

**ROJUMANA -v- REGINAM**

**High Court of Solomon Islands**

**(Ward C.J.)**

**Criminal Case No. 16 of 1990**

**Hearing: 31 July 1990**

**Judgment: 1 August 1990**

**T. Kama for the Appellant**

**F. Mwanosalua for the Respondent**

**WARD C.J.:** The appellant pleaded guilty to four counts each of forgery and embezzlement and was sentenced to imprisonment for a total period of one year.

At the time of the offences, he was the Premier of Ysabel Province and the charges relate to a fund that was set up to provide recreational facilities for the people in Buala. The appellant was the Chairman of that committee and one of three signatories to a bank account that was set up following a donation by the Australian High Commission of \$5,652.66.

The committee was to organise fundraising activities but, when no such activity took place and money was withdrawn from the fund, the Provincial Treasurer asked to see the books and, having done so, reported to the Police. The appellant had withdrawn four sums (\$200, \$600, \$800 and \$200) over a period of a little over two weeks. In each case he signed the withdrawal slip himself and forged the signature of the secretary to the Fund.

He was interviewed by the police and admitted the offences and a short time later repaid the money to the fund. It is clear that the money he repaid was obtained by a loan from another bank.

He now appeals on the grounds that the sentence is excessive in the circumstances and an alternative sentence is justified due to the health of the appellant.

I deal with the second ground first. Documentary evidence was produced to this court that, the day before the hearing in the Magistrates' Court, the appellant had been to see a doctor complaining of coldness and weakness. The doctor concluded there was nothing seriously wrong with him. The same day he was seen at the prison and a note on his card states he had a history of shortness of breath and chest pains. He was apparently checked and referred to a doctor. Mr Kama now tells the court that he has had this problem for some time and needs help with his breathing when it occurs.

Nothing of this was said to the lower court.

I do not feel such evidence gives any ground to consider the sentence excessive. In general terms, the health of a person who is liable to be sentenced to imprisonment may be a matter to take into account when deciding whether and how long to imprison him. Any medical condition is a matter of general mitigation. However, an appellate court will only interfere with a sentence on these grounds where the condition is so severe that it will mean his life is endangered or for other reasons of mercy it considers it appropriate. Such cases must be extreme and exceptional and should be supported by clear medical evidence. This case clearly does not fall within that category.

Mr Kama urges on the first ground that the appellant took the money because he was in financial hardship and he intended to repay it quite quickly. He points out that, although he betrayed the people's trust, now he has repaid the money, their trust is restored and they do not feel an offence has any longer been committed. To that argument, I can simply say that I am surprised their trust can be based on such a simple attitude.

This man did not borrow the money nor is there any evidence he would or could have repaid it. When he did it was only after he knew of the police investigation and then only by way of a loan. He never asked the other officers of the fund if he could use the money. Far from it, he forged the signature of a fellow officer. That was a serious and deliberate act.

In sentencing, the learned magistrate considered these matters. He took into account the pleas of guilty, the appellant's remorse, the effect imprisonment would have on his family and his career and the fact he was a first offender.

He stated:

*"Mr Kama has eloquently said everything that could possibly have been said on the accused's behalf but I feel it is important that I go to the root of these offences.*

*The harsh fact is that the accused was the Premier of Ysabel Province. In that position of great public trust and confidence, where a person is expected to show the utmost good faith and behave with absolute rectitude and honesty, he instigated a community project. I find it quite impossible to distinguish between his position as Premier and his position in the community. Both are inextricably linked. The defendant then, on his own admission, abused the trust that had been placed upon him by forging the signature of one of his subordinates and using the community's money to discharge his personal*

*debts.*

*By any standards that is criminally and morally wrong, and when done by a person in the defendant's position is a matter of the utmost gravity.*

*I accept that since committing the offences the accused has made amends, though he seems to have got himself into a desperate financial situation to do so, and has settled matters with the community. It is, however, apparent that he took this step only after he was aware that he was under investigation, and this factor tends to reduce the mitigating effect which repayment would otherwise have had."*

I agree with all he has said. This court will only interfere if the sentence is wrong in principle or manifestly excessive. In this case the learned magistrate has given a clear account of the way he has considered the case and the sentence he passed is clearly not excessive. On the contrary, bearing in mind the position of the appellant in public life and the nature of the fund he defrauded, I feel it is very lenient.

I have seriously considered increasing the sentence but have decided, with some hesitation, that it is not so obviously lenient that I need interfere.

Finally, Mr Kama suggests the magistrate should or could have considered a reduced term of imprisonment by coupling it with a fine. The learned magistrate stated that he did not feel any non-custodial would sufficiently meet the objectives of sentencing in this case. With that, I wholeheartedly agree. This was a case that demanded an immediate sentence of imprisonment. The learned magistrate was right not to add a fine to that. It is clear the defendant had no means to pay and this is not a case where the fact his relatives may be able to meet the fine can help him.

Appeal dismissed.

(F.G.R. Ward)  
CHIEF JUSTICE