

7. Blood began running down the Complainant's face. He was assisted by by-standers when he was calling for help. He was quickly rushed to the hospital to seek medical attention.
8. The Complainant was examined by Dr Lidia Kopsy, and later produced a medical report that was dated on the 29th of May 2024.

Maximum penalty

9. The maximum penalty for the offence at hand can be found under section 224 (a) of the penal Code. this section states:
224: Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person
(a)- unlawfully wounds or does any grievous harm to any person by any means whatever;
Is guilty of a felony, and shall be liable to imprisonment for life¹.
10. The maximum penalty in this regard, should speak volumes as to how serious our legislators have come to categorise this kind of offending.

Matters of aggravation

11. The matters of aggravation that I come to note from Counsels submissions include, the use of a weapon, that being, the kitchen knife you used on the Complainant's head. Your actions were also said to be premeditated, as there had been a previous incident, involving you taking goods from the Complainant's shop and your threats to kill him with a knife when warned not to take the goods.
12. I also note that you were intoxicated when you committed the act. Further to that, I also note that you have been sentenced for 1 ½ years for a similar offending, on the 11th of August 2023, where you served 6 months imprisonment while the remaining 12 months was suspended. Counsel representing you, claimed to not have known about this. I was provided with a copy of the sentence, and have gone further in confirming with the Magistrate who dealt with your previous case.
13. I am also asked to consider the nature of the injury sustained by the Complainant, which I will discuss later.

Matters of mitigation

14. On the 23 of September 2024, I recorded a guilty plea on your part.
15. I am asked to consider your personal circumstances and a whole lot of factors including your age, work history, good candidate for rehabilitation, the injury, and how remorseful you are. I will however, discuss these factors in my sentencing remarks.

Sentencing considerations

1. Counsels have referred me to a few cases all involving the acts intending to cause grievous harm. These cases are summarised in the paragraphs below.
2. **Regina v Fafale**, the Defendant used a 10 cm knife to stabbed the victim's back, at the Kavuaire Night Club without warning, wounding the victim instantly. The victim underwent two surgeries since the knife penetrated his back and entered his lung, causing air and blood to fill up his pleural cavity. He had to undergo a chest drain treatment whereby a water seal drainage devise was inserted into his right chest to drain the air and blood. He managed to recover after the surgeries. He was sentenced to 3 ½ years².

¹ 2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

² [2017] SBMC 9

3. **Regina v Pandavisi**, the Defendant and victim are related as brothers. The Victim earlier that day, warned the Defendant to turn down his music, as people were still sleeping. He later accompanied his wife to the garden. Upon their return, he was challenged by the Defendant. Having just returned from the garden, he went and left his knife at the veranda of the Defendant's house. The Defendant approached the victim with a 4 x 2 timber, and hit it towards the victim's head. The victim blocked the timber which broke into two and landed on the victim's head. The victim fell onto the ground, and was later stabbed 2 times by the defendant, with one of the knives that the victim placed on his veranda. The victim's medical report showed that he sustains cuts to his back and had a painful forearm. The Defendant was sentenced to 5 years imprisonment³.
4. **R v Fasiadi**, the Defendant and victim are husband and wife. The incident occurred at CEMA plantation, Tina Road, Central Guadalcanal, Guadalcanal Province.
5. The Defendant had returned home drunk and started arguing with the victim. The victim ran away to the house of the Defendant's parents. He went after her to his parent's house, where he took grab of a knife and attacked the victim with it. The victim received slash wounds to both of her hands, her right ankle, her up and lower back and her buttock. She was taken to the Good Samaritan Hospital and referred to the National Referral Hospital. He was sentenced to 3 ½ years' imprisonment⁴.
6. **Regina v Bitiai**, the Defendant stabbed the victim under her left breast, while she was still breast feeding her sick baby, who was admitted at the national referral Hospital at that time. She was later stabbed twice in the back. The wounds to the back were relatively superficial. She was rushed to surgery and a litre of blood was drained from her abdominal cavity. The victim recovered but is still experiencing abdominal pain and has some numbness and weakness in her arm.
7. He was sentenced to 3 years and 8 months by the High Court, but later sentenced to 4 years 9 months upon appeal by the Director of Public Prosecution⁵.
8. **Regina v Paewa**, facts of the case showed that the defendant and the victim have been drinking home brew together earlier that day when the victim said something about the victim's cousin sister which the defendant found offensive. He then decided to leave them and return to his village without taking the matter further. The victim was from a neighbouring village⁶.
9. The victim however later on with another person followed the defendant to his home and continued drinking at his home. The victim was stabbed by the defendant at his home with a kitchen knife that was about 30 cm long. He was sentenced to 4 years imprisonment⁷.
10. **Regina v Namu**, the Defendant was drunk and had been swearing and causing disturbance in the village. He was warned as to his behaviour and he ran away. He later saw the victim and accused him that he was one of those who tried to apprehend him. The defendant then cut him with a bush knife to the base of the left side of his neck and cut through to his collar bone. Fortunately, no major vessels were cut but it is still a serious injury and the victim has to be rushed to the National Referral and admitted for treatment. The defendant was sentenced to 4 years imprisonment⁸.

Comparative sentencing

³ [2019] SBHC 80

⁴ [2021] SBHC 26; HCSI-CRC 490 OF 2020

⁵ [2010] SBCA 3; CA-CRAC 15 OF 2009

⁶ [2016] SBHC 86; HCSI-CRC 458 OF 2014

⁷ Above n 6.

⁸ [2018] SBHC 19; HCSI-CRC 612 OF 2015

11. I am grateful for the cases cited by Counsels, as they will be of great assistance in determining the appropriate sentence in this regard. I also acknowledge that previous courts have advocated on both the need to ensure consistency in imposing sentences, and the need for cases to be dealt with upon assessment of their own set of facts and circumstances.
12. **In Joel Likilua & Allen Kokolobu v R** Ward CJ commented at page 149:
Sentencing is not a process that follows exact mathematical rules. Circumstances and people vary and it is undesirable to consider such comparisons as more than a very imprecise guide⁹.
13. **In Sau v R [1982] SILR 65** Daly CJ commented at page 69:
'I must add one further observation on the sentencing process and on appeals against sentence. There is an increasing practice of reference being made to specific previous cases in court. This was done by the learned magistrate in this case and the dissimilarities give counsel a ready-made ground for argument which they understandably take. Sentencing is not an exact mathematical process; if it were it could be done by a computer. The human element both in the person before the court and the sentencer remain a vital part of the process. Previous sentences demonstrate principles or parameters of sentence; but they should not be used as binding precedents to reach a sentence in a particular case. All the judiciary have access to each other's sentences and we must rely upon the good sense and experience of the judiciary to reach sentences which reflect not only their own views but also the views of the community.' (emphasis added)¹⁰.
14. **In R v Ben Tugale, Brown Beu, Nelson Oma, James Sala, Loius Lipa, Charles Meaio & John Teti (Unrep. Criminal Case No. 12 of 1997)** Lungole – Awich J commented at page 21:
Punishment in one case usually cannot be matched exactly with punishment in another. Circumstances usually differ even if only in details. Public view about how serious an offence is regarded also changes. Prevalence or otherwise of an offence during particular period also counts¹¹.

Sentencing remarks

15. I note from the agreed facts tendered by Counsel, that there has been a previous encounter, or encounters between yourself and the Complainant. During these encounters, you would go and take goods from the Complainant's shop and would made threats to kill the Complainant with a knife, when he tried to stop you from taking the goods.
16. This shows the no care attitude that you have, especially the thought that no one can stop you from doing what you want to do.
17. I am asked to consider your age, that being 36 and the fact that you only went as far as Form 1, which has denied you the opportunity of securing a steady employment.
18. In terms of your age, I wish to remind you of all the lawful avenues you could have engaged in to make yourself useful and the role model you should have been to the younger generation. As far as this court is concerned, your age represents yourself and the group of young adults who have crossed the half of 60 years old, and are still waiting for a good opportunity to come their way, instead of becoming entrepreneurs that this country is in need of.
19. You were previously convicted and sentenced on the 11th of August 2023, where the court sentenced you to 1 ½ years imprisonment, of which, 12 months was suspended.

⁹ [1988 – 89] SILR 148

¹⁰ [1982] SILR 65

¹¹ (Unrep. Criminal Case No. 12 of 1997)

20. From the date in the charge, there is no dispute, that you reoffended within the 12 months suspended period. The inference that I can get from your actions, is that the period you spent in custody did not rehabilitate you in anyway, instead it made you think that the criminal system is something you can play around with.
21. I am also asked to consider the fact, that while the Complainant was treated for the injury inflicted on him, there was no follow up medical report regarding the Complainant's condition. This should imply that the wound was small, not life threatening, and that the Complainant has gone back to his normal life.
22. In my view, your action was uncalled for. The Complainant despite being a male, was not prepared to be stabbed on the head with a kitchen knife, since he was busy with the operation of his shop. People like should stop from engaging in this kind of nonsense and shameful act and engage in lawful activities that will benefit yourself, family, and community.
23. Your actions do not prove that you are someone that society should fear and look up to, but only proves that you are a very immature person that is suffering from some kind of personal problems that needs to be addressed as soon as possible before something far worse happens, either to yourself or another person.
24. I encourage you to humble yourself and seek the assistance that you are in need of.
25. In terms of the cases cited, I note that the similarities are confined to the involvement of alcohol and the use of weapon. While there is no dispute that the Complainant had suffered a wound to his head, the injuries in the cases cited are far serious than that of the Complainant. Nevertheless, this is not an excuse, an injury is an injury, and no one has the right to engage in unlawful actions that will result cause harm to another person.
26. As stated earlier, Counsel Tinoni was not aware that you were previously convicted. This is the kind of information, that the Crown should have disclosed to the defence. I infer from the circumstances leading towards your arraignment, that Counsels did not give their full attention to this case, have they done so, your previous conviction would have been disclosed. The court is not someplace that lawyers can just come and do their work ignorantly and carelessly, there should never be room for such mediocracy in our courts.
27. Before going further, I wish to cite the case of **R v Su'umania**, where CJ Ward, as he was then, highlighted the following when sentencing offenders with previous convictions:
"When sentencing persistent offenders, the court must make protection of the public the principal consideration in determining the length of sentence¹²."
"It is well settled however that even in such cases the sentence must be still be appropriate to the offence and the court must be careful not to sentence the accused for his previous convictions as was explained by Spreight JA in Kaboa v. R (1980/81) SILR 43 at 46. Thus, whilst previous good character may reduce a sentence, previous bad character cannot increase it beyond the proper term but the court can and should consider previous convictions in assessing the character of the man before it and the likelihood of him changing his ways¹³ (underlined mine)."
28. From the cases cited, Counsels would agree that previous convictions, should not in any way be used to increase an offender's sentence, rather it should be used to assess the offender's character and the probable chances that he or she might turn away from wrongdoing.

Activating suspended sentences

¹² (Unrep. HCSI-CRC 00287)

¹³ Above n 12

29. Moving on, the Crown has asked to activate the 1-year suspended sentence imposed on you by Her Worship Principal Magistrate Hilly on the 11th of August 2023. Counsel representing you opposes to this.
30. The Court of Appeal in the case of **Regina v Paewa**¹⁴ sets out the guidance in activating suspended sentences as follows:
We consider that the following steps should be noted in future cases when implementing a suspended sentence of imprisonment:
1. *The prosecution must inform the Court of the existence of a suspended prison sentence in any particular case.*
- (a) *The prosecution should provide the Judge with a copy of the record of conviction and sentence, the Judge's or Magistrate's sentencing notes and a summary of facts of the suspended prison offences.*
 - (b) *The prosecution should advise the Judge whether they seek an order under S 45(1)(a) (b), (c) or (d).*
 - (c) *The defendant should advise the Judge whether the orders sought by the prosecution are opposed.*
 - (d) *Both the prosecution and defence should be invited to make submissions on the alternatives in S.45 (1).*
 - (e) *The court should first deal with the sentence for the new offence and then consider the suspended sentence under S.S45.*
31. Section 45 of the Penal Code, deals with subsequent offences committed during the period in which sentence is suspended.
32. In strict compliance with the guidance set out by the Court of Appeal, as highlighted in paragraph 30 of this sentence, I would say, that despite being given a copy of the sentence previously imposed, I was not given the record of conviction, nor the summary of facts of the suspended prison offence. The defence has clearly opposed to activating the previous suspended sentence, as part of their brief sentencing submissions. As for the Crown, though applying to activate the suspended sentence, did not provide proper assistance with respect to the application of section 45 of the Penal Code.
33. The Crown as well as the Defence, should be well informed and should provide proper assistance to the court as and when needed. I therefore decline to activate the suspended sentence, since I am not provided with the proper material information relating to the summary facts of the case which was the subject of the suspended sentence.

Sentence for current offending

34. From the facts before me, and the charge itself, you committed this offence on the 26th of May 2024. Your sentence was passed on the 11th of August 2023, meaning, you deliberately committed this offence within the 12 months that you were supposed to serve out of prison.
35. Your actions have proved that you have not changed your ways, hence, the court should consider a sentence that addresses the need for deterrence, both specific and general, retribution, rehabilitation and prevention. I will therefore pitch the starting point at 42 months. I deduct 14 months (1/3 of starting point) for the guilty plea, and further deduct the 4 months already spent in custody. This brings us to 24 months, I add 12 more months to reflect the use of weapon,

¹⁴ Above n 7


involvement of alcohol, pre-mediation involved, and your previous conviction bringing us to a total of 36 months.

36. Mr Nigel Haibagau, it is with the above reasonings, that I now dictate as follows:

ORDERS:

- (1) FOR THE OFFENCE OF ACTS INTENDED TO CAUSE GRIEVIOUS HARM, I SENTENCE YOU TO 36 MONTHS IMPRISONMENT.**
- (2) YOUR SENTENCE COMMENCES ON THIS DATE, THE 23RD OF OCTOBER 2024.**
- (3) NO ORDERS MADE FOR ACTIVATION OF SUSPENDED SENTENCE.**
- (4) RIGHT OF APPEAL APPLIES WITHIN 14 DAYS FROM TODAY.**

Dated this 23rd day of October 2024.


THE COURT
Emily Z Vagibule Pakoa (Mrs)
Principal Magistrate

