

**IN THE CENTRAL MAGISTRATES COURT**  
Criminal Case No. 1241/2009

**REGINA**

**V**

**MARK KEMAKEZA**

**Date of Submissions:** 13 March 2012

**Date of Sentence:** 13 March 2012

Mr Rob Barry for Prosecution  
Ms Maelyn Samuel for Defence

**SENTENCE**

- (1) You were found guilty of one count of conversion after a trial which took place over a period of 28 days in February, March, April and May of 2011.
- (2) The charge that you are convicted of read as follows:

**Ct3: Statement of offence**

*Conversion section 278(1)(c) Penal Code (Cap 26)*

**Particulars of Offence**

*That Mark Kemakeza between 15th October 2007 and 30 November 2007, at Honiara, being entrusted with property, namely \$280,000 being funds to be paid or delivered pursuant to the Rural Micro Fisheries Projects 2007, did fraudulently convert to his own use or benefit the said property.*

- (3) Upon completion of trial this matter was adjourned due to non-availability of the prosecution counsel as well as your counsel who was unavailable to make the final submission because of her medical conditions.
- (4) The sum of \$280,000 was allocated by Parliament and paid into Ngella Constituency Trust Fund Account and was earmarked for fishing projects for members of the communities from your constituency.
- (5) Instead of giving the sum of \$280,000 to the members of your community you used the entire sum of \$280,000 within a period of about 5 weeks and thus deprived the members of the community from your constituency to the fishing projects that they were entitled to.
- (6) At the outset I would like to state that this is a very serious case of abuse and breach of trust imposed on you. You had absolutely no regard for the welfare of the people that you represented and for whose benefit the funding was entrusted to you and you decided to use all the funds for your own use and benefit. This was indeed a very selfish and shameful act.

(7) One of most disturbing feature that surfaced during your trial was that none of the Members of Parliament who were allocated these fishing projects funds submitted any reports or retirement of the funds between year 2006 – 2009 to the responsible Minister or to Parliament.

### **Your personal background**

(8) In 2007 you were a Member of Parliament of the National Parliament and also the Minister of Forest, Environment and Conservation.

(9) You are 49 years old married and have 10 children. Two children are attending primary school, two in secondary school and 4 are receiving tertiary education.

(10) Your wife is unemployed and you are the sole breadwinner in the family.

(11) You are currently the sitting Member of Parliament for Ngella Constituency and you are actually involved as a member of Church of Melanesia and you are chairman of your local school and you are a chief of your tribe.

(12) You are 1st offender and have had an unblemished record and you are a person of good character and standing in the society.

### **Delay**

(13) This incident took place in October/November 2007 and you were not charged until the 18/11/09 and you first appeared in court on 2/12/09 and the trial was completed last month. Obviously, this delay of 4 years would have caused you anxiety and stress and I shall take that into consideration which I impose the sentence.

### **Restitution of \$280,000**

(14) A day after the judgment was delivered, you paid a sum of \$280,000.00 in cash to the High Court registry. By making this payment you have fully compensated the Solomon Island Government (SIG) but this payment cannot and will not compensate the people for whom it was earmarked for. How can they be compensated for the projects that they were entitled to? How can I measure the achievements and successes that these people and their families have been deprived of? In my view, it is immeasurable.

(15) When the prosecution became aware of this payment of \$280,000 it wanted to inquire as to where the funds came from. Your counsel had told the court that it came from members of your family and your friends.

(16) The prosecution suspected that this sum or at least part thereof came out of the Ngella Constituency account and obtained a search warrant from my brother magistrate Mr Jim Seuka on 5/3/12 and this document was placed before me on 7/3/12.

(17) I am told the prosecutions suspicion of withdrawal of funds from Ngella Constituency account was unfounded and perhaps this should have been done in complete isolation from me as sentencing magistrate to avoid any suggestions of prejudice.

(18) I would like to place on record that I shall completely ignore the prosecution's suspicions of withdrawals from the Ngella Constituency account and I further state that I am not in any way prejudiced by these unfounded suspicions.

**Sentencing Range:**

(19) On the sentencing range I have submissions from your counsel that I shall impose a sentence of 5 months imprisonment, which will enable you to keep your seat in Parliament.

(20) In the case authorities provided by the prosecution where Members of Parliament were dealt with for similar offences the sentencing range has been around 18 months imprisonment. The prosecution had not put a figure but had suggested that I should take an "initiative synthesis" which should take all relevant matters into consideration.

(21) Having taken into account the serious breach of trust that you committed and the delay in the case, which was, spread over 4 years and the fact that you have made payment to SIG I impose a sentence of 14 months imprisonment, which is to start from 21/2/12.

**Shafi Khan**  
**Principal Magistrate**