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**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT HONIARA**

(Criminal Jurisdiction)

Criminal Case No: 971 of 2020

REGINA

-v-

MOFFAT ULASI (*CONSOLIDATED WITH*)

Criminal Case No. 1052 of 2020

REGINA

-v-

MOFFAT ULASI

BEFORE: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Tex Riwa, Police Prosecutions for the Crown (PPD)

Mr Haniel Max, Senior Legal Officer, Public Solicitors Office, for the Defendant

Date of Mitigation: 14 December 2020

Date of Sentence: 17 December 2020

Notice: *This copy of the Court's Reasons for Judgment/Sentence is subject to formal revision prior to publication.*

SENTENCE

INTRODUCTION

1. Mr Moffat Ulasi ("the defendant") pleaded guilty to one count of malicious damage contrary to section 326(1) of the *Penal Code* [Cap 26] in the criminal case No. 971 of 2020 and one count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26] in the criminal case No. 1052 of 2020. I now convict him based on the pleas entered.

FACTS

2. In criminal case No. 971 of 2020, the Complainant in this matter is Kennedy Jimmy.

3. The defendant's name is provided above, a native of Aufasu village, Central Kwarae in the Malaita Province. He is a self-employed businessman and was 39 years old at the time of the offending earlier this year. He should be around the same age by now. He resides at Gilbert Camp Area in Central Honiara. The defendant is the complainant's brother-in-law.
4. This incident occurred at Gilbert Camp in Honiara on Guadalcanal.
5. On the 15th August 2020 at 0600hrs, the complainant returned home after being at the Morgue at the National Referral Hospital to mourn the death of one of his relatives. He parked the vehicle that was under his carriage and owned by CEMA Company Ltd next to his father-in-law's resident.
6. Between 0800hrs and 0930hrs on the said date, the defendant damaged the left and right mirrors of the vehicle with his right hand. He proceeded further with a stone in hand and hit the front bonnet, just next to the front right side light. One of the frontal lights was also damaged. The value of the damage although not particularized in the agreed facts is pleaded as part of the particulars to be SBD 5255.
7. The defendant's brother, Hendry Ulasi, intervened and calmed the defendant and then led him away to his house.
8. The defendant on earlier occasions had argued with his sister and brother-in-law over a house that was built on their father's land. He is the one next in line to formally inherit the properties legally owned by the father.
9. According to the customary norms that is practiced from where he comes from in Malaita Province, the first born son would be the one, based on propriety interests to have sole right in the next line of succession and or inheritance. His sister and brother-in-law insisted and later proceeded to complete the house. However, they would not complete the shower room and toilet. The defendant volunteered to complete the outstanding works using his own money with the understanding that he would be refunded with interests later. He then arranged for the house to be rented out to a Police Officer.
10. Months later he asked for his refund when the third quarterly rental payment came in but he was told to wait for the next rental payments for the next year, 2021. He approached them several times but was told that he has no right and interests over the land and properties.
11. He was later charged with the offence of Malicious Damage contrary to section 326(1) of the *Penal Code* [Cap 26].
12. The defendant has since reconciled with the complainant, and is willing to pay up the total cost of the damage.

13. In criminal case No. 1052 of 2020, the complainant in this matter is Biltu Kumer Darker. The defendant's particulars is provided above.
14. The second incident also occurred at Gilbert Camp in Honiara. On the 21st of October at about 1030hrs, the complainant drove up to Gilbert Camp in his car purposely to clean up a building, which he has rented and was then vacating the premises. The complainant's landlord was the defendant's father.
15. The complainant arrived at the said location and he was still in his car when the defendant came running towards him. The defendant slapped the victim from the outside on the victim's chin and face with his right hand for about four times. The defendant then said to the complainant that he (complainant) should have given him a proper notice or letter.
16. The father of the defendant (as the landlord) had entered into a tenancy agreement with the victim which became effective as of the 1st of March 2020. It was initially agreed that the victim would pay a monthly rental of SBD 5000 per month. Since then he only paid SBD 4000 for each of the months following the agreement until he vacated the premises on the 18th October 2020.
17. Prior to vacating the premises, he was told to repay the outstanding amount due and to comply with paragraph 18 of the tenancy agreement.
18. The accused all along with his father told him (complainant) that he should have provided a 3-month notice that would allow him to leave the property on the 18 January 2021. He disagreed and acted otherwise and he left the premises voluntarily.
19. The defendant has since tried to approach the victim for a reconciliation but was told to wait for the court.

DISCUSSION AND ANALYSIS

Count 1: Willful and Unlawful Damage

20. Section 326(1) of the *Penal Code* [Cap 26]¹ provides that:

Any person who willfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanor, and he shall be liable, if no other punishment is provided, to imprisonment of two years.

21. The maximum sentence for willful and unlawful damage is two years:

¹ *Penal Code* [Cap 26], s 326(1)

Aggravating factors

22. **Value of damage and loss of money.** CEMA as a company and legal entity would be affected financially if the said loss is not reimbursed by the defendant. The amount pleaded in the particulars of the charge is around SBD 5000.
23. **Innocent Victim.** The vehicle that was damaged is owned by CEMA Company which is an independent and innocent entity and I consider this as an aggravation. CEMA as a legal person is definitely an innocent victim and has nothing to do with the family problems that the defendant had with his sister and brother in-law.
24. **Weapon used.** The defendant used a stone to damage parts of the vehicle. This in itself is serious.
25. **Repeated assault.** For the second count, the defendant slapped the victim on his face not once but four times which is an aggravation.

Mitigating Factors

26. The mitigating factors include the following: early guilty plea and remorse, first offender, cooperation with the police, reconciliation (for the first count only) and his personal circumstances. I will elaborate more on this in the coming paragraphs.
27. In order for the court to understand the general trend of sentencing in certain offences, consulting of past cases can sometimes be of assistance.
28. I am also fully aware that each case should be decided in accordance with its own facts, merits and circumstances.

Comparative Sentences

29. In *Regina v Wanefalea* [1992] SBHC 62; HCSI-CRC 13 of 1992 (27 May 1992)², the offender was sentenced for a number of offences including malicious damage. In that case, the offender plunged the knife into two fibre-glass canoes damaging them. He was sentenced to four months imprisonment each for the two counts of malicious damage, which were served concurrently with the more serious charge of armed robbery for two and-half years.
30. In *Regina v Sukulu* [2017] SBMC 55; Criminal Case 873 of 2017 (30 October 2017)³, the offender was sentenced to four months imprisonment for wilful and malicious damage contrary

² *Regina v Wanefalea* [1992] SBHC 62; HCSI-CRC 13 of 1992 (27 May 1992)

³ *Regina v Sukulu* [2017] SBMC 55; Criminal Case 873 of 2017 (30 October 2017)

to section 326(1) of the *Penal Code* [Cap 26]. The properties damaged were as follows: a 2 feet light valued \$250, 2 buckets valued \$156 and a wheel barrow valued \$450.

31. In *Regina-v-Goro* [2016] SBMC 24; Criminal Case 1277 of 2015 (15 September 2016)⁴, the offender pleaded guilty to a number of offences including two counts of malicious damage contrary to section 326(1) of the *Penal Code*. He was sentenced for five (5) months imprisonment each for the malicious damage. The offender in the *Goro case* actually pulled down the verandah and the walling of the victim's house.⁵
32. In *Regina v Alatala* [2017] SBMC 57; Criminal Case 777 of 2017 (16 November 2017)⁶, the offender was charged and found guilty of malicious damage including other offences. The offence involved the shooting and breaking of the back glass of a moving vehicle. The offender was sentenced to one (1) year or twelve months for malicious damage. The final sentence, however, combining other offences is two years and nine months.
33. In *R v Homelo* [2019] SBMC 16; Criminal Case 85 of 2019 (25 March 2019)⁷, the offender was sentenced to eighteen months for damaging a Toyota Caldina especially the back-rear glass with a hard object.
34. In *Ghele v Reginam* [2004] SBHC 38; HC-CRAC 169 of 2004 (6 May 2004)⁸, the matter was appealed to the High Court on the basis that the total sentence of twelve (12) months imprisonment for malicious damage and three (3) months imprisonment for common assault imposed by the Principal Magistrate were manifestly excessive. However, his Lordship Judge Kabui, as he then was, disagreed and increased the sentence for malicious damage to eighteen (18) months whilst the sentence for common assault remained unchanged.
35. The following sentences are applicable in Solomon Islands and have been invoked by the superior courts and this court in the past: penalty fines, non-custodial sentences, and custodial sentences. In terms of custodial sentences, it depends very much on the severity of the offence and the extent and value of damages occasioned. So far the courts have imposed up to 18 months imprisonment for the worst kind of malicious damages.
36. In this case, there are two options that are available to the court as it is quite serious. The first one is a custodial sentence and the other one is a penalty fine.⁹ However, after having considered the relevant factors, and given the fact that an innocent third party became a victim

⁴ *Regina-v-Goro* [2016] SBMC 24; Criminal Case 1277 of 2015 (15 September 2016)

⁵ The Court in that case imposed a sentence of 2 years and 2 months which included other offences combined with the malicious damage.

⁶ *Regina v Alatala* [2017] SBMC 57; Criminal Case 777 of 2017 (16 November 2017).

⁷ *R v Homelo* [2019] SBMC 16; Criminal Case 85 of 2019 (25 March 2019).

⁸ *Ghele v Reginam* [2004] SBHC 38; HC-CRAC 169 of 2004 (6 May 2004). The value of the damage is estimated to be \$38,750.00 in total and the 18 months imprisonment issued by Kabui J reflected that.

⁹ *Penal Code* [Cap 26], s 24(3)

of a totally different issue, I am of the view that a deterrent sentence should be given which means an immediate custodial sentence should be imposed.

STARTING POINT

37. After having considered the aggravating and the mitigating factors, I am of the view that a starting point of sixteen (16) months imprisonment.
38. **Early Guilty plea and remorse.** The defendant entered an early guilty plea which saves the court's time and resources. This is also a sign of genuine remorse. I deduct 4 months to reflect the early plea and remorse.
39. **First Offender.** The defendant has no previous conviction. I deduct 2 months to reflect this.
40. **Cooperation with the Police.** The defendant cooperated with the Police and made early admissions which is consistent with the guilty plea. I deduct 2 months to reflect this.
41. **Reconciliation.** The defendant took active steps to reconcile with the brother-in-law, and have agreed that he would repay the damages done on the vehicle. This morning I have also been furnished with a document from CEMA which confirmed its agreement for the defendant to make installment payments with respect to the damages. According to the document by CEMA, the amount of damage could be higher than the amount pleaded in the charge. I deduct 2 months to reflect the reconciliation that took place and also the understanding that CEMA entered into with the defendant.
42. **Personal Circumstances.** He is currently 39 years of age. He is married and has 5 children which are aged 13, 7, 6, 4 and 1. He is also a bread winner in his family. I note that he has parental responsibilities and I deduct another 2 months to reflect this.
43. Hence, I am of the view that four (4) months imprisonment is appropriate for the first count.

COUNT 2: COMMON ASSAULT

44. Section 244 of the *Penal Code* [Cap 26]¹⁰ provides as follows:

244. Any person who unlawfully assaults another is guilty of a misdemeanour, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, shall be liable to imprisonment for one year.

¹⁰ *Penal Code* [Cap 26], s 244

45. The offence of common assault carries a maximum sentence of 12 months imprisonment.
46. The common sentencing options for common assault in this jurisdiction include, inter alia, bound-over sentences, penalty fines, suspended sentences and custodial sentences.

STARTING POINT

47. The assaulting of someone for four times must be considered as more serious than when a person is assaulted once. After having considered the aggravating and the mitigating factors, I am of the view that an immediate custodial sentence is appropriate and a starting point of 8 months imprisonment is appropriate.
48. **Early Guilty plea and remorse.** The defendant entered an early guilty plea which saves the court's time and resources. This is also a sign of genuine remorse. I deduct 2 months to reflect the early plea and remorse.
49. **First Offender.** The defendant has no previous conviction. I deduct 2 months to reflect this.
50. **Cooperation with the Police.** The defendant cooperated with the Police and made early admissions which is consistent with the guilty plea. I deduct 1 month to reflect this.
51. **Personal Circumstances.** He is 39 years of age at the time of offending. He is married and has 5 children which are aged 13, 7, 6, 4 and 1. He is also a bread winner in his family. I note that he has parental responsibilities and I deduct another 1 month to reflect this.
52. Thus, I am of the view that two (2) months imprisonment is appropriate for the second count.

Consecutive sentences

53. Both offences did not arise from the same transaction so they are to be served consecutively.¹¹

CONCLUSION

54. I consider the present offence of malicious damage as quite serious because how can a person justify damaging the property of an innocent party or entity especially CEMA when the problem he had was with his own family or sister? How did CEMA come into the equation? This is unacceptable. It is always important for an individual to control his/her feelings and emotions at all times. There are always peaceful means and ways that a person can sort out and solve whatever ill feelings he or she may have towards another person. The use of the stone, which is a weapon, is serious as far as section 44(2) of the *Penal Code* [Cap 26] is concerned.

¹¹ *Bade v Regina* [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988); *Regina v Mae* [2005] SBHC 10; HCSI-CRC 120 of 2004 (7 September 2005)

The destruction of an innocent entity's property stemming out of a family problem is illogical and absurd.

55. The law is here to safeguard and protect the rights and even the lives of each and every individuals, and also the legal entities such as companies and business houses in this country. It protects a person's property and it forbids a person to unlawfully assault another person.¹² The actions of the defendant not only breached the constitutional rights of the victims but they are contrary to the relevant provisions of the *Penal Code* [Cap 26].
56. In view of the above, and after having considered the relevant sentencing principles such as punishment, deterrence and rehabilitation, I hereby sentence the defendant to four (4) months imprisonment for one count of malicious damage contrary to section 326(1) of the *Penal Code* [Cap 26], and I now sentence the defendant to two (2) months imprisonment for one count of common assault contrary to section 244 of the *Penal Code* [Cap 26].
57. More so, for the first count, taking into account the use of the weapon, my powers to suspend the sentence is not enlivened and the submissions of both the Prosecution and the defence to suspend the sentence cannot be entertained taking into account section 44(2) of the *Penal Code* [Cap 26].
58. For the second count, since a weapon was not used, hence, I am satisfied that section 44(1) of the *Penal Code* [Cap 26] can be invoked, and I hereby suspend that two (2) months imprisonment for count of common assault for 12 months, and that it commences after he has served his time in prison for the first count of malicious damage.

ORDERS

59. The defendant, Mr Moffat Ulasi, is sentenced as follows:

[1] **Count 1:** The defendant, Moffat Ulasi, is sentenced to four (4) months imprisonment for one count of malicious damage contrary to section 326(1) of the *Penal Code* [Cap 26].

[2] **Count 2:** The defendant, Moffat Ulasi, is sentenced to two (2) months imprisonment for one count of common assault contrary to section 244 of the *Penal Code* [Cap 26]. Section 44(1) of the *Penal Code* [Cap 26] is hereby invoked and the sentence for one count of common assault is hereby suspended for the period of 12 months.

[3] The sentences must be served consecutively, which means the sentence for the second count becomes effective after he has served his imprisonment term for the first count.

¹² *Constitution of Solomon Islands*, s 7 and 8

[4] Any time spent in custody previously, if any, shall be duly deducted.

[5] Right of Appeal within 14 days.

[6] I order accordingly.



PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT