

IN THE CENTRAL MAGISTRATES COURT  
CRIMINAL JURISDICTION

CRC: 904/2016

**Regina**

**v**

**Ellison Raoga**

*Coram: John Numapo*

*Prosecutor: Bradley Dalipanda*

*Defence Counsel: Anderson Kesaka*

#### **SENTENCE**

Both the prosecution and defence submitted written submissions on sentence and were also accorded the opportunity to speak on their respective submissions.

The prosecution strongly submitted that a long custodial sentence should be imposed to serve as general deterrence to others as corruption is increasing at an alarming rate and the country is suffering as a result. It further submitted that the defendant had betrayed the public trust bestowed on him as a Compliance Officer/ Tax Assessor to raise the much needed revenue for the government so that it could provide the basic essential services to its people such as health services, schools and infrastructures etc. Prosecution called for custodial sentence so that a strong and clear message is sent to those occupying public offices to do their work with honesty, integrity and in accordance with the law and that they do not abuse their office and positions to benefit themselves at the expense of the country. Prosecution referred the court to a number of case laws to support their call for a custodial sentence. I will refer to some of these cases later in my sentencing.

The defence in their sentence submission put more emphasis on the mitigating factors and the defendant's personal circumstances and asked the court for leniency and proposed a lesser sentence if custodial sentence is to be imposed and also asked the court to consider suspended sentence to accord the defendant the opportunity to rehabilitate. Defence also asked the court to take into consideration the principle of totality and concurrency in sentencing. It made references to some case laws supporting this principle.

I am guided by the general sentencing factors such as deterrence (specific and general deterrence); rehabilitation, restitution and retribution. I am also mindful of the sentencing principles that forms the basis of sentencing decisions that includes; parsimony – the sentence must not be more severe than is necessary to meet the purpose of sentencing, proportionality – the overall punishment must be proportionate to the gravity of the offending behaviour, parity – similar sentences should be

imposed for similar offences committed by offenders in similar circumstances and finally, totality – where an offender is to serve more than one sentence, the overall sentence must be just and appropriate in light of the overall offending behaviour. Other consideration includes; seriousness of the offence, prevalence of the offence and the effect such offence has on the community or society as a whole.

(i) Official Corruption

The offence of official corruption is a serious one and is prescribed as a felony and carries a maximum imprisonment term of seven (7) years under section 91 of the Penal Code. There is no fine prescribed. The intention of the legislature is therefore, clear in that custodial sentence is mandatory.

Corruption is spreading rapidly and is becoming a huge problem in Solomon Islands. Corruption spreads through society like a cancer that is slowly eating away the once highly prized and respected societal values, norms and conventions that promotes the principles of good governance, transparency, accountability, honesty and integrity. It destroys utterly the very structure of government and the rule of law. Once started, corruption is hard to stop. It would be an understatement to say that corruption is a growing problem in this country infact the opposite is true in that corruption has overgrown to such an extent that it is a serious concern. There is public outcry we see and hear of everyday to fight and eradicate corruption in this country.

Corruption is so entrenched that sadly, it is becoming a way of life for many people. Honest businessmen cannot remain competitive if other businessmen acquire competitive advantages through corruption. The easy money floating about in a corrupt society intoxicates many honest men tempted by the easy access to wealth. By the time the authorities mobilizes and deal with it, the action is often too little and comes too late.

When corruption thrives the people and the country suffers. People miss out on basic essential services that the government is expected to provide such as good health services, schools and other basic infrastructures to improve the quality of lives for its citizens. Where corruption exists the future of the country looks bleak with a lot of uncertainties. Corruption in all its forms must be eradicated for the sake of our future generations. As citizens of this country we must ask ourselves this one very important question and that is; “if I allow corruption to flourish what sort of a future am I giving to my children and their children and their children’s children? It’s everyone’s responsibility to fight corruption at every levels of the society.

Those holding public office such as public servants, politicians and employees of state owned enterprises (SOE) and others have a duty of care and must lead by example and are expected to uphold the integrity of the office they occupy and should not abuse their positions to benefit and unjustly enriched themselves at the expense of the people and the country. The resources and the money they managed are public funds that rightly belonged to the people and not private money that can be squandered and misused as they like.

As it appears the maximum sentence on corruption in this country in the last 10 years has been 18 months as I found in the case of Regina v Wale [Unreported decision of CMC in criminal case 832 of 2008 26 November 2008]. The various case laws and authorities cited to me by the counsels have

not assisted me a lot in terms of sentencing trend and tariffs on corruption cases in this jurisdiction let alone other jurisdictions within the region. I also noticed from the case laws that sentencing varies greatly from case to case making it difficult for the court to establish a common denominator that relates to sentencing trend. With the increasing number of corruption cases coming to court these days it is perhaps time that the courts seriously look at setting some sentencing tariffs on corruption cases to guide future decisions. This also includes factors and considerations the courts need to take into account in deciding an appropriate sentence.

In the absence of a clear sentencing guideline and tariff on corruption cases in this country, I am compelled to use the sentencing guidelines enunciated in the PNG case of Wellington Belawa v The State [1988-89] PNGLR 496 relating to sentencing on corruption cases which I found to a useful guide to decide what would be an appropriate sentence to impose in this case. In the case of *Wellington Belawa* the Supreme Court held that the lesser the amount of money involved the lesser the sentence should be. The converse of that is that, the higher the amount is the higher the sentence should be. The Court then held that the amount taken; the quality and degree of trust reposed in the offender including his rank; the periods over which the fraud or the thefts have been perpetrated are relevant factors for consideration. The Court included in that list, the use to which the money or property dishonestly taken was put; the effect upon the victim; the impact of the offences on the public and public confidence; the effect on fellow-employees or partners. Further the Court held that the effect on the offender himself; the offender's own history; restitution; and factors in mitigation such as illness; being placed under great strain by excessive responsibility or the like; co-operating with the police are also factors relevant for consideration.

#### **Sentence in Your Case – Defendant Ellison Raoga**

##### (i) Official Corruption (count 1)

Official corruption is becoming so prevalent that it is extremely difficult to expose and detect, and once detected, the need to impose a punitive and deterrent sentence to deter others becomes crucial'. I couldn't agree more with His Honour Injia J (as he then was) in the PNG case of The State v Pablito P Miguel (06/12/02) N2338.

Using the sentencing guidelines in *Wellington Belawa's* case, the first aspect of the sentencing guidelines is that evidence showed that you have received a sum of \$5,000 in total from Delta Timber Limited and solicits a further \$25,000 which was not yet given to you when you were arrested. So in terms of monetary value your case falls at the lower end of the sentencing scale. The second aspect relates to the quality and degree of trust reposed on you including the position or rank you hold. On this aspect it is established that as Compliance Officer/ Tax Assessor your job is to correctly and accurately assessed tax returns and calculates tax payable for tax payers. You have a fiduciary duty to uphold the tax laws of the country and it is incumbent upon you to ensure that proper and accurate tax is paid to the government. The growth and development of this country depended on how much tax you can collect for the government so that government services are delivered and your salary is paid and this how important you role is. You have betrayed that trust of

the people that employed you and breached the very laws he swore on Oath to uphold in doing your job. This is serious in my view and pushed measuring stick towards the maximum end of the penalty scale. The third aspect relates to the period over which the fraud has been perpetrated. Evidence showed that the period of tax assessment was from 2011 to 2015 a period of five (5) years that you have defrauded the State by altering or making false entries resulting in tax loss to the government. Again, this is serious as it involved a series of deliberate and calculated acts over a period of time so it must fall within the upper end of the sentencing scale. The final aspect relates to the impact of the offence on public and public confidence; the effect on fellow-employees or partners. I have no doubt in my mind you're your actions have completely destroyed public trust and confidence in the Internal Revenue Division (IRD) of the Ministry of Finance & Treasury (MoFT). By a single stroke of a pen you have tarnished forever the good image and reputation of IRD built over the years. It will take years for IRD to gain back the respect and the confidence of the public. Your fellow employees are affected and must be embarrassed by what you did. I am sure they also felt betrayed by your actions. Your family probably felt the same too and are ashamed of what you did and this would have a lasting impact on them too. Your friends and relatives will probably have a different opinion of you from now on. All this pushes the barometer further towards the higher end of the sentencing scale.

Adding it all, it appears that you have not scored well in terms of the lower end of the penalty scale to attract a lesser sentence. I am therefore, left with no option but to consider sentence staring from the mid-point to the upper end of sentence scale.

#### Aggravating Factors

In addition to what I said above which I consider to be also aggravating factors, I also include the following as additional factors that served against you. Firstly, you were put in the position of trust but have abused that position and office to unjustly enrich yourself. Secondly, you have violated the tax laws of this country, the very laws you promised to uphold which is to collect revenue for the government but instead you breached it resulting in revenue loss to the government. Thirdly, I note from the evidence that you have done similar things for other tax payers as well in the past that Delta Timber is not the one and only company you have dealt with. Finally, you have not shown any remorse at all for your action(s).

#### Mitigating Factors

In your plea in mitigation you asked the court to consider your personal family circumstances as you are a married man with two children and the only bread winner for the family. You have a young family and your wife is unemployed. You have no prior conviction and you lost your job as a result of this case. Unfortunately, personal reasons and circumstances are not considered as sufficient or adequate mitigating factors and therefore, cannot go in your favour. And I adopt the view taken by His Lordship Palmer CJ in Regina v Sisiolo SBHC 35; HCSI-CRC 194 of 2007 (30 June 2010); and I quote; *"Any form of incarceration will always cause hardship on family members and close relatives...It has always been said that these are the consequences the accused should have thought about before committing the offence. Part of that means that he must be prepared to face up to the prescribed penalties set out under our laws and the hardship that may follow from any such consequences. The hardship that will be faced by his family must be balanced with the seriousness of*

*the offence committed and the importance of making it clear that those who commit such offences must expect a custodial sentence..."* end of quote.

The credits I will give to are that; you have cooperated well with the police from your arrest right through to your trial and up to now. You have complied with your bail conditions and have faithfully attended your court hearings.

For your sentence your lawyer asked me to start with a head sentence of 12 months as a starting point. The prosecution has not indicated any specific period of sentence as a starting point but stressed the point that whatever sentence the court imposed on you must send a clear message as a deterrence to others that such offending cannot be tolerated and those who follow can expect heavy penalties. For the reason(s) given above regarding the lack of sentencing trend and/or tariff on corruption cases the court is faced with a dilemma as there is no benchmark to follow or use as a guide. The risk therefore, in my view is that the head sentence might be either too high or too low. Head sentence or starting point gives an impression of inflexible sentencing options. It is for this reason that I would like to use what is called sentencing 'scale' or 'range' as it gives the court a greater flexibility to move up or down the sentencing scale depending on the circumstances of the case the other relevant factors. As it is often said; each case must be treated on its own merits.

(ii) Fraudulent Falsifications of Accounts

The second charge (Counts 2-6) follows from the first charge of official corruption. A fraudulent falsification of accounts is one of the rare misdemeanour offences that carry an imprisonment term of seven (7) years. I wish to reiterate again the intention of the legislature which calls for custodial sentence for this offence.

The definition of 'intent to defraud' is expounded further by section 335 of the Penal Code which places emphasis on the existence of a presumption as a conclusive proof to prove intent.

For the sentence in the second charge (counts 2 -6), I agreed the defence counsel that the charges are related as it all happened as a result of a single transaction. That a sentence imposed on each count (2-6) should be the same given the similarities of the facts and circumstances except for the different periods of financial year reporting and assessments of each tax returns spread over a period of five years from 2011 – 2015. Each year's assessment is equally important as the other and this should be reflected in the sentence. The maximum penalty prescribed by law is seven (7) years imprisonment on each and every count. However, I have considered the mitigating factors including that fact the offences were committed through a single transaction and not far apart from each other.

Order (count 1)

For the charge of Official Corruption (count 1) I considered that a longer custodial term of imprisonment would be appropriate for this charge. The court has a duty to send a strong and clear message through its deliberations, decisions and pronouncements that corruption has no place in our society. On this count of official corruption I sentence the defendant to five (5) years imprisonment.

**Order (Counts 2-6)**

Accordingly, I sentenced the defendant to one (1) year for each count on fraudulent falsifications of accounts charges. The aggregate total is five (5) years imprisonment.

**Totality and Concurrency of Sentence**

The charges are related and came about as a result of single transaction hence I have decided to consider the principles of totality and concurrency of sentence enunciated in some leading case on sentencing. I agreed with the views taken in R. v Griffiths and Stanley Bade v Regina in that if the charges emanates from the single chain of events and are directly related to each other with same set of facts and circumstances and committed by the same person the court should consider the total net of sentence for every counts so that it is not crushing on the defendant.

It is my view that if I imposed a cumulative sentence on the defendant which is a total of ten (10) years imprisonment it would be crushing on him and may also not give him the opportunity for rehabilitation. Every person deserves a second chance in life and for this reason I have decided to impose a concurrent sentence combining both counts 1 with counts 2-6.

**I make the following Orders**

Defendant is sentenced to a total of ten (10) years imprisonment for all the counts to be served concurrently. The imprisonment term of five (5) years is imposed as concurrent net sentence. In total, the defendant is to serve an imprisonment term of five (5) years.

Defendant is to be immediately taken to Rove Correctional Services to begin his term.

John Numapo  
Presiding Magistrate

30<sup>th</sup> September, 2017

