

**PUBLIC PROSECUTOR**  
**Appellant**

**-V-**

**ALBERT TARI**  
**Respondent**

*Leon Malantugun for the Public Prosecutor*  
*No appearance by or on behalf of the defendant*

---

**JUDGMENT OF JUSTICE HARROP AS TO PROSECUTOR'S APPEAL AGAINST  
SENTENCE**

**16 APRIL 2014**

---

1. The Public Prosecutor lodged an appeal on 7 May 2012 against the sentence imposed on Mr Tari by Magistrate H Nalau Ilo on 23 April 2012. Mr Tari had pleaded guilty to committing an act of domestic violence which, pursuant to section 10 (1) of the Family Protection Act, rendered him liable to a term of imprisonment of up to 5 years or a fine not exceeding Vt 100,000 or both.
2. The lenient Magistrate took into account Mr Tari's remorse and apology, the fact he was a first time offender and had cooperated with the police as well as pleading guilty at the first opportunity.
3. While the incident was serious, including injuries being caused by a bush knife to his wife's head and back, the Court sentenced Mr Tari to 4 weeks imprisonment but suspended this for a period of 12 months.

4. Notably , in the prosecution's written sentencing submissions signed by Mr Brian Bani , a suspended sentence was the outcome sought.
5. Regrettably, this appeal has not been advanced in an appropriate manner and it is now almost two years since the sentence was imposed.
6. At a conference on Monday 14 April 2014, I observed to Mr Malantugun who appeared for the Public Prosecutor (there being no appearance by or on behalf of Mr Tari) that even if the Court were of the view that a more stringent sentence ought to have been imposed by the learned Magistrate, the passage of time since the sentence was imposed meant it was quite inappropriate to revisit it. It would be unfair to Mr Tari after all this time to reopen the matter and then to impose, for example, an unsuspended sentence of imprisonment.
7. In any event the sentence which was sought by the prosecution at sentencing was the sentence the Court imposed. It may be that the components of that sentence were not as stringent as the prosecution had hoped. The prosecutor is of course entitled to appeal but the Court is always slow, on a prosecutor's appeal, to impose a different *kind* of sentence unless the sentencing Magistrate was very clearly out of step with appropriate sentencing practice. That consideration would have applied if the appeal had been heard promptly.
8. The passage of time here simply reinforces the impropriety of the sentence being revisited. Even if, for example, the Court considered that a sentence of say 12 months imprisonment suspended for 2 years was appropriate, Mr Tari would effectively already have served that as well and there would be no practical point in imposing such a sentence.
9. I appreciate that sometimes by appealing the prosecution seeks to obtain from this Court a guideline judgment as to sentencing in a particular category of cases. Perhaps that was so here as the Family Protection Act was still relatively new in 2012. Mr Malantugun was unfortunately not aware of the reasons for the appeal or what alternative sentence was sought. But whatever wider assistance an appeal judgment might provide, fundamentally the consequences of the result of an appeal against sentence are borne by the defendant/respondent. Accordingly his or her interests must predominate.

10. In these circumstances, and having reflected on my observations, Mr Malantugun accepted that the appeal should not be pursued . It is dismissed accordingly.
11. A copy of this judgment is to be sent to the Public Solicitor's Office in the hope that Mr Tari will be promptly informed of the result.

**BY THE COURT**