

**IN THE SUPREME COURT OF TONGA  
CRIMINAL JURISDICTION  
NUKU'ALOFA REGISTRY**

**CR 158 of 2019**

*Mr Lutui  
DPP  
Crown Law  
Scan and File.*

**REX**

**-V-**

**SINELA FIFITA**

**BEFORE HON. JUSTICE NIU**

**Counsel : Mr. J. Fifita for the Crown.  
Mr. S. Fili, for the accused.**

**Probation Report : by Probation Officer Patelesio Pale on 14  
May 2020.**

**Submissions on sentence: By Mr. Fifita on 11 May 2020.  
By Mr. Fili on 19 May 2020.**

**Sentencing : on 28 May 2020**

**SENTENCING**

**The offence**

[1] Sinela Fifita, I have found you guilty of serious causing of bodily harm to Neiafutahi Bloomfield on 14 January 2015 at Fatai, by stabbing him with a knife on his chest, his shoulder and his nose. If Siopo Tu'i'onetoa had not attacked you with a piece of timber, you

**29 MAY 2020<sup>1</sup>**

*jt*

would have carried on stabbing Neiafutahi until he died, and you would have been charged with murder instead.

- [2] Neiafutahi was helpless. He had no weapon and there was no one there to help him. He could do nothing but to try and fend off your stabs, unsuccessfully. He was bleeding all over, blood was spurting from his chest, and from his shoulder and flowing from his nose. You still went to stab him but for Siope swinging a 4x2 timber to hit you and you ducked and ran away.
- [3] When the police arrested and took you away shortly after that, you told them that you had stabbed Neiafutahi like that because he had called out to the people in his house to get the gun, when no such call was made by him at all.
- [4] And at your trial you maintained that he did and that you were acting in self-defence when you stabbed him repeatedly like you did. You said you were afraid he would shoot you and your family with the gun. But when you were asked by Mr. Fifita why then did you run off and leave your family, you said that it was because you knew that Neiafutahi had only meant to shoot you, but not your family, with the gun. And as I have said, if that was what you were thinking when you heard him call for the gun, why then did you not run away by yourself then, instead of attacking him and stabbing him with the knife?

### **Representations**

- [5] You now appear before me for sentence for that offence and the probation officer says that you told him that you are genuinely remorseful for what you had done to Neiafutahi and that you apologise to me and to Neiafutahi for what you did.
- [6] Your counsel says that you told him that you have learnt your lesson from what happened and that you have vowed to keep the peace and live a law abiding life in the years to come.

- [7] Letters of support for you and favourable comments have been made by Lord Lasike, who had worked closely with you whilst you were a boxer, your present employer who now employs you as security, your partner, Petulisa Pome'e, the chairman, Drew Havea, of the Tonga National Youth Congress, the district officer of Kolomotu'a, Siosua Holani, the district officer of Kolofo'ou, 'Alotaisi Takau, the secretary general, Takitoa Taumoepeau, of Tonga Sports Association, and the Church Minister, Samisoni Halahala, from Haveluloto.
- [8] However those letters also confirm that you have not, in all these past 5 years since this incident happened, gone and apologised to your uncle, Neiafutahi, whom you have wronged. That was confirmed by your not guilty plea and the not guilty trial we have held and your claim in that trial that you were justified in stabbing him repeatedly as you did. You have shown no remorse at all for what you have done. You thereby continue to maintain your claim that he was and still is the one who has done you wrong instead.
- [9] You are now 45 years old. You are not a foolish young man any more. You would appear to be now set in your ways – that you do not wish to admit that you have been wrong. It would seem that you would continue to believe that you are still right and I am afraid that if a similar situation arises in future, you may do the same as what you have done in the present case. That is the danger I see in you if you do not accept that you have done wrong and apologise to the complainant for what you did to him and to seek his forgiveness. If you were able to do that, I may be convinced that you may not repeat what you have done here.
- [10] Mr. Fifita for the Crown has referred to sentences imposed in other cases similar to yours. He must do that so that the accused persons in those cases do not think that this Court favours you and give a lighter sentence than they have received for their offences which they may say were similar to yours.
- [11] In *R v Pulotu* (CR 159/2019), the accused stabbed the complainant with a knife he had hidden in his hand when they began to exchange

punches. The complainant suffered a punctured lung. The accused pleaded guilty to causing grievous bodily harm. He was sentenced to 3 years 6 months imprisonment, with the last 6 months being suspended.

[12] In *R v Finau* (CR 3/2020), the accused struck his brother with a machete, twice, cutting off the ring finger and half of the small finger of his brother. He pleaded guilty to serious causing bodily harm. He was sentenced to 2 years imprisonment which was fully suspended.

[13] In *R v Fakaanga* (CR 155/2012), the accused struck and injured the complainant's head with a machete. He pleaded guilty to serious causing bodily harm and he was sentenced to 3 years imprisonment with the last year being suspended.

[14] In *R v Tupou* (CR 97/18 & AC 16/18), the accused was angry with 2 men with whom he was arguing. He went home and got a machete and came back and hit one man 5 times with it and then chased and hit the other man with it several times as well. He pleaded guilty to serious causing bodily harm. He was sentenced to 6 years imprisonment with the last 2 years being suspended.

[15] In *R v Toki* (CR 106/2009), the accused handcuffed the complainant then punched, kicked and stomped on him. He was found guilty after trial. He was sentenced to 2 years imprisonment.

[16] In accordance with the sentences in those cases, Mr. Fifita submits that a custodial sentence be imposed on you. He submits that an appropriate sentence is 3 years imprisonment with the last 6 months being suspended for 1 year.

[17] Your counsel has submitted that you be sentenced as was done in *R v Taufu* (CR35/2012), where the accused went out of a restaurant to see what some argument outside was about and he punched the complainant and the complainant fell and was knocked out on the pavement. He was sentenced to 3 years imprisonment, but fully suspended for 3 years and to pay a fine of \$500. Your counsel

submits that this incident would not have happened but for the complainant chucking his bunch of keys at the louvers of your house.

### **The sentence**

[18] The law provides for the sentence to be imposed upon a person who has committed the offence you have committed. It is imprisonment for up to a maximum of 5 years. The reason for that sentence is to punish the offender for breaking the law and for serious causing of the injuries to the complainant. In prison the accused is subjected to hard labour every day except Saturday and Sunday until he/she has served his/her time. At the same time, because he/she is locked away in prison, he/she does not commit any offence to anyone in his/her village or elsewhere. The community is safe from him/her during the period of imprisonment.

[19] There are 3 types of offences for injuring a person:

(a) simple causing of bodily harm, punishable for up to 3 years,

(b) serious causing of bodily harm, punishable for up to 5 years,  
and

(c) grievous bodily harm, punishable for up to 10 years.

Offences (a) are for minor injuries caused by say slapping or punching a person. Offences (b) are for minor or moderate injuries caused by the use of a weapon, such as a knife, rock, stick, etc. Offences (c) are for serious injuries which endanger health and life irrespective of how it is caused.

[20] Your offence is serious causing of bodily harm with a maximum sentence of up to 5 years imprisonment because you used a weapon, namely a knife, to stab the complainant 3 times causing him serious wounds to his chest and shoulder and nose. They were serious because he could have died from those wounds. The manner in which you did that was brutal (anga fakamanu).

- [21] The Courts have held that anyone who commits an offence of violence against another runs a serious risk of immediate imprisonment, and that that would apply even to a first offender and that likelihood of going to prison becomes a virtual certainty when a weapon of any type is used: *Huahulu v Police* [1994] Tonga LR 93, as well as the cases referred to above.
- [22] And I cannot see if there will be another serious causing case that will be more serious than the serious causing you have committed in the present case, because the serious causing you have committed is perhaps the limit. If another case is more serious, then that accused would have to be charged with causing grievous bodily harm with the 10 year maximum instead.
- [23] That means your offence should be punished with a sentence close to the maximum sentence of 5 years because it is somewhere up there close to the limit.
- [24] However due allowance is required to be given to reduce that sentence if you pleaded guilty, but you did not and so no such allowance is given. Allowance may also be given if apology has been made and is accepted, but you have not done that and none can be allowed for that. Allowance can also be made if you have made amends to the complainant, that is by way of compensation or assistance to compensate him for his pain and suffering or for financial loss in attending to medical treatment, etc, but you have not done any of that either and so no allowance can be given for that.
- [25] The only thing that may be considered in your favour is your record of good behaviour since 1997 and that you have a family and 5 children and that they all depend upon you for their education and upbringing and livelihood. In respect of that, I consider that an allowance of 12 months is generous.
- [26] Accordingly, taking all the circumstances which I have referred to, and the sentences imposed in the cases I have referred to, and

making the allowance of 12 months as I have stated, I sentence you to 3 years imprisonment.

[27] Your trial has taken 5 years to be held through no fault of yours. That is an inordinately very long time, and such delay should not have happened. You were entitled to have your trial held in 2015 or 2016 at the latest. But because it has taken this long for it to come to trial, you have continued with your life with your family as anyone would. You now have 2 children more than you had in 2015, (at the trial you told the Court that in 2015 you had 3 children then) which you might not have had, had you been dealt with readily in 2015 or so. That is a relevant consideration. Whereas your partner might have properly survived on her own with only 3 children if you had gone to prison then, she certainly would find it much harder, perhaps impossible, for her to survive with now 5 children, young children, on her own as she has stated in her letter – only because someone was at fault and had overlooked to have your case properly processed for trial in 2015.

[28] I consider that that factor is such that it would be unjust that you serve the 3 year sentence of imprisonment and thereby subject your family, the family you have created in the 5 years of default of the Crown, to great hardship. I consider that the Crown cannot insist that your case be treated like the other cases I have referred to because there was no such long period of delay in those case like there is in your case.

[29] I have to consider whether or not your 3 year imprisonment sentence should be suspended either in whole or in part, and one of the main considerations for making such an order is whether or not you would be likely not to re-offend during the period of suspension. Although I have said that I am not sure whether or not you would not re-offend because you have not apologised to the complainant and that you may still think you did not do him any wrong, I have to accept that you would not be likely to re-offend because, for the past

5 years you have not offended in any way whatever, and I am satisfied that you would not re-offend if your sentence is suspended.

[30] Accordingly, I consider that it is appropriate, and just, in accordance with the requirements for suspension of an imprisonment sentence, that your whole 3 year imprisonment sentence is suspended for a period of 2 years from today. I so order. It is a condition of your suspension that you do not commit an offence punishable by imprisonment within those 2 years.

[31] Finally, I consider that you should still be punished in some way for what you have done, but in a way that you serve that punishment and still be with your family and be able to be the breadwinner for them. I order that you serve 100 hours of community service as the Probation Officer shall direct. You will take a copy of this sentencing and see the Probation Officer right away to organise the work you will do.

**NUKU'ALOFA: 28 May 2020.**



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