



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

(Criminal Jurisdiction)

Criminal Case No: 825 of 2019

REGINA

-V-

BENJAMIN OLO SAMANI (CONSOLIDATED WITH)

Criminal Case No. 940 of 2019

REGINA

-V-

BENJAMIN OLO SAMANI

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mrs Ethel Maue for the Crown (Police Prosecutions)

Mr Fagani, Senior Legal Office, PSO, for the Defendant

Date of Sentencing and Mitigation: 11th December 2020.

Date of Ruling: 23rd January 2020.

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

SENTENCE

1. On or about 14th October 2019, the defendant pleaded guilty to one count of Domestic Violence contrary to sections 4(1)(a) and 58 of the *Family Protection Act 2014* ("FPA") in the Criminal Case No. 825 of 2019. Moreover, on or about 4th of December 2019, the defendant also pleaded guilty to two further charges of Domestic Violence contrary to section 4(1)(a) and 58 of the FPA in the Criminal Case No. 940 of 2019 ("CC No. 940 of 2019"). I note that there were three counts of Domestic Violence that

were withdrawn by the Prosecution pursuant to section 190(2)(b)(i) of the *Criminal Procedure Code* [Cap 7]¹ on the 19th November 2019 with respect to the CC No. 940 of 2019.

2. I now pronounce Mr Samani's conviction for all the 3 counts of Domestic Violence contrary to sections 4 and 58 of the FPA.

Antecedent and basic background

3. Mr Benjamin Olo Samani is 38 years of age originally from Alisisiu Village on Malaita, Malaita Province.
4. The victim in this case is Barbra Baura, the wife of the defendant. The defendant and the victim are married with 4 children.
5. The defendant and the victim were selling betel nut to earn income and help themselves in their living in Honiara.

THE FACTS

FIRST INCIDENT-CC No. 940 OF 2019

6. On or about 17th of January 2017, at about 1700hrs, the victim left their market stall at the White River 01 Bus stop, West Honiara and went home to prepare dinner for their family.
7. When the victim arrived back at their market stall at White River, the defendant was the one who looked after the market.
8. At around 11pm in the night, the defendant closed the market, he had alcohol and got drunk and then went home.
9. Having learned that the defendant was drunk, the wife became worried fearing that he might use up their earnings for the day to purchase for more alcohol.
10. The couple then had another heated argument as the defendant arrived home.
11. The victim then went and had her bath.
12. Upon her return after having her bath, she noticed that the bag of money containing their earnings from the market was in the possession of the defendant.

¹ *Criminal Procedure Code* [Cap 7]

13. She asked him to give the money to her but he refused.
14. The argument between them escalated and the defendant then assaulted his wife with his open right hand by slapping the victim.
15. No medical report was tendered with respect to the incident.
16. The incident was reported to the Police and the defendant was charged with one count of Domestic Violence contrary to section 4(1) read with section 58 of the FPA.

SECOND INCIDENT – CC No. 825 of 2019

17. On or about 12 April 2019, the defendant was drunk and he returned home at around 12:00am and disturbed the family by punching the door of their house and it opened, and he subsequently walked into the house.
18. Whilst in the house, he stepped into a pot containing cooked rice purposely for the family's consumption.
19. The victim protested and urged the defendant not to spoil the rice.
20. The defendant turned around to the victim and told her some very disrespectful and demeaning words in Solomon Islands Pidgin which are as follows: "...you go fuckem daddy blo you and ota tribe blo you...". The words mean "...go and fuck your dad and members of your tribe...".
21. The argument escalated again as the couple argued. As a result, he assaulted the victim and her nose and mouth bled.
22. No medical report was tendered with respect to the incident.
23. The defendant was arrested and charged with one count of Domestic Violence contrary to section 4 and 58 of the FPA.

THIRD INCIDENT-CC No. 940 OF 2019

24. The victim in the third incident is his brother Mr Robert Samani.
25. On the 21st October 2019, Mr. Benjamin Samani is drunk and he used abusive words against his brother Mr Robert Samani. He said the following words in pidgin "...youfala everyone lo community and iufala fuckem dad and mummy blo ufala everyone." The words mean "...all the people or members of this community, you all fuck your fathers and mothers."

26. He was very angry with his brother because he was pinned down to the ground by his brother for using abusive words against the people in the community and his brother.
27. The matter was reported to the police and the defendant was charged with one count of domestic violence contrary to section 4(1) and 58 of the FPA.

DISCUSSION AND ANALYSIS

28. Section 4(1)(a) of the FPA defines domestic violence as a:

“...conduct committed by a person (“the offender”) against another person with whom the offender is in a domestic relationship, or the threat of such conduct, the constitutes any of the following-

- a) Physical abuse;*
- b) Sexual abuse;*
- c) Psychological abuse; and*
- d) Economic abuse.”²*

29. It *“...may consist of a single act or a number of acts that form part of a pattern of behavior even though some or all of those acts when viewed in isolation appear to be minor or trivial.”³*

30. Section 58 of the FPA provides as follows:

- 1) A person commits an offence if the person commits domestic violence.*
- 2) The Penalty for an offence under subsection (1) is a fine of 30, 000 penalty units or imprisonment for 3 years or both.⁴*
- 3) It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for engaging in the conduct that resulted in the breach.⁵*

31. The FPA is “an Act to provide for the protection of families from domestic violence and to promote the safety, health and wellbeing of the victims of domestic violence...”⁶. The enactment of the FPA is a legislative response to the need to protect both men and women, the children, the old, the marginalized and all kinds of people from all walks of life from domestic violence. It must be noted that the most vulnerable people in our communities are the women and children as compared to men, however, nowadays, some men are also victims of domestic violence.

Aggravating features

32. The aggravating factors are as follows:

² Family Protection Act 2014, s 4

³ Family Protection Act 2014, s 4

⁴ Family Protection Act 2014, s 58

⁵ Family Protection Act 2014, s 58

⁶ Family Protection Act 2014, Long Title

- 1) The maxim sentence is either a 3 years' imprisonment or a fine of 30,000 penalty units or both.
- 2) The victim is his wife and the assaults committed against her is a breach of the trust and respect that should be embraced by the wife and husband.
- 3) The other victim is the defendant's biological brother and the disrespectful words that the defendant said to his brother is wrong in custom, and attracts customary compensation.
- 4) In the second incident, the defendant told the victim these words "go fuckem daddy blo you and tribe blo you." This is also very wrong, abusive and hurtful and significantly, a grave mistake as per our norms and customs.
- 5) The assault of the wife is repeated. He assaulted the wife on two occasions which is an aggravation.
- 6) In one of the offending, the children were also present as the door of their house was opened forcefully by the defendant. There is no doubt that the children were traumatized as well and I consider this as an aggravation.

Mitigating Features

33. The mitigating factors as follows:

- 1) **Early guilty plea.** The defendant entered a guilty plea which shows that he is remorseful and he takes responsibility of the wrongs he committed. This saves the court's time and resources.
- 2) **First time offender.** He is a first-time offender and has no previous conviction. He is 38 years of age.
- 3) **Cooperated well with Police.** He cooperated well with the Police by admitting the offences and that the fact that he was wrong.
- 4) **Time Spent in Custody.** This must be taken into account as well and whatever sentence that will be imposed ought to be backdated to the date that the offender was first remanded.
- 5) **Personal Circumstances.** The defendant is married with 4 children and a breadwinner in the family.

Sentencing Principles

34. The sentencing principles such as punishment, deterrence, and rehabilitation must always be taken into consideration in the process of formulating the sentences.

35. It is an established principle or rule that each case must be decided on its own merits or facts.

36. In the case of *Kunia v Regina* [2005] SBHC 60; HCSI-CRAC 599 of 2004 (21 February 2005)⁷, his Lordship Palmer CJ said as follows:

On the other hand, there have been instances in which such assaults have resulted in the death of the opposite spouse and a more serious charge including that of manslaughter or murder imposed. As a weaker vessel, women victims are especially vulnerable and the courts have readily come to their protection by imposing immediate custodial sentences as in this case. The fact the incident occurs in a domestic relationship does not justify or minimise its significance. No spouse should be physically abused or attacked for offences caused within the marriage relationship and parties should as much as possible seek to iron out their differences/disputes in a peaceful or controlled manner without having recourse to physical violence and harm to each other. In such situations,

⁷ *Kunia v Regina* [2005] SBHC 60; HCSI-CRAC 599 of 2004 (21 February 2005).

nobody wins and more often than not, both become the loser. Where there are children they can be traumatised or affected by such incidents.

37. In the case of *Regina v Popoe* [2014] SBHC 155; HCSI-CRC 77 of 2010 (6 November 2014)⁸, in that case the learned Judge His Lordship Palmer CJ made some pertinent observations concerning domestic violence as follows:

This type of violence occurs within the confines of the home and family setting, for which over the years women groups, family groups, churches, non-Government organisations, including the Police have been very vocal about and repeatedly urged that this type of violent offending be curtailed. It is not something, which cannot be controlled, rather it is within the power of the perpetrator to stop and desist from. It has been pointed out so many times that this is more an attitudinal problem than cultural or anything else. Domestic violence cases are a phenomenon the world over. It occurs in almost every country not only in Melanesia and many organizations and stakeholders have actively sought to highlight this problem so that it is addressed aggressively by everyone in the community and not swept under the carpet. The courts too, not only in this country but in other jurisdictions have duty to ensure that the law which denounces this type of conduct is enforced firmly, fairly and consistently.

38. That case is a manslaughter case, however, it is relevant because the death of the victim occurred as a result of domestic violence.
39. In the present case, the repetition of offending in the present cases shows that the offender has become a dangerous person especially for the victim and his family.
40. I must say that the Court should not wait until another life is taken before imposing harsh penalties.
41. After having considered both the aggravating and mitigating factors, the circumstances of the case, I am satisfied that an immediate custodial sentence is appropriate.

Starting Point

42. I am of the view that a starting point of 12 months is relevant for all the charges.

First Count

43. *Early guilty plea and Genuine Remorse.* The defendant entered a guilty plea which shows that he is remorseful and he takes responsibility of the wrongs he committed. This saves the court's time and resources. I deduct 4 months.
44. *First time offender.* He is a first-time offender and has no previous conviction. It was after 38 years on earth that he finally got convicted. I deduct 2 months.
45. *Cooperated well with Police.* He cooperated well with the Police by admitting the offence and that the fact that he was wrong. I deduct 2 month.

⁸ *Regina v Popoe* [2014] SBHC 155; HCSI-CRC 77 of 2010 (6 November 2014)

46. *Personal circumstances.* The defendant is married with 4 children and a breadwinner. I deduct 1 month.

47. In summary, I am satisfied that 3 months imprisonment is appropriate for this incident.

Second Count

48. For count 2, it involves the punching of the door, the destruction of the family's food that is a pot of rice. Putting a dirty leg into the pot of rice is demeaning, disrespectful and very unfatherly.

49. It was exacerbated by the assault that resulted in her sustaining a bleeding nose and mouth.

50. *Early guilty plea.* The defendant entered a guilty plea which shows that he is remorseful and he takes responsibility of the wrongs he committed. I deduct 4 months.

51. *First time offender.* He is a first-time offender and has no previous conviction. It was after 38 years on earth that he finally got convicted. I deduct 2 months.

52. *Cooperated well with Police.* He cooperated well with the Police by admitting the offence and that the fact that he was wrong. I deduct 2 month.

53. *Personal circumstances.* The defendant is married with 4 children and a breadwinner. I deduct 1 month.

54. Hence, I am satisfied that 3 months imprisonment is appropriate for the second count.

Third Count

55. The third count involves the saying of disrespectful words to his brother. He said that the people in the community should fuck their mothers and fathers. This is extremely and gravely serious as far as custom, community and societal norms, religious beliefs and doctrines, and laws are concerned. The defendant has no right to simply say those bad words generally to the community. People in that particular community include chiefs, elders, strangers, working people and even the defendant's own relatives, and they had nothing to do with the defendant. The community deserves respect from the defendant.

56. *Early guilty plea.* The defendant entered a guilty plea which shows that he is remorseful and he takes responsibility of the wrongs he committed. I deduct 4 months.

57. *First time offender.* He is a first-time offender and has no previous conviction. It was after 26 years on earth that he finally got convicted. I deduct 2 months.

58. *Cooperated well with Police.* He cooperated well with the Police by admitting the offence and that the fact that he was wrong. I deduct 2 month.

59. *Personal circumstances.* The defendant is married with 4 children and a breadwinner. I deduct 1 month.

60. In summary, and given the fact that it only involves, the use of words, this should be differentiated with physical violence, and hence, I deduct 1 month to reflect its severity. Hence, I am satisfied that 2 months of imprisonment is appropriate for count 3.

Observations, comments and Conclusion

61. As alluded to earlier on, the offender repeated the offending against his wife and this must be considered an aggravation. I note also that in these incidents, there is no medical report provided for the assault committed by the defendant.
62. In Solomon Islands, the saying of disrespectful and derogatory words to others is very sensitive. The person who said those words normally would pay a compensation after a recognized customary institution such as the panel of chiefs make their decision and sanctions, and orders the perpetrator to pay a penalty fine either to the victim or the chiefs.
63. In other instances, such hurtful words actually have caused hatred and differences amongst certain ethnic groups. Honiara is comprised of diverse and multi-ethnic communities and societies, and the discourteous actions and words that the defendant indiscriminately said, as shown in these incidents, can be spiteful and instigate resentment and retaliation.
64. Hence, the defendant and the public at large must learn to stop using those abusive words which can lead to further and bigger problems and issues. In one of the instances, Mr Samani directed those bad words encompassing the whole community.
65. People and couples who are in a domestic relationship whenever they are having any problem must address their issues in a mature, cordial, respectful, and peaceful manner.
66. If either the wife or the husband goes to prison, that will also affect the other partner and the children. In this present matter, the couple have 4 children and the length of time that the defendant would spend behind locked doors will no doubt have adverse repercussions for the children. It is unfortunate, however, that is the consequences of the choices and actions of the defendant.
67. The total sentence imposed is to show the court's condemnation of the offence of domestic violence which must be curtailed to ensure all our people especially the elderly, women and children are safe in our communities, and the country as a whole.
68. Moreover, after taking into account the core principles of sentencing such as punishment, retribution, deterrence and rehabilitation, and having done my own computation, I now sentence the offender Mr Samani as follows:
 - 1] Count 1-3 months imprisonment
 - 2] Count 2-3 months imprisonment
 - 3] Count 3-2 months imprisonment
69. Counts 1, 2, and 3 are to be served consecutively and the resulting sentence is therefore 8 months' imprisonment.

ORDERS

70. The orders of the Court are as follows:

- 1] **The offender Mr Benjamin Olo Samani is sentenced as follows for the 3 counts of Domestic Violence Contrary to section 4 and 58 of the FPA as follows:**
 - 1) **Count 1-3 months imprisonment term**
 - 2) **Count 2-3 months imprisonment term**
 - 3) **Count 3-2months imprisonment term**
- 2] **Counts 1, 2, and 3 are to run consecutively and the resulting sentence is 8 months imprisonment term.**
- 3] **One of the incident occurred in 2017, that is a delay of around 2 years, and I am of the view that another 1 month should be deducted from the head sentence to reflect the delay.**
- 4] **Hence, the final sentence is 7 months imprisonment term, and it shall be backdated to the date when the defendant was first remanded.**
- 5] **Right of Appeal within 14 days.**



**PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT**