

IN THE MAGISTRATES COURT  
OF SOLOMON ISLANDS

*Criminal jurisdiction.*

*Crim. Case No: 450/18*



In the matter of:

**REGINA**  
-v-  
**LAUA LAMANI TALANGEMALEFO**

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Sentence

1. You have changed your attitude towards your plea of not guilty at the beginning of your trial. You have instructed your lawyer to change your plea to a guilty plea.
2. After re-arraignment you have pleaded guilty to one count of criminal intimidation contrary to section 231(1) of the penal code.

Brief facts

3. On the 1<sup>st</sup> of January 2018, the Mr. Talangemalefo wrote a letter on behalf of his sub tribe ( Laua Talangemalefo tribe) addressed to the Chief Executive (CEO) of the Solomon Island Airlines. The CEO at that time is Mr. Brett William Gebers.
4. The subject of the letter is "*Warning and objection to any landing of plane on Manaoba airport.*"
5. This letter was copied to several offices in the government. This includes, COP Attorney General (AG chambers), Commissioner of Lands, Accountant General, etc.
6. In the absent of the CEO at that time, Mr. Collin Singamanu (Manager Commercial) received the letter and instructed to deliver to the CEO when he resumed back in office.

7. When the CEO resumed back in office, he read the letter which he believes the content of the letter was a direct threat to the safety and security of the airlines and to him personally as the CEO of the Solomon Airlines. He felt threatened, upset, angry and uncomfortable about the content of the letter.
8. From the effect of that letter of threats, the CEO instructed and make directives that all flights to Manaoba airfield is ceased, and seek to report the matter to police for further investigation.

### The Law

9. The offence of intimidation under section 231(1) of the penal code.

Section 229 stated:-

*“Any person who intimidates or molests any other person shall be guilty of an offence and liable to imprisonment for three years.”*

10. This case should not be treated differently from other physical intimidation case in this jurisdiction. However, what makes this case unique is the threats and intimidation was made through writing. Whether the treats are made physically or through telephone or letter, the annoying and the threats against other person have the same effects.
11. The principal guideline of sentencing is clearly stated in the case of *Farsy v Reginam*, [2004] SBHC 120; where his Lordship Palmer stated; “ when considering what sentence to impose or would be appropriate, the courts have developed from guiding principles. These are Retribution, Deterrence, Prevention and Rehabilitation. Any Judge who comes to sentence ought always to have those four classic principals in mind and to apply them to the facts.
12. In the case of *Johnson v Tariani*, Court of Appeal of Solomon Islands; where Sir Mari Kapi JA stated; “ *Where the law simply provides a maximum sentence, the courts are given a very wide discretion to determining the appropriate*

*penalty in a case. The courts have developed principles of sentencing which guide the exercise in his discretion."*

### **Sentencing Tariff**

13. The usual tariff of the sentence for intimidation handed by the Courts ranged from bound over, suspended sentence, 6 month custodial sentence or even 2 years depending on the circumstances of the offending, the mitigating and aggravating factors, and the personal circumstances of the offender.
14. In the case of *Kilatu v R*, the defendant pleaded guilty to one count of intimidating a taxi driver and other charges. He was sentenced to 6 months imprisonment. He appealed to the High Court and the sentence remained unaltered. In that case, no weapon was used, he was not drunk and a first time offender. The Kilatu's case was less serious to your case because no weapon was used at the commission of the offence.
15. In *R v Tonny Ramosala*, the defendant who was drunk, intimidated his father and mother after they refused to give him money. In relation to his father, he threatened him with an iron rode which fortunately, his father missed it after being shot. He was sentenced to 1 year imprisonment for that intimidating charge amongst other offences.
16. In *R v Kemakeza*, the High Court quashed the sentence of 6 months and substituted with 16 months imprisonment.
17. In *R v Mose Keho*, the defendant who was drunk and armed with a knife intimidated his aunty inside a Kai Bar at Rove. There was no element of planning involved for this offence. He was sentenced to 8 months imprisonment besides his other charges.
18. In your case, you wrote a letter on behalf of your tribe expressing the tribe disappointments perhaps the Government did not consider your claims or demand. This court has taken into consideration that such approach is unlawful. What your tribe supposed to do is exhausting all avenue and allow any court process to take the course. When you take it into your own hands that is where the laws comes to play.
19. All the above comparative cases submitted indicates that there is no fixed tariff for intimidation offences in our jurisdiction. The court based their selections on each

individual facts of cases, as the court accept that each case must be considered on their own merits.

20. I am pounding my mind on what His Lordship Justice Groundar discuss as guideline principles for determining the starting points in sentencing in *Laisiasa v State* (criminal Appeal AAU 0018 of 2010. I observed “ *in selecting a starting point, the court must have regards to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower middle or middle range of the tariff. After adjusting for the mitigation and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.*”
21. In this process, the court must go through the process of elimination other possible courses such as absolute discharge, conditional discharge, probation order, fines and then say to itself, this is a case for imprisonment and the final question, it being a case for imprisonment required, or can I give a suspended sentence.
22. I note that it is the duty of the court to deter offenders and other persons of the community from committing this type of offence and to signify that the court and community denounce the commission of such offence.
23. Having considered the guideline stated above, I am of the view that a custodial sentencing is inevitable where the accused should be imposed with an immediate imprisonment from the offence he committed.
24. Considering the objective seriousness, I selected 8 months as the starting point for this sentencing. Although, I have considered this kind of threatening is a serious in nature, I am not convinced through submissions from both counsels to guide my thought which is the best and appropriate selection in this jurisdiction on intimidating another person by letter.
25. I have come to conclusion whether to answer the final question like, is immediate imprisonment required or can I give a suspended sentence. The fact

that the accused is a first offender facilitated the court to act under the provision of imposing a suspended sentence.

26. Mr. Lamani Laua Talangemalefo, you are sentence today to 8 months imprisonment. Considering your personal circumstances, that you have change your pleading so early in a trial proper and you are a first offender, accordingly, I suspend your sentence to 2 years.

27. If you commit any offence within the suspended period of two years you can charge or serve immediate imprisonment.

Order:

1. 8 months imprisonment, suspended to 2 years

*Right of appeal is extended within 30 days from today's date.*

