

**IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS**

CRIMINAL JURISDICTION

Criminal Case No. 916 of 2018

REGINA

V

ALICK KAIETI



Date of Plea & Hearing: August 22, 2018
Date of Sentence: August 22, 2018

Mr. E. Konle for the prosecution
Accused in person

SENTENCE

Introduction

1. The accused was brought to court for first mention. He voluntarily indicated that he would plead guilty to the charge. I therefore arraigned him accordingly. On arraignment, he pleaded guilty to one count of restriction on making liquor, contrary to section 50(2) of the Liquor Act 2004.
2. The maximum penalty for this offence has been increased by a legislation called Penalties Miscellaneous Amendment Act 2009. Under section 8 of the Schedule of that said legislation and as read together with section 50 (2) of the Liquor Act 2004, the maximum penalty for this offence is a fine of \$30,000 or 3 years imprisonment or both fine and penalty.
3. For avoidance of doubt, this maximum penalty is provided in the original signed and gazetted copy published in the pdf file on pacii and not from the internet generated copy of the legislation. The internet generated copy provides for \$1,500, which is an incorrect maximum penalty. This clarification must be clearly understood by legal practitioners, police prosecutors and the public/litigants when dealing with this offence.

Circumstances of the offence

4. The brief synopsis of this case is this. The accused is a resident of Namoruka settlement in West Honiara. Police received information through informers that he used to brew and sell kwaso from his premises at Namoruka.

5. On 21st of August 2018, police conducted a raid at his premises. His house was thoroughly searched. As a result of the search, police discovered the following equipment/items¹ used for distilling and brewing of kwaso:
 - (i) One blue jerry can full of pure kwaso (20 litres);
 - (ii) One white jerry can full of pure kwaso (20 litres);
 - (iii) One empty 9.0kg cylinder gas bottle;
 - (iv) Four yellow empty jerry cans still smelt of kwaso; and
 - (v) One basket full of empty szeba containers.
6. Police then confiscated those equipment/items for safe custody and exhibits. The accused was arrested and conveyed to the Central Police Station for interrogation.
7. During his interview with police, he made the following admissions:
 - (i) That he normally cooked kwaso;
 - (ii) That he was the owner of the items used to brew kwaso; and
 - (iii) That he used to sell them at Burns Creek in East Honiara and White River 01 market area;

Mitigating and personal factors

8. For purposes of his mitigation and personal factors, I take into account his early guilty plea; being a first time offender; a married man and his remorse. In court, he said sorry for what he did and promised not to repeat this same offending again in the future. I commend him for uttering this promise and this shows he was conscious of his own wrong doing and will ensure he won't brew kwaso again in the future.
9. I give him full credit for all his mitigating and personal factors. No doubt, this will be factored in his sentence.
10. For a first time offenders, the court normally imposes a lenient sentence out of the maximum penalty. Accordingly, he has the benefit of this.

Aggravating factors

11. The production of kwaso here is in large scale and ongoing. This is established by his own admissions. The photographs tendered by the prosecution shows a total of 40 litres of kwaso were stored in two 20 litres containers. Four empty 20 litres jerry can containers and a bag full of empty plastic bottles were there was well, ready to be filled.
12. The facts also established he had supplied kwaso for sale to two different locations in Honiara town. One is White River 01 market area and another is Burns creek. He no doubt contributed to the mass distribution of this illegal liquor in our town.
13. I find that he deliberately made a decision to commit this offence. The fact that he brewed and stored kwaso at his premises was not mistakenly done. The organising, collecting and gathering of all these equipment/items in order to produce kwaso clearly reflected his

¹ A photograph of this was tendered to court

deliberate and malicious intention. Only those who planned this very well would do this kind of thing. I easily find the accused brewing and storing of kwaso at his premises was well planned and orchestrated.

Kwaso is an illegal and harmful product

14. I start by saying that kwaso is an illegal and a very harmful liquor. It cannot be legalised or licensed midway during the course of its production like other ordinary alcohols. It is not licensed but an illegal and outlawed product. It has been banned or prohibited by our lawmakers at the very first place because of its negative and harmful effects.
15. Since the introduction of this illegal liquor in our country, it has done no good to individuals, families, communities and the entire country as a whole. It is not only dangerous or hazardous to human health but can breed wide spread of black market outlets where cheap liquor can be brought and in turn translate that particular locality where it is produced to a climate of drunkenness and disorderliness.² Peace and tranquility in a community now become displaced by drunkenness, disorderliness, disturbances and other unacceptable or nonsensical forms of behaviors. People will not have the freedom to move about freely whether in the rural or urban areas because of fear of being attacked by drunkards. Innocent people are easily targeted and victimized and the list goes on.
16. Besides law, health also says that kwaso can kill. There are men who died directly as a result of them consuming this product.
17. A simple survey will show that most people in Solomon Islands have fed up of this illegal liquor. The negative impacts it generates in our societies are disastrous and catastrophic. In reality, it is one of the root causes of a lot of social problems and even premature deaths in some instances. A lot of awareness and penalties had been sent out to the public by the police and the court for the need to refrain from producing this illegal liquor in our communities because of those negative impacts and consequences.
18. Viewed from this is the very reason why our lawmakers saw it fit to criminalize the making of this liquor at the first place with a hefty maximum penalty fine of \$30,000 or 3 years imprisonment or both fine and imprisonment. One of the main intentions for increasing this maximum penalty is to prohibit people from brewing kwaso because if they do, they are expected to pay a hefty fine or alternately, they would be imprisoned or a combination of fine and imprisonment. Had it not for this, the maximum penalty for this offence would be very minimal or it would be only a few thousand dollars like other ordinary liquor offences.
19. For the present case, the accused brewed and kept kwaso right inside his premises at Namoruka. This shows he has no fear for the authority and the law. He kept on flouting the liquor law openly and persistently. He also admitted that he has been selling kwaso for a while and had supplied it to White River 01 market and Burns creek. Therefore, this is an ongoing and uninterrupted illegal activity.
20. The accused is a family man. He knew very well that producing kwaso is illegal and unlawful. It would risk him paying a hefty fine or going to prison. He didn't realise those

² For same sentiments see: *R v Hellen Kasi* HCSI-CRC No. 141 of 2009

common sense thoughts and continued with his illegal brewery of kwaso. Although that might have been done due to the costs of living in town, in my view, that is a lame excuse. He should not resort to committing a crime to raise money in order to make a living. He must undo that attitude if he wants to stop seeing the court in the future.

21. People must learn to follow the laws that are put in place by the State because of the consequences that will follow suit. Likewise, people must learn to think about the consequence of a particular activity before embarking on.
22. I have been told that kwaso production is now at an unprecedented and alarming rate in the settlements in and around Honiara. It is now at the rate that it is quite hard for people to forego the habit of brewing and selling of kwaso. The production of kwaso nowadays is just like another production of soft drinks for sale. Kwaso producers and sellers do not fear the law anymore as what seemed to be the general description or conversation by the public at large.
23. In my view, one reason for that sad state of affair is due to the lenient sentences being imposed for this offending. This calls for the court to revisit its old sentencing pattern since it does not have any significant effect to deter this offending.
24. If the past sentences fail to deter this offending then the court needs to adjust its sentence to warn and stop kwaso producers from producing this illegal product. I think the time has come that the courts of this country must take a tough stand on this and send a strong deterrent message to the public from producing and selling of this illegal product. Otherwise, public confidence in the criminal justice system will be weakened and this in turn encourages concerned kwaso producers to continue to remain defiant in the face of law.
25. That message needs to be sent now to kwaso producers in Honiara and the country as a whole that it is time to forego and put to rest the brewing, selling and consumption of kwaso. The court has this very important duty to curb and deter this offending. In my view, this is a national duty and one that should not be overlooked. The public looks to the court as the institution that should send the right deterrent message to warn people from brewing kwaso. When all hopes are gone to deter this peculiar offending, it is only the court that the public has the confidence and trust to help reduce or weed out this delinquency that is so unstoppable and prevalent in our societies.
26. I take into account that he is a family man with responsibility. I am also conscious of the fact that the financial hardship he went through might have forced him to commit this offence. However, that should not be used to shirk or condone this offending.

Sentencing orders

27. In light of its prevalence and the taking into account the mitigating, personal and aggravating factors, I therefore sentenced him to a noncustodial form of penalty and that is, a fine of **\$19,000 (SBD)** to be paid by **26th October 2018**. In default of payment, the accused will serve **2 years imprisonment**.
28. Order for forfeiture of all the confiscated equipment/items to the Royal Solomon Islands Police (RSIP) and be destroyed forthwith as soon as practicable.

29. 14 days right of appeal applies.

