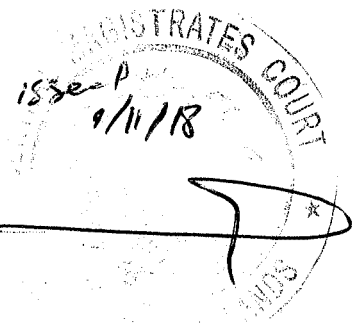


In the Central Magistrates Court  
Sitting in Honiara, Solomon Islands



*Criminal Sentencing jurisdiction:*

844  
Criminal Case: No: ~~5898~~/2016

IN the matter of:

**REGINA**

**vs**

**TOMMY QAZOBATU**

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*Messrs. Jasper ANISI and Ms. SUIFA'ASIA for the Crown  
Messrs. Ronald DIVE for Defendant*

Sentence

1. Tommy Qazobatu, you were convicted after trial where you have advised through your legal advocator not to further challenge the charge and change attitude on your pleading.
2. The prosecution case has called about eight witnesses and tender a number of documents in support of their case.
3. At the closing of the prosecution case, you have changed your attitude and advised to change not to put up your defense. You have pleaded guilty to 19 counts of Larceny and Embezzlement by clerk contrary to section 273(a)(i) of the penal code.
4. During the hearing the prosecution proved beyond reasonable doubt that Mr. Qazobatu was previously employed at the Central Bank of Solomon Islands (CBSI) as a payroll officer within the Financial and information Technology department in 2015. In his position he entered Grade 2.2 of salary structure which he earns \$26,339 per annum.
5. In December 2015 Mr Qazobatu elevated to take the position of Account Exchange Officer with the Currency and Banking department. This position is a grade 3 of the CBSI pay structure where he award an annual salary of \$64,270.00.
6. Mr. Qazobatu while in his role as a payroll officer in early 2015 and later as Accounts Exchange Officer had manipulated the payroll system to his advantage and paying into four of his commercial banks unusual sums of money as salary. The four bank accounts were in his name Tommy Qazobatu. These are the commercial bank accounts: ANZ bank account No: 5301339, BSP bank account No: 120000008576, BSP (westPac) bank account No: 2000123162 and Pan Oceanic Bank account No: 12001006599.
7. The prosecution has proved that in 2015, there were 15 pay periods in which transaction for salaries paid into Mr. Qazobatu's bank accounts. Again, in 2016, there were 5 pay

- period in which transaction for salary were paid into his four bank accounts. It was then proved that on each pay period there were either a single transaction or three or four transactions for salaries paid simultaneously into Mr. Qazobatu's separate bank accounts.
8. A summary table confirmed that these transactions of salaries in unusual amounts paid to Mr Qazobatu's bank accounts with the four commercial banks namely, ANZ, POB, BSP and BSP (central).
  9. The evidence shows that Mr. Qazobatu had received a total sum of SBD\$250,000.00 of an unauthorized salary payments for the 15 pay periods in 2015. In 2016, Mr. Qazobatu had received a total sum of SBD\$185,000.00 of unauthorized salary payments in five (5) pay period in 2016.
  10. These unusual transaction was came to light after **the** Management Accountant was reconciling and balancing off financial information from between the old and the new system called Micro Meridian system into Technology One system. When the officer discovered some discrepancies fingers which was not reconciling in the system. The finding was brought up to the high level management of the CBSI, a thorough internal investigation was carried out and held Mr. Qazobatu accountable to those unusual payment.

#### **Larceny and Embezzlement contrary to section 273(a)(i) of the penal code.**

11. The maximum penalties for Larceny and Embezzlement by clerk provided under the penal code is 14 years imprisonment. This has indicates that Larceny and Embezzlement by clerk is one of the more serious offences in the law of Solomon Islands. These seriousness are well reflected in the maximum sentence of 14 years imprisonment.
12. The seriousness also emerged from the facts that a dishonest to the financial system of the Central Bank of Solomon Islands (CBSI).
13. I will begin by quoting the case of ***State vs Roberts*** [2004] FJHC Crim. App. No: 53J of 2003 were the Court considered cases dealing with Larceny and Embezzlement by clerks and stated:  
"In *Barrick*, the appellant, who was held a position of trust in a finance company, has stolen 9000 pounds. He pleaded not guilty and was found guilty. He was sentence to two years imprisonment. On appeal he asked for suspension of his sentence. The court of Appeal held that in breach of trust cases, a term of immediate imprisonment was inevitable except in exceptional circumstances. Relevant matters were the quality and degree of trust abused, the period of defrauding, the use to which the money was put, the effect on the victim, the impact on the public, the effect on the offender, any delay between discovery and trial and the offender's personal history. The court found that the 2 years term imposed was too lenient saying that a term of up to 18 months imprisonment was appropriate for the theft of amount up to 10,000 pounds, 2 to 3 years imprisonment for the theft of amount up to up to 10,000.00 pounds and \$50,000.00 and terms of 3 and half to 4 and half for the theft of more than 50,000.00. Pounds.

14. In our present case, you have been employed by the Central Bank of Solomon Islands (CBSI) as a Payroll Officer and then an Account Officer. You have been placed with a big responsibility of trust by handling the financial system of this country. The office you have been part of its employment is the heart of the financial system of this nation. You being then acting in the capacity of servant of the CBSI falsifying four commercial bank accounts with intent to defraud. You have been breached the principal and objective of the CBSI. The court always have to take a serious view of such cases as this of gross breach of trust. By breaching this trust, a custodial sentencing is appropriate in your case.

### **Mitigating and Aggravating Sentencing**

15. Having consider the circumstances in your case, it is now the duty of this court to assess and analyses which type of sentencing your case will fall in to. I have the opportunity to read through the materials submitted by both Counsels and interest to start of my assessment on what the then High Court Judge Pallaras stated in *Regina v Bosamate* [2012] HC-CRC 227. In his sentencing remarks, his Lordship stated; *“,,,the sentencing process is a living organism – it grows, develop and adopt to community needs and expectation. It may well be that in the current times it is opportune for the Court to re-assess whether the relative low sentencing ranges referred to adequately reflect both the attitude of the legislature and the needs of the community.”*
16. The Crown Prosecutor has directing me to choose from a number of sentencing cases in this jurisdiction which I am already know what I will impose to Mr. Qazobatu. However, appropriate sentencing in such circumstances depend on consideration of each cases, such as the offence, offender and the presence of aggravating and mitigating factors. I always guided by the principles that each case has to be considered on its merit to arrive at an appropriate sentence.
17. I have been greatly troubled what to do in your case. The defence Counsel at his conclusion suggested and ask the court to consider imposing a sentencing that is according to law and have the mercy and enter a suspended sentence. On mitigation, Mr. Qazobatu has no previous conviction as this is his first time brushing the law. He was said been remorseful notwithstanding him pleaded not guilty at the first instant. He is ready to take up the responsibility of his action. It is further submitted that the circumstances that led to the commission of the offence was purely an act of ignorance on the part of the defendant in taking advantage of a weak monitoring payroll system of CBSI. I am not convinced on this part of mitigation.
18. Having consider the circumstances of our current case, I have fully considered the mitigation submitted on behalf of Mr. Tommy Qazobatu. The defence counsel has directed this court to take into consideration the personal circumstance of the defendant especially, his remorseful status. I have noted that the defendant had pleaded not guilty to 19 counts of Larceny and Embezzlement by clerk which forced the prosecution to called

eight (8) crown witnesses from the CBSI and other commercial bank operated in Solomon Islands. It took about a week to have those busy bank officers to adjust their busy schedules to avail themselves in court and give their evidences in support of the charges against the defendant.

19. After the Crown has settled their case, the defendant changed his attitude and call for re-arraignment instead of putting up his defense case. In those running circumstances, I am of the view not to accept it as the defendant was remorseful and pleaded guilty notwithstanding his pleading at the first instant.
20. I am fully conscious of the desirability of imposing a sentence which would serve to act as a deterrence to others, notwithstanding the law is not to be administered mercilessly. The offence you have found guilty of is one which would in most cases merit a substantial term of imprisonment.
21. My difficulty has been in determining where there is anything in the circumstances of your case to warrant a departure from the importance of deterrence. After anxious thought and not without hesitation I think there is not. What you did has been completely out of character and perhaps has shown a weakness of character of which not even you were aware. I have never moved by the fact that you have a young family which will be effected so badly should a custodial sentence is impose on you, even you are the sole bread winner of your family.
22. I have consider the sentencing tariff in this jurisdiction on larceny by servant. There are number of cases suggested from both counsel and asked to be considered. I have settled on three cases that have the similar facts but different amount of money involved.
23. The amount involve in the case *R v Philip Bobongi* is 1.4 million. He was found guilty after trial and the defendant was sentence to 12 years imprisonment.
24. The second case of *Regina v Gagahe* [2012] SBMC 4; Crim case No: 874 of 2009. In this case, the defendant was found guilty after trial on 5 counts of larceny by servant involving 1.7 million dollars. The court impose a sentence of 6 years imprisonment.
25. I now turn to assess the sentencing tariff in *Elima v Regian* [2004] SBHC 126; HCSI-CRC 339 of 2004. In this case, the defendant has pleaded guilty to the offence of larceny by a clerk contrary to section 273 (a) (i) of the penal code. The magistrate court sentence the defendant to 4 years imprisonment. He appeal to the High Court against that sentencing and was dismissed. The Appellant further appeal to Court of Appeal of Solomon Islands and again the appeal was dismissed therefore, the sentencing stands 4 and half years imprisonment as appropriate. The amount involved in this case is \$135,000.00 and was charged with 5 counts of Larceny by clerk.
26. Mr. Qazobatu was found guilty on 19 counts of Larceny by clerk. The amount involved is SBD\$435, 550.00. This amount was never recovered.
27. In the three cases referred to above, the amounts taken were substantial, ranging from \$132,400 to 1.7 million and sentencing from 4.5 years to 12 years imprisonment. There were other factors which were similar, for example, the defendant was in a managing

position of trust and responsibility. Mr. Qazobatu was first entrusted with task of running the payroll of all the CBSI staffs or employees. The offences were not a onetime thing. It was committed within more than 12 months.

28. Considering the gravity of the offending for the offence of Larceny, embezzlement by clerk, I will take my stand between the cases of *Regina v Gagahe*, *Regina v Bobongi* and *Elima v Regina* which I have mentioned earlier. After a close distinguished of the facts and mitigation, I select 5 years as my starting point based on aggravating and mitigating factors.
29. I sentence you to 5 years imprisonment for each counts of Larceny, embezzlement by clerk under section 273(a)(i) of the penal code. I still found difficulties to accept the effect of suspended sentence to allow you to refund the monies on installment payment in 24 months on condition.
30. I further considering totality principle I order these to be concurrent to each other. Therefore, counts 2 to 19 to serve concurrent to count 1. Accordingly, I sentence you to 5 years imprisonment to commence today.
31. Your right is given to appeal within 28 days.

