

**IN THE CENTRAL DISTRICT MAGISTRATE'S COURT  
OF SOLOMON ISLANDS AT MARAU**

**CRIMINAL JURISDICTION**

**Criminal Case No. 220 of 2023**



**REX**

**-V-**

**KINGSLEY NAOTO'ORA**

Sentencing submissions: May 11, 2023

Sentence: May 16, 2023

Mr. Steward Tonowane for the prosecution

Mr. Lazarus Waroka for the defendant

**SENTENCE**

**A. BACKGROUND**

1. This is a sentence for the defendant, Kingsley Naoto'tora, who was convicted after trial of one count of unlawful wounding contrary to section 229 of the *Penal Code*. He denied the charge and put a pretentious and frivolous defence that it was not him who caused the wound, but another person named Rockson. He was adamant to run that defence despite it was a broad day light incident. The incident occurred on 4<sup>th</sup> January 2022 at around 2:00pm at Waihusa village, Marau, in the Guadalcanal Province

**B. BRIEF FACTS**

2. The defendant is from Komupa'u village. The victim, Mary Ann Sepo, is from Waihusa village. Both were neighbouring villages in Marau, Guadalcanal Province. The victim and the defendant knew each other very well since they were neighbours and were related to each other according to their tribal lineage in Marau, Guadalcanal Province.
3. On 4<sup>th</sup> January 2022 around 2:00pm, the victim, a 50 year old elderly woman, was with her brother inside their kitchen at Waihusa. Whilst inside the kitchen, the defendant and

others came inside their village and were drunk. They started to behave disorderly and aggressively and threw stones at the brother of the victim. The defendant came into the kitchen, grabbed an iron rod used for cooking and landed it heavily on the victim's head.

4. The victim attended to Marau clinic for medical examination. On 5<sup>th</sup> January 2022, the medical officer who attended to the victim examined the injury and recorded that the injury suffered by the victim was measured 7mm in length and 3mm in depth.

### **C. PARTIES' SUBMISSIONS**

5. Both parties conceded and recommended that sending the defendant herein to imprisonment is a fitting punishment. This would do justice for the victim and the society. The prosecution suggests a term of 2 to 3 years imprisonment while the defence calls for 1 ½ year imprisonment, backdated to presentence period.
6. To determine the appropriate penalty, I will adopt the following decision making process:
  - step 1: what is the maximum penalty?
  - step 2: what sentences have been imposed for this offence following trial?
  - step 3: what are the aggravating and mitigating factors?
  - step 4: what should be the proper starting point?
  - step 5: what should the head sentence be?
  - step 6: should all or part of the sentence be suspended?

### **D. THE MAXIMUM PENALTY**

7. Section 229 of the *Penal Code* states:

*"Any person who unlawfully wounds another is guilty of a misdemeanour and shall be liable to imprisonment for five years."*

8. The maximum penalty therefore is 5 years. It is recognised that the Court has a discretion to impose a sentence it considered appropriate in a given case. The sentence must be based on the facts presented before it, taking into account the aggravating, mitigating and extenuating factors (if there is any).

**E. THE SENTENCES IMPOSED FOR THIS OFFENCE FOLLOWING TRIAL**

9. The range of sentence imposed by the Court for this offence following a trial showed a range of sentence of 2 to 4 ½ years imprisonment. Of course, the sentence will depend on the facts of the case.
10. In *Regina v Funifaka and others*<sup>1</sup>, three accused persons were charged and tried for attempted murder and unlawful wounding. The unlawful wound offence was committed in the early morning hours of 29<sup>th</sup> April 1996 when they intruded the house of two victims, who were brothers. The victims woke up and had a struggle with them from which the victims were stabbed with a knife. The Court imposed a sentence of 7 years for the attempted murder and 2 years for the charge of unlawful wounding.
11. In *R v Nguyen Van Thang*<sup>2</sup>, the accused, a Vietnamese, was charged with unlawful wounding of another Vietnamese inside a fishing vessel. He stabbed the right side of the victim's neck with a knife. The wound was measured about 3cm in length and 5cm in depth, and was located in the posterior triangle near the base of the neck. The wound was so critical and life threatening that an emergency surgery had to be performed on the victim in order to save his life. The accused was sentenced to 4 ½ years imprisonment.
12. In *Regina v Paul*<sup>3</sup>, the accused was charged and tried for stabbing another male person with a knife following a scuffle in the boys lodge. The knife penetrated the inner arm and out to the outer arm. The injury at the inner arm was measured 4cm and the outer arm was 3cm wide. The victim had 4 stitches to his inner arm and 3 stitches to the outer arm. The accused was sentenced to 3 years imprisonment.

**F. THE AGGRAVATING AND MITIGATING FACTORS**

13. In the present case, I consider the following as aggravating factors. First, the defendant was under the influence of liquor when he entered the victim's village and eventually committed the offence. The evidence revealed that he and the others were drunk and behaved disorderly and aggressively when they entered the village. Whilst he was drunk,

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<sup>1</sup> [1997] SBHC 31; HC-CRC No. 033 of 1997.

<sup>2</sup> [2013] SBHC 26; HCSI-CRC No. 150 of 2011.

<sup>3</sup> [2014] SBHC 37; HCSI-CRC No. 141 of 2011.

he then hit the victim with the iron frame used for cooking. Second, the iron was used to inflict the wound on the victim. This is a weapon capable of producing serious or even fatal injury on a person. Third, the defendant hit the head of the victim, being a vulnerable part of her body. This is a gratuitous cruelty on an elderly victim, more so, a woman. Fourth, the defendant wounded an elderly 50 year old woman who was his relative. He ought to respect her. Instead, he hit her with the iron which was disrespectful. Fifth, the attack on the victim was unprovoked and uncalled for at the material time.

14. The only mitigating factor for the defendant is that he is a first time offender. He is not entitled to any remorse as what would normally be afforded to an offender who pleaded guilty to the offence. This position was well expressed in *State v Tumu Luna*<sup>4</sup> where the Court stated "*In fact, to my mind, expression of remorse after conviction following a trial loses its significance. It does not, in my view, indicate true remorse and contrition; not when someone tries to hide his involvement but after he is found guilty, he says sorry for what he had done. If an accused person pleads guilty however, and then says "sorry," his expression of "sorrow" would appear to me to be from deep within his heart.*"<sup>5</sup>
15. Hence, the defendant's expression of remorse after the trial, in my view, cannot be considered a mitigating factor. Even if there is, it will be afforded less weight.

#### **G. WHAT SHOULD BE THE STARTING POINT?**

16. I am unable to locate a suitable precedent on what should be the appropriate starting point for a conviction following a trial on a charge of unlawful wounding. So I will use the mid-point of 2 years as the starting point. This starting point does not take into account any matters of aggravation and mitigation.

#### **E. WHAT SHOULD THE HEAD SENTENCE BE?**

17. I adopt the approach taken in *State v Ongkau*<sup>6</sup> when considering the head sentence for this case. In that case, the Court considered these factors to determine the head sentence. I have answered these questions in the light of this case:

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<sup>4</sup> (20/05/02) N2205.

<sup>5</sup> At page 13 of *Anis v State* [1978] PNGLR 8.

<sup>6</sup> [2007] PGNC 251; N5488. See paragraph 12 of the decision.

- (i) Did the assault on the victim consist of just a single hit? Yes. The hit involved hitting the victim with an iron frame used for cooking.
- (ii) Was just one person involved in the assault? Yes.
- (iii) Were there some other cause of bodily harm, ie did the injury not result directly from the assault committed by the offender? No.
- (iv) Was the victim injured by only a fist? No, it was from an iron frame used for cooking.
- (v) Did the offender not set out to hurt anyone? No.
- (vi) Did the victim or any other person provoke the offender in 'the non-legal sense', eg did the victim abuse or assault the offender? No.
- (vii) Did the victim have a pre-existing condition making her susceptible to injury by a moderate blow? No.
- (viii) Can the assault on the victim be classed as 'not vicious'? No – it was quite vicious, the head wound was measured 7mm in length and 3mm in depth.
- (ix) Did the offender give himself up after the incident? No.
- (x) Did the offender cooperate with the police in their investigations? Neutral.
- (xi) Has the offender done anything tangible towards repairing his wrong, eg offering compensation to the victim, engaging in a peace and reconciliation ceremony, personally or publicly apologising for what he did? No.
- (xii) Did the offender plead guilty? No.
- (xiii) Has the offender genuinely expressed remorse? No.
- (xiv) Is this his first offence? Yes.
- (xv) Can the offender be regarded as a youthful offender or are his personal circumstances such that they should mitigate the sentence? No.
- (xvi) Are there any other circumstances of the incident or the offender that warrant mitigation of the head sentence? Yes, he is a first time offender.

18. After weighing all these factors, the head sentence should be above the starting point of 2 years. That is, 6 months is added to the starting point to reflect the aggravating factors, making it a term of 2 ½ years imprisonment. However, I deduct 1 month from this term to reflect his mitigating factor and another 4 months for the delay that has been taken to finalise this case.

19. The final sentence is that the defendant, Kingsley Naoto'ora, is sentenced to 25 months or 2 years and 1 month imprisonment.

**F. SHOULD ALL OR PART OF THE HEAD SENTENCE BE SUSPENDED?**

20. The offence involved the use of an iron, being an item classified as a weapon that can cause an injury to a person. Therefore, by operation of section 44 (2) of the *Penal Code*, this term is not suspended either partially or in full.

**ORDERS**

1. The defendant, Kingsley Naoto'ora, is sentenced to 2 years and 1 month for the charge of unlawful wounding contrary to section 229 of the *Penal Code*.
2. Presentence period is to be taken into account.
3. Right of appeal applies.



THE COURT

Augustine Aulanga – Principal Magistrate