

**IN THE CENTRAL MAGISTRATES' COURT
OF SOLOMON ISLANDS**

CRIMINAL JURISDICTION

CMC-CRC No. 335 of 2019

REGINA

V

TEPALA AND OTHERS

Date of Sentence hearing: September 13, 2019

Date of Sentence: September 16, 2019

Mr Tovosia for the Prosecutions

Mr Pulekera for the Defence

SENTENCE

Introduction

1. Three accused persons, Barnabas Teua, Nigel Sanai and David Tepala were all charged with Unlawful assembly contrary to section 74 of the *Penal Code*.
2. They all pleaded guilty to the charges on 23rd August 2019. And I convict them for the charges.

Maximum Penalty

3. The maximum penalty of the offences is one year imprisonment.

Facts

4. On 24th April 2019, on the election of the Prime Minister, there was some discontentment in Honiara. At Honiara City Council Headquarters, a group of people formed in disagreement to the new leader elected. The Offenders were part of the group. They then marched towards kukum, and assembled at kukum highway. However, the Royal Solomon Islands Police Force intervened and arrested two of the Offenders, Nigel Sanai and David Tepala. Further investigations led the Police to arrest Barnabas Teua at Rove, a Police Officer's home on 27th April 2019.

Aggravating Factors

5. There is no aggravating factor. Taking part in an unlawful assembly is the offence. It will aggravate if it is mentioned in the facts that their participation involved the riotous nature

causing fear and breach of the peace. It was not stated in the facts. It cannot be assumed and must go towards the benefit of the Offenders.

Mitigating Factors

6. Guilty plea at the earliest opportunity. It saves time, effort and resources. A guilty plea will usually deducts a head sentence by one third. I award that.
7. Remorse. All Offenders have submitted their remorse through their counsel. It is good to be remorseful as it shows a person who accepts a wrong and will refrain from such wrongs in future. That is, rehabilitation.
8. No previous conviction. First time offender are to be treated as persons who will learn from a wrong and become better. It is when a person does the wrong more than one time that sentence ought to be harsher as that person has not learnt and needs a stiffer punishment to effect retributive justice.
9. I have considered the Offenders' personal circumstances as young persons and the followings:
Mr Tepala was 24 years at the time of offending. He is married with one 1 year old daughter and works with Bintang. He is the breadwinner.
Mr Sanai, was 21 years at the time of offending. He is becoming a mechanic by rote. And uses some of his earnings to help his siblings and parents. He was a youth member of the Christ the King.
Mr Teula was 23 years old at the time of offending. He intends to continue with overseas tertiary studies after being a form seven leaver and is working as a part time bus conductor for school fee. He was a member of the Christ the King youth.

Court Sentence

10. Unlawful assembly on 24th April 2019 is quite different to other unlawful assemblies. This is because it was a building momentum of masses leading up to rioting generally in Honiara but was fortunately stopped by Royal Solomon Islands Police Force. Solomon Islands have a bad history of unlawful assembly which turned into rioting, arson and looting in 2006 for a very similar election of a Prime Minister.
11. Two of the Offenders are conditioned youths of the Christ the King, form five leaver and form seven leaver. They should have known better. I need not remind them of what it is to be a youth leader with Christina principles. The other Offender is a married person with one child. A one year old daughter. And working for the survival of his family. All these should be the first consideration before choosing to join an unlawful assembly. We have learnt from the past that opportunists will turn such assemblies to serious matters as looting and arson or even other serious offending. For example, what have you achieved from the unlawful assembly now but to receive a sentencing from the court.
12. From the facts, and mitigating factors, I must also add deterrence. Eight months imprisonment is appropriate to factor deterrence.
13. I reduce it by one third for the early guilty plea. A remainder of 6 months is the result.
14. With the other mitigating factors, I further will order a full suspended sentence of one year.

ORDERS

15. All three Offenders are sentenced to 6 months imprisonment.

16. The six months imprisonment is to be fully suspended one full year.
17. The pre-detention period is to be considered if the suspension is breached.
18. Right of Appeal to any aggrieved party within 14 days of this sentence judgement.



THE COURT

Ishmael Kekou – Magistrate First Class