



Press Release

Dili District Court

29 March 2019

JSMP believes that the Court has issued an unfair decision in a case of failure to provide food assistance

JSMP believes that the court has issued an unfair decision in a case of failure to provide food assistance involving the defendant JMRX who allegedly committed the offence against his two underage children KMS and ORX who were represented by their mother PCPAS on 4 February 2019.

JSMP believes that this decision is unfair because the court did not use all means provided for in Article 116 of the Criminal Procedure Code on admissibility of evidence to consider the relevant facts including gathering other facts where doubt exists. The court should have asked the defendant to provide documentary evidence pursuant to Article 132 of the Criminal Procedure Code to justify his statement regarding his failure to abide by an agreement obliging him to provide alimony when the defendant presented the argument that his business has been bankrupt since 2015. However, the Court did not do this and simply trusted the statement of the defendant as the basis for its decision.

“JSMP believes that the decision to acquit was unfair in this case because the defendant acknowledged that he did not meet his obligation to provide food assistance for the children, as well as his responsibility for their tuition fees based on an agreement, and the defendant did not produce any authentic evidence in accordance with the law,” said Luis de Oliveira Sampaio, Executive Director of JSMP.

JSMP also deeply regrets the language used by the judge who said that "This case is a minor matter and it happens all the time". JSMP believes that a judge presiding over a trial, or any other judicial authority, should not use language like this because it could motivate and convince the defendant and/or the community in general to continue practicing similar criminal acts, because they will believe that cases like this are minor and happen all the time.

Previously in 2015 the defendant and the mother of the two children entered into a mutual agreement and consented to a divorce settlement¹ that set out the obligations of the defendant and the mother of the two children, who were supposed to each take care of the children on a six monthly basis and the defendant was supposed to take full responsibility for their tuition fees.

¹ Divorce agreement based on mutual consent on 24/12/5, registered as NUC 1541/14.CVTDD

The defendant and the mother of the children agreed on these matters and signed the aforementioned agreement.

However, in reality the defendant did not meet all of his obligations so the mother of the children initiated proceedings against the defendant stating that he has never provided food assistance for the children and also did not meet the other obligation set out in the agreement to pay the tuition fees of the children.

In court the defendant acknowledged all of the facts, namely that he did not pay the tuition fees of the children because their mother transferred them from a public school to a private international school which is very expensive and beyond his financial capacity, even though the defendant knew about this because the mother informed him. The defendant also confirmed some of the facts, namely that he had an income of US\$32,000 every month from a project he was working on but this was not the case for the last two years because the defendant's project collapsed, or in other words he went bankrupt, and has gone into debt.

The defendant also confirmed that he did not give alimony to the children because at that time they preferred to live with their mother and not with the defendant. In addition the mother of the children has the capacity to sustain or provide food assistance to the children because she is a business woman. The defendant added that when they got divorced he gave a truck and a Prado vehicle to transport the children to school as well as to support the ongoing development of their mother's carpentry company. And when the defendant's company started doing well again the defendant gave US\$40,000 to the mother to pay for the children's schooling as well as alimony for two years.

The mother of the children (PCPAS) completely rejected the defendant's statement and arguments. PCPAS stated that the defendant has never given a single cent for the children, or any food support. She clarified that the defendant gave her US\$40,000 at that time, but this was her money that the defendant owed her for re-establishing his company. PCPAS also presented original receipts of the children's school fees to the court. She also rejected the claim about the two vehicles because she said that this was part of the divorce settlement and division of assets acquired during the marriage. In reality the defendant has neglected the children since 2004.

Also, the child KMS completely rejected the statement of the defendant and KSM stated that the defendant (their father) never paid for their schooling, or gave any money for food assistance. KMS confirmed that on one occasion their father told a person to give US\$100, but there was no more after that.

JSMP believes that all of these facts clearly show that the defendant was guilty of committing the crime of failing to provide food assistance to the children. This decision is favourable to the

Rua Beco Lacateu, Aldeia ,Manu Fuik, Colmera, Dili Timor Leste

PoBox: 275

Telephone: 3323883 |77295795

Website: <http://jsmp.tl>

Facebook: www.facebook.com/timorleste.jsmp

Twitter: @JSMPtl

defendant who did not present any authentic documents. Actually the court should have asked the defendant to present facts confirming his income at that time. Moreover, the court favoured the defendant's statement that he could not provide food assistance to the children because they preferred to live with their mother.

JSMP understands that all decisions regarding the obligation to provide food assistance are aimed at protecting the well-being and interests of children. Therefore, children are allowed to decide who they want to live with and where they feel safe and comfortable. However, this can never be used as a reason by a defendant to avoid meeting his obligation to provide food assistance to his children. The court said that “Even though the defendant has a responsibility to provide food assistance to the children, in reality they never lacked food or any other necessity”.²

JSMP disagrees with the court's reasoning, because examination of the facts shows that the children did not lack food because their mother took sole responsibility to avoid the potential risks of the defendant ignoring his obligations.

The court should never have taken into account the current living conditions of the children, which were due to the efforts of PCPAS, to allow the defendant to ignore his obligation and fail to abide by the court's decision.

The court also should not have included the fact that the defendant gave a Prado valued at \$35,000 to the victim's mother as reasoning for its decision that the defendant had the intent to support the schooling of the children, because this vehicle was part of their divorce agreement which included the division of assets.

This case was registered by the court as Case No. 0415/17.PDDIL, and was presided over by judge Albertina das Neves. The public prosecution service was represented by Bartolomeu Barros and the defence was represented by Private Lawyer Manuel Tilman.

For more information, please contact:

Luis de Oliveira Sampaio
Executive Director of JSMP

Email: luis@jsmp.tl

Website: <http://jsmp.tl>

² Page 7, decision of the Dili District Court in Case No. 0415/17.PDDIL, 4 March 2019.