

IN THE CENTRAL MAGISTRATES COURT)  
OF SOLOMON ISLANDS AT HONIARA)  
(*Criminal Jurisdiction*)

Criminal Case No: 472/2019

REGINA

-V-

ROBERT OPPOTO

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COURTS SENTENCING RULING

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Prosecutor: Miss Luza, F for the Director of Public Prosecutions

Defence counsel: Mr. Fagani, M of Public Solicitors Office

Trial dates: 10<sup>th</sup> and 12<sup>th</sup> Mar 2020

Judgment: 16<sup>th</sup> Mar 2020

Sentencing submissions: 17<sup>th</sup> Mar 2020

Written sentencing ruling: 19<sup>th</sup> Mar 2020

**CHARGE:**

The Defendant in this matter is a Mr. Robert OPPOTTO. He is being charged for the offence of Acts intending to cause grievous harm contrary to section 224 (b) of the Penal Code, Cap 26. He pleaded not guilty so a trial was conducted on 10 and 12 Mar 2020. After trial I find that the prosecution has made out their case beyond reasonable doubt and convicted him accordingly.

**FACTS:**

The facts established through the trial is that on the 22<sup>nd</sup> of April 2019, at about 2000hours, the Defendant attempted to cause grievous harm to the Victim namely Steward NGAITANIA by striking him with a knife. This was at Soveas house at Waimea, Mbirau Ward, Guadalcanal Province.

#### AGGRAVATING FEATURES:

When assessing the vital factors displaying the aggravating features of the case, the following were noted:

1. The Defendant was drunk at the time of the offending.
2. The incident occurred during the night time which is at around 8pm.
3. The Defendant shone a torch light towards the Victim's face prior to striking him. Such situation can be seen in my view as aggravating as shining a torch towards someone at night time in a heated situation would in my view cause fear to the Victim and helplessness of not having proper opportunity to observe the surroundings at that relevant time
4. I further note that Prosecutions had highlighted in their submissions the fact that a weapon was used to commit the offence therefore it makes it aggravating. They also submitted that the force employed by the Defendant at the time of the offending makes it aggravating. I refuse to take these as aggravating factors as they are actually the elements of the offending. I therefore did not add them as aggravating features for this case.

#### MITIGATING FEATURES:

On the other hand, I also find the following as mitigating factors present for the case. They are:

1. The submission by defence to emphasise the Defendants apology for what he has done in this case. He also assured the court that he will never repeat this again in the future. In my view this shows that the Defendant has acknowledged his wrongdoings, is sorry for what he has done and has learnt a lesson.
2. He is also a first time offender and has been a law abiding citizen until he committed this offence.
3. Youthfulness- he is 20 years old and has a long way to go through life to find his purpose and make positive changes for the better. I agree with this as I view the Defendant has someone just entering adulthood/maturity when he encountered this unfortunate situation.
4. Educational background- he was doing form 4 when the incident occurred. He stopped attending school from that time to this date to attend to this case. His counsel also orally submits that he intends to continue studying and therefore the penalty that will be imposed should factor this important aspect of their mitigating factors. His counsel submits that any lengthy custodial sentence would deprive him from returning to school again.
5. I note further which defence did not submit on, that this was a provoked attack as one of his sisters was hanging out with the Victim but no compensation was ever paid by the Victim to remedy the breach of custom he did. Customary law is part of our laws and must be respected. Those who encounter such situation must

learn to solve issues accordingly to avoid provoking people to commit offences arising from such situation. This is therefore a mitigating factor available for the Defendant in the circumstances of the case. It explains how and why he behaved in that manner at that relevant time.

6. He has spent 2 months in custody already as he was remanded prior to being granted bail. This is submitted to be sufficient penalty for the Defendant for this charge. I understand this submission, however I will take this as part of his mitigating factor than the punishment suitable for the offending. I take this 2 months term as mitigating in the sense that he has served some form of punishment already by that remand term.

PERSONAL CIRCUMSTANCES:

1. His Date of Birth is in 1999 so he is now about 20 years old.
2. He was a student at the time of the offending.
3. He is a single boy.
4. He is unemployed.
5. He is a first time offender.

When I assessed all the vital elements for sentencing I note the need for general deterrence and specific deterrence as submitted by Prosecution. However I would give more weight to general deterrence than specific because of the seriousness of using violence displayed in this case. In addition to this, the Defendant is a first time offender and has already apologised and assured the court he will not do this again. The incident also arose from a customary dispute with the Victim which was not sorted out by the Victim resulting in the attack. Other important principle of sentencing is the Rehabilitative aspect of punishment which I see as also crucial for me to factor into for this matter.

I also note prosecutions strong submissions to have the Defendant penalised by imprisonment to deter the community and himself because of the seriousness of this kind of offence. Whilst I agree in principle with prosecutions on this and how imprisonment is usually implemented for such offences, I still have to look at the circumstances to see if a custodial penalty is the most appropriate punishment for it. I must be reminded that no two cases have the exact same features to enable me to impose the exact same penalty. While doing this assessment I find relevant cases decided already that are on point provided by defence. His submissions persuaded me more as they actually provide guidance for punishing "Student Offenders".

This is seen from the High Court case of *R v Kama*<sup>1</sup> as well as the more recent case of *R v Amelia Kabui*<sup>2</sup>. These two cases display very serious offences committed by Offenders who are students with the *Kama* matter having the exact charge found in this case. That case involved a number of Defendants who are students and they plan to return to University to continue their studies. Penalty imposed for them was a bound over for 12 months as they had spent some time already in pre-detention (remanded for the charges faced). The High Court took those pre-detention terms as a suitable punishment and added the bound over penalty for them during sentencing ruling proceedings. For the *Kabui* matter she pleaded guilty to the 4 charges against her and was penalised for each count and ultimately ordered to serve a 12 months' imprisonment term which was wholly suspended. This is a concurrent penalty for all the 4 counts. This was also to allow her to continue studying and learn from what had occurred. Her charges related to offences against police officers which is usually a custodial sentence matter and others relating to obstructing police, intimidation and behaving disorderly in a police premises.

The analysis of the court in these two cases which are from the HC and this came Court considered favourably the fact that the offenders were young and students. The prospects of them becoming better citizens and learning from one incident in court was very high that the penalties imposed for both the offences were similar.

In this same case I have a relatively younger student compared to those in *Kama* and *Kabui*. Mr. Oppoto also intended to continue studying like the *Kama* matter as submitted by his counsel in court. *Kabui's* matter involved a student still studying and committed the offences during her holiday period. For the *Kama* matter it was a penalty imposed after a trial similar to this present case. *Kabui's* matter was an early guilty plea case. Furthermore the *Kama* matter is very much similar to this as 2 of the Defendants were convicted of this exactly same charge after trial.

Furthermore, one of the important highlights which defence proposes and I agree with is the fact that no injury was sustained though they acknowledge it was a serious matter. In *Kama* there was only a minor injury described by his lordship Cameron while the present one had none. In the *Kama* matter it is a group to group offending resulting in the death of the Deceased. The 4 Defendants dealt with in the case were acquitted of the murder charge but were found to be guilty for lesser offences including this offence of Acts intending to cause grievous harm by using a knife.

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<sup>1</sup> [2008] SBHC 100; HCSI-CRC 358 of 2007 (21 November 2008).

<sup>2</sup> [2017] CMC 776; MCSI-CRC 776 of 2017 (14 July 2017).

In light of the analysis provided, as the case of *Kama* is a HC matter in this jurisdiction, I am bound to follow it should the circumstances be of great similarities as I have found in this case.

Other essential notes of this case compared to the *Kama* and *Kabui* matter are as follows:

1. Mr. Oppoto is relatively younger than other defendants in the *Kama* and *Kabui* matter
2. He expressed remorse and assured the court not to repeat this again.
3. This was a clearly provoked attack in custom while the *Kama* matter was a group to group or gang fight type of offence. *Kabui* however committed the offences out of drunkenness and disorderly and for unprovoked situations.
4. No injury sustained in this case while *Kama* had minor injuries.

I will therefore give him strong warning to ensure he takes up activities and change the course of his direction in life, pursue studying and learn to handle serious situations in life with the assistance of elders. He must learn to be responsible over his emotions to avoid getting in trouble again. If he is in the village and has issues with anyone, he should utilise elders and or any known mediator, police or pastors and leaders to avoid getting in trouble again. Like the *Kabui* matter I repeat the same sentiments to this Defendant to learn from what has happened and progress from here onwards to make positive changes in life to help develop this nation.

I also take into account the time spent in custody for remand for this matter and would not order for further custody for his penalty. However he is to be released and the appropriate penalty I see fit for him would be a bound over for 12 months to keep the peace and be of good behaviour on his own recognisance in the amount of \$600. I also impose section 27 of the Penal Code and order that the Defendant pays compensation to the Victim for the very serious charge he has been convicted of. He is to pay the Victim the amount of \$200 to be paid in 2 weeks as well.

Court orders:

1. Mr. Oppoto to be released from custody at the rising of the court and enter into his bound over term;

2. Order that he be bound over for 12 months to be of good behaviour and keep the peace in the community on his own recognisance in the amount of \$600.00;
3. Additional compensation for the Victim as per section 27 of the Penal Code. The amount is \$200.
4. Compensation to the Victim to be paid within 2 weeks.
5. Right of appeal within 14 days from today.

Beneteh

Tearo R Beneteti

Principal Magistrate

