

**REGINA v. SIMON IAFALU NOBENI****HIGH COURT OF SOLOMON ISLANDS  
(KABUI, J.).****Criminal Review Case No.105 of 2004****Date of Review: 29 October, 2004.****REVIEW**

**Kabui, J.** The prisoner had pleaded guilty to two counts of demanding money with menaces, contrary to section 294, two counts of arson, contrary to section 319 and one count of common assault, contrary to section 244 of the Penal Code Act (Cap. 26), "the Code," on 6<sup>th</sup> July 2004 before Magistrate Esther Ferah Lelapitu sitting in Auki in the Malaita Province on circuit. Count one being demanding money with menaces, count two, being arson, count three, being demanding money with menaces, count four, being arson again and count five being common assault. The Magistrate having entered "a guilty plea" for each count, sentenced the prisoner to 6 months imprisonment on count one to be suspended, 1 year imprisonment on count two, 6 months imprisonment on count three, 1 year imprisonment on count four and \$50.00 fine or imprisonment for 25 days in default of paying the fine on count five. The warrant of commitment on a conviction where the punishment is by imprisonment was signed by the Magistrate on 9<sup>th</sup> July 2004. The prisoner is currently serving a custodial sentence for 2 years in the Rove Prison.

**Lack of jurisdiction by the Magistrate.**

By letter dated 8<sup>th</sup> July 2004, Magistrate, Esther Ferah Lelapitu, wrote to the then Registrar, Mr. Chetwynd, telling him that the prisoner had pleaded guilty before her and she remanded him in custody for sentencing on Friday 9<sup>th</sup> July 2004. She suggested in the letter that in case the Principal Magistrate, Mr. Makin, did not arrive, would her jurisdiction be increased to enable her to pass sentence on the prisoner. In response to a minute by the then Registrar, Mr. Chetwynd, dated 8<sup>th</sup> July 2004, the Chief Justice, Mr. Justice Albert Rocky Palmer CBE, suggested that Magistrate Esther Ferah Lelapitu should remand the prisoner for 14 days to appear at the Central Magistrate Court by transfer for sentencing purpose. That position was faxed to the Auki Magistrate Court at 11.16 on 9<sup>th</sup> July 2004. It is not clear whether Magistrate Esther Ferah Lelapitu had received the fax or not but she went ahead nevertheless and sentenced the prisoner on 9<sup>th</sup> July 2004. The prisoner filed his appeal against the sentence passed on him that same day, 9<sup>th</sup> July 2004. The Court Clerk in the Auki Magistrate Court by letter dated 18<sup>th</sup> July 2004, wrote to the then Registrar, Mr. Chetwynd, informing him that the prisoner had appealed against his sentence and he would act accordingly in due course. On 18<sup>th</sup> August 2004, the Auki Magistrate Court Clerk by letter informed the then Registrar Mr. Chetwynd, that he was sending the prisoner's appeal but the court record would follow after being checked by the Magistrate. The appeal came before me on 22<sup>nd</sup> September, 2004 but was adjourned to a date to be fixed. The matter came up again before His Lordship, the Chief Justice, on 15<sup>th</sup> October 2004. His Lordship then directed that the matter be put before a reviewing judge and that the appeal be stayed pending the review of the case. On 20<sup>th</sup> October 2004, the Chief Justice directed the present Registrar to put the case before me for review on the ground that Magistrate Esther Ferah

Lalepitu did not have jurisdiction to deal with the case in the first place. The Chief Justice's direction was put to me by the Registrar on 21<sup>st</sup> October 2004.

**Criminal jurisdiction of a Magistrate of the Second Class.**

Section 27(2) of the Magistrates' Courts Act (Cap. 20) stipulates that a Magistrate of the Second Class shall have jurisdiction to summarily try any criminal offence for which the maximum penalty does not exceed a term of one year imprisonment or a fine of two hundred dollars or both such imprisonment and fine etc. By subsection 3 of section 27 above, the Chief Justice is empowered to increase the jurisdiction of any Magistrate Court beyond its jurisdiction provided the sentence passed by that Magistrate Court whose jurisdiction has been increased does not exceed the maximum punishment prescribed in subsection 2 (a) of section 27 above. In the case of a Magistrate of the Second Class, the sentence must not exceed one year imprisonment or a fine of two hundred dollars or both such imprisonment or such fine. Magistrate Esther Ferah Lalepitu was appointed a Magistrate of the Second Class by the former Chief Justice on 10<sup>th</sup> August 1999. There is no evidence to show that her jurisdiction had been increased by the Chief Justice to hear the cases of demanding money with menaces, contrary to section 294 of the Code which prescribes the maximum penalty for that offence as being five years imprisonment. The same is the case for the offence of arson, contrary to section 319 of the Code which prescribes the maximum penalty for that offence as being imprisonment for life. Magistrate Esther Ferah Lalepitu clearly lacked jurisdiction when she convicted the prisoner on 6<sup>th</sup> June 2004 and sentenced him on 9<sup>th</sup> July 2004 at Auki. She could have dealt with the common assault charge and then left the charges for demanding money with menaces and arson to be dealt with by the Principal Magistrate. Even the offence of arson, contrary to section 319 of the Code is beyond the jurisdiction of a Principal Magistrate whose jurisdiction is limited only to offences carrying the maximum punishment of fourteen years imprisonment.

**Delay over three months fatal in this case?**

The prisoner's appeal was within time but was overtaken by the discovery of the lack of jurisdiction by the Chief Justice on 3<sup>rd</sup> September 2004. At that point in time, the review option was already apparent. When the appeal came before me on 22<sup>nd</sup> September 2004, I raised the review point with Counsel for the prisoner who was seeking an adjournment for the purpose of seeking further instructions from the prisoner. Counsel indicated then that she might reconsider the existing ground of appeal being one against sentence to that of lack of jurisdiction. When the appeal came on again for mention before the Chief Justice on 15<sup>th</sup> October 2004, the review option was taken as the way to deal with the case and the appeal was stayed pending the appeal. The case file from the Auki Magistrate Court had been sent to the then Registrar by the Auki Magistrate Court Clerk on 18<sup>th</sup> August 2004 for the purpose of processing the appeal against sentence. The three months period prescribed by the proviso to section 47 of the Magistrates' Courts Act (Cap. 20) will end on 31<sup>st</sup> October 2004. This review is done on 29<sup>th</sup> October 2004 well within the prescribed period. Even if my calculation of the time period is erroneous, my view is that the proviso does not apply to where the Magistrate who dealt with the case in the first place lacked jurisdiction. The whole process of dealing with the case would have been null and void from the beginning.

**The orders of this Court.**

I confirm the conviction of the prisoner for the offence of common assault, contrary to section 244 of the Code and the sentence imposed for that offence by the Magistrate.

However, I would quash the convictions for demanding money with menaces, contrary to section 294 and arson, contrary to section 319 of the Code. The sentences imposed automatically are quashed accordingly. I order accordingly.

I further order that the prisoner be held in remand only and to be produced to the Magistrate Court as soon as possible for mention and further directions by the Magistrate Court. The prisoner will be treated as being on remand only and not as a convicted prisoner whilst in the Rove Prison with effect from the date of this review. I order accordingly. This is a case from Malaita and so that consideration will be borne in mind when dealing with the accused. The case file forwarded from the Auki Magistrate Court will be forwarded to the Office of the Director of Public Prosecutions in due course for the purpose of processing the case further.

**F.O. Kabui**  
**Puisne Judge**