

REGINA -v- ROBERT MAEBINUAHIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Criminal Appeal No. 297 of 2004

Date of Hearing: 20th and 21st July, 2004Date of Ruling: 23rd July 2004

C. Ryan for the Crown.

M. Swainson for the Appellant.

RULING

Kabui, J. This matter came before me on 20th July 2004 as an appeal arising from conviction and sentence entered against the appellant by a Magistrate of the Second Class in the Central Magistrate on 19th February 2004. At the hearing, Counsel for the appellant, Mr. Swainson, indicated to me that his first ground of appeal that the learned Magistrate did not have jurisdiction to hear the case of false pretence, contrary to section 308 of the Penal Code Act (Cap. 26) "the Code" was being abandoned. In other words, the question of jurisdiction was no longer an issue in the appeal. At that point, I made the observation that Legal Notice No.68 of 1963 revised and reprinted at page 740, volume 2, of the Laws of Solomon Islands, Revised Edition, 1996 did not reproduce section 301 of the same Code in volume 1 at page 95 of the Laws of the British Solomon Islands Protectorate, 1969. The implication of this observation was that the old section 301 being false pretence had been omitted from the revised version of Legal Notice No. 68 of 1963 when printed and reproduced in 1996 with the result that the Magistrate had acted without jurisdiction when he dealt with the appellant. Counsel for the Crown, Mr. Ryan, conceded this point and agreed that the Magistrate lacked jurisdiction in the first place and therefore the conviction entered against the appellant was null and void. On that basis, I ordered that the appellant be set free immediately and signed a formal order to that effect. On subsequent further research, it was discovered that section 301 did in fact exist in the Legal Notice No. 68 of 1963. It had not been omitted. The question then was whether we were all mistaken on this point at the first hearing. The matter was again set down for hearing before me on 21st July 2004. The question then was whether or not section 301 had been deleted and therefore not reproduced in the 1996 revised laws as mentioned above. Counsel for the Crown, Mr. Ryan, pointed out that section 308 of the Penal Code in the revised edition in of the laws in 1996 was the equivalent of section 301 in the 1969 edition. In other words, section 301 in the 1969 edition is now section 308 in the 1996 edition simply by way of re-numbering than anything else. The question of jurisdiction therefore for this reason has remained intact since the 1969 edition of the laws then of the British Solomon Islands Protectorate. The effect of this position is that the Magistrate was within jurisdiction when he dealt with the appellant. This being the case, Counsel for the Crown, Mr. Ryan, suggested that I vacate my order and hear the appeal against sentence only. On the question of sentence, Mr. Ryan conceded that the committal warrant which had 18 months imprisonment written on it had been the work of another court officer and not under the hand of the Magistrate himself. The actual court record itself under the hand of the Magistrate has on it in writing the figure 8 months imprisonment for count 1 for false pretence. On that basis, Mr. Ryan conceded that the appeal should be allowed. That is, the

correct sentence is 8 months imprisonment. The fact however is that the appellant had been freed on 20th July 2004 following the first hearing as mentioned above. Mr. Ryan had conceded that it would be a cruel thing to re-arrest the appellant and sent him back to Rove Prison to complete his term of 8 months there in detention. Mr. Ryan suggested that instead of that happening, I should consider suspending the remaining part of his sentence. As stated by Mr. Ryan, the appellant had already completed 153 days in detention with 90 days remaining. It appears from the record that the appellant was of good character before he was sent to prison. Bearing in mind the circumstances of this case, I am prepared to suspend under section 44 (b) of the Code the remaining part of the appellant's 8 months term of imprisonment for 12 months. The period of 12 months is the least period of time permitted under the proviso to section 44 of the Code. The upper limit is a period of 2 years. The effect of this is that the appellant may be brought back to the Court and the Court will reinstate the suspended sentence if the appellant should commit another offence later after the suspended sentence has been imposed which later offence is punishable with imprisonment. Since the appellant is not in Court, I would ask Counsel for the appellant to explain to him the effect of section 45 of the Code. In the result, the orders of this Court are-

1. The order of the Court signed and perfected on 20th July 2004 be vacated forthwith;
2. The sentence of 18 months imprisonment be quashed;
3. The sentence of 8 months imprisonment be reinstated in lieu of the sentence of 18 months in 2 above;
4. The remaining part of the sentence of 8 months in 3 above which is yet to be served be suspended for 12 months with effect from 20th July 2004, the date on which the appellant was set free.

On hindsight, the observation I had made was rather a red herring but I was prompted by the feeling that false pretence being a serious offence carrying the maximum penalty of 5 years imprisonment could not possibly be within the jurisdiction of a Magistrate of the Second Class. To my surprise, it is the case.

F.O. Kabui
Puisne Judge