

IN THE CENTRAL MAGISTRATE COURT
IN THE SOLOMON ISLANDS



In the Criminal Jurisdiction

BETWEEN: REGINA

AND: MARK LEONARD MAEFITI

Before: Michael Fagani

Mr. Teula. J for Prosecution

Ms. Palmer. R for Defence

Date of sentencing and mitigation: 31st of August 2022

Date of sentence: 7th of September 2022

SENTENCE

1. The defendant Mark Leonard Maefiti is charged with one count of malicious damage and two counts of using abusive words, he had entered a guilty plea to all the counts. I now enter conviction against the defendant and today he appears before me for sentencing.
2. The facts before me shows that on the 21st of May 2022, at around 1700hr, Joycelyn Kupa (complainant 1) was at her residence. The defendant was drunk at the time and came to her and asked for his bag cements.
3. Complainant 1 came out of her house and told the defendant that she had no money because her husband already taken the money.
4. The defendant heard this and was angry because complainant 1 and the defendant made an oral agreement prior to the incident that he will make bricks for her and she will buy 10 bags of cement for the defendant.
5. The defendant went straight to where complainant 1 piled her bricks and damaged 79 of the bricks which were made for sale and a bucket used for mixing cement.
6. Complainant 1 lost \$790 because she sold her bricks at \$10 each.
7. The defendant then used abusive words, saying "you talem husband blo you fuckem dad blo hem"
8. The defendant also swore at Diana Kupa (complainant 2) "saying talem dad blo you fuckem dad blo hem". The defendant then left the residence.
9. The matter was reported to the police and the defendant was arrested and charged with one count of malicious damage contrary to section 326(1) of the Penal Code and two counts of using abusive words contrary to section 178(n) of the Penal Code.
10. The maximum penalty for malicious damage contrary to section 326(1) of the Penal Code is 2 years imprisonment and using abusive words pursuant to the *Penalties Miscellaneous Amendment Act 2009*¹ is a fine of \$1,000.00- or 1-month imprisonment or both such fine or such imprisonment.
11. It is trite law that the maximum penalty is reserve for worst type of offending and each case must be dealt with its own set of facts.

¹ Penalties Miscellaneous Amendment Act 2009.

12. The aggravating factors which can be seen in this case is as follows:
 - 12.1 The maximum penalty of the offence. The offence of malicious damage carries a maximum penalty of 2 years and using abusive words is 1,000 or 1-month imprisonment. This speaks for itself that the offence itself is serious in our jurisdiction.
 - 12.2 Loss of business. The Court noted that there were 79 bricks and a bucket been damaged. The total value of the bricks is \$780. This is a huge loss for small business-like brick making.
 - 12.3 Lack of respect. I noted from the facts that the defendant used abusive words against the two complainants. Using abusive words is very disrespectful in most of our customs. Sometime it can lead to compensation if you are not careful.
 - 12.4 The defendant was drunk at the time of the commission of the offence.
13. In *Selwyn v Regina*², the appellant is charged with one count of malicious damage and simple larceny. The Court imposed a fine sentence of \$200.00 for malicious damage.
14. In *Regina v Ramosala*³, the defendant damaged one aluminium dish worth of \$85 with a timber after demanding \$20.00 from his mother and other offences. The Court sentence the defendant to 2 months' imprisonment for the offence of malicious damage.
15. In *R v Masuru*⁴, the defendant is charged with one count of malicious damage and other offences. The Court in that case sentence the defendant to 10 months imprisonment.
16. According to the cases discussed above, the sentence range for malicious damage ranged from good behaviour bond, fine or imprisonment depending on the circumstances of the case. For using abusive words, the sentence also ranges from good behaviour bond, fine and imprisonment depending on the circumstances of the offending.
17. Having consider the aggravating factors, circumstance of the case and the circumstances surrounding the offending. In my view, this case falls between the case of *Selwyn v Regina* and *Ramosala's* case. Even though there is a difference in relation to the value of items been damage. However, the nature of the offending is less serious compared to *Ramosala's* case.
18. There, the defendant was drunk, demanding money from the mother and threatening to kill his parents. In addition, the act of the defendant was unprovoked. Here, the defendant was quite disagreed because the complainant breached his contractual obligation to pay his bag cements after the he makes all the bricks. The Court see that the complainant too also contributes towards the commission of the offence unlike *Ramosala's* case. Therefore, the view of the Court is any sentence impose should fall below *Selwyn* and *Ramosala's* case and in my view a fine sentence is appropriate in this case.
19. The starting point for count 1, Malicious damage is a fine of \$1,500. For count 2, using abusive words a fine of \$200 and count 3, a fine of \$200.
20. For mitigating factors, the Court take into account the following mitigating factors as submitted by defence counsel. The defendant entered an early guilty plea at the first opportunity. This saves Court's time and resources. The Court also noted that the defendant is a first-time offender. He paid a compensation of \$300.00 to the two complainants and the husband of complainant 1. The defendant is cooperating well with the police. The Court also take into account the personal circumstances of the defendant that he is 24 years of age, a younger father of 2 children and he is the sole breadwinner.
21. Since the defendant entered an early guilty plea, I will deduct \$300.00 from the starting point of malicious damage and \$50.00 from each count of using abusive words. This is to reflect the 25% discount seen in the case of *QolanF*.
22. Therefore, the resulting sentence to be imposed on the defendant is as follows.

² [1991] SBHC 68; HCSI-CRC 21 of 1991 (23 October 1991).

³ [2016] SBMC 8; Criminal Case 1297 of 2015 & 27 of 2016 (5 April 2016).

⁴ [2019] SBMC 40; Criminal Case 80 of 2019 (11 October 2019).

⁵ *Qolan v Regina* [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005).

- a. Count 1, Malicious damage - \$1,200.00 fine.
 - b. Count 2: Using abusive words - 150 fine.
 - c. Count 3: Using abusive words - \$150 fine.
23. Let me remind the defendant as I have stated in other cases that come before me. If you have disagreement or issues with someone, there are avenues where you can access to and help solve your disagreement or issues. Go to the chief, church leader, community leaders or police. This people are very helpful to solve disagreements or issues in the communities rather than taking the law in your own hands. I must strongly warn the defendant to put a stop to such an unlawful action now.
24. Having say this, the Court believe that the sentence impose on the defendant should deter him from committing the offence again in the future. Not only that, but to rehabilitate the defendant and send out message to any likeminded person who thinks of committing such offence to put a stop now.
25. Thus, having weighed the circumstances and entirety of this matter, I now order as follows:

ORDER

- (1) I convict the defendant Mr. Mark Leonard Maefiti for one count of malicious damage contrary to section 326(1) of the Penal Code and two counts of using abusive words contrary to section 178(n) of the Penal Code;
- (2) I impose a fine;
2.1 Count 1: Malicious damage - \$1,200
2.2 Count 2: Using abusive words - \$150
2.2 Count 3: Using abusive words - \$150
- (3) I further order Count 1, 2 and 3 to run concurrent. Therefore, the final sentence is a fine of \$1,200-00 to be paid on the 21st of September 2022 before 4:30pm. In default, 2 months' imprisonment;
- (4) 14 days right of appeal; and
- (5) Order accordingly.

Dated this 7th day of September 2022.

