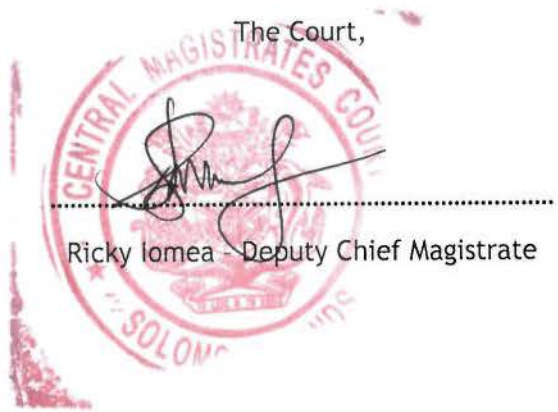
- 1) On 11<sup>th</sup> October 2019 the Court found you guilty on one count of Grievous harm contrary to section 226 of the Penal Code and one count of Assault Causing Actual Bodily Harm contrary to section 245 of the Penal Code and convicted you on those two charges. Today is for the Court to impose sentence on you.
- 2) On 10<sup>th</sup> February 2018, Thomas Anderson Kolua, the Complainant was following the road in the village of Burungia when he saw you running after a person by the name of Trence. Later on you followed him and met him in-front of his granny's house. You then talked to Thomas Anderson Kolua saying 'who na iu?' Mr. Kolua responded by saying 'me nomoa'. You then removed a knife and stabbed him. The knife landed on his right buttock just above his anus. You then removed the knife and ran away.
- 3) Thomas Kolua felt pain and went and slept at Planet Pula's house. He was weak and his eyes were dizzy. He said his uncle and aunty came and they carried him to a boat and took him to Dede clinic but because the nurses there were not capable of treating the injury, he was then taken to Tulaghi hospital. The length of the knife was estimated be 20 - 30 cm and was sharp on both edges.
- 4) A Consultant Clinical Nurse at Tulagi hospital had observed that Mr. Kolua was weak and unconscious due to what he believed to be loss of blood. They put IV drip on him because Mr. Kolua had lost a lot of blood. The injury was a penetrated wound caused by a sharp object. The wound was 2 - 3 inches deep just above the anus. According to the Nurse, the injury was quite serious. The injury causes further damage to muscles and the patient losing a lot of blood.
- 5) Those are the facts that the Court found to have constituted the offence of Grievous Harm, contrary to section 226 of the Pena Code.
- 6) The offending is viewed as serious because a weapon, a knife was used resulting in a wound measured 2 - 3 inches deep just above the anus.
- 7) This was an unprovoked attack against a boy who was walking innocently on the village road.

- 8) Any sentence must carry with it the aim of discourage any future violent reaction by the defendant or other like-minded people.
- 9) The principal of retribution is also accorded the appropriate weight in arriving at the appropriate starting point for this charge.
- 10) I have gathered from the cases cited by parties in their submissions that the use of knives as weapons to inflict serious injuries on victims has attracted immediate custodial sentences of differing lengths. The lengths of each custodial sentence was to some extent, influenced by the distinctive facts of each case. This case is of no exception. The appropriate starting sentence for this charge will be decided on the facts of this case and the aggravating features that are present.
- 11) In view of the above aggravating factors and the circumstances of the offending in this case, I am of the view that the appropriate starting point in this case is 2 ½ years imprisonment.
- 12) On 31<sup>st</sup> October 2010 Junior Fred Samora, the Complainant and his two brothers, Eddie Samora and Kevin Ghaso went to check their water source. They checked the dam but it was full so they turned it on and came back. On their way back they arrived at your house but you were not there. Only your wife was there and argued with them. Whilst they were standing there, you shot them with an arrow. The arrow landed on Junior Fred Samora's left hand, around the left elbow. They then ran away. It was when they ran away that the arrow came out from the Complainant's hand. Only a small part - the sharp front got stuck to the Complainant's hand. The arrow went into the Complainant's skin and caused pain to him. The arrow was made of sago palm leaf.
- 13) Those are the facts found by the Court to have constituted the offence of Assault Causing Actual Bodily Harm contrary to section 245 of the Penal Code.
- 14) In this incident, a weapon was also used and this was also an unprovoked attack on the complainant.
- 15) In view of those aggravating factors, as well as the delay in progressing this charge since was committed in 2010, a starting point of 6 months is appropriate in my view.
- 16) In terms of mitigation, I noted that he is a first time offender and as a father, has responsibilities to his family. His family has felt and will certainly feel the impact of his imprisonment.
- 17) To reflect the above mitigating factors, I will deduct 6 months from the starting point of 2 ½ years imprisonment for the Grievous harm charge and 3 months from the ACABH charge.
- 18) The sentences to run consecutively. The total sentence is 2 years and 3 months imprisonment. In view of the principle of totality, I will further deduct 3 months from the total sentence above. The total sentence to be served is 2 years imprisonment.

19) I believe that this sentence also reflects a just punishment for the Accused. I am also satisfied that the defendant is a good candidate for rehabilitation so this sentence will allow the Accused to rehabilitate himself in prison to learn that resorting to violence with the use of deadly weapons such as knife is not the way to solve disagreements.

20) This sentence is back dated to commence on 11<sup>th</sup> October 2019 when he was remanded by this Court in custody at Rove pending sentencing. Any time spent in custody to be taken into account by the Correctional Services.

The Court,



Ricky Iomea - Deputy Chief Magistrate