

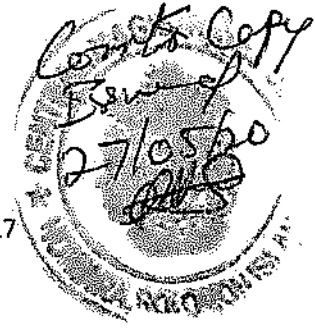
IN THE CENTRAL MAGISTRATES' COURT
OF SOLOMON ISLANDS

Criminal Jurisdiction

Criminal Case No. 759 of 2017

On the 27th day of May 2020

Abel Maelanga for Police Prosecutions
Susie Julia Pengalo for the Accused



BETWEEN:	REGINA	Complainant
AND:	ELTON KANA	Accused

SENTENCE

- 1) The Accused, has pleaded guilty to the three counts in the charge against him. Count 1 is Demanding with menace things capable of being stolen contrary to section 295 of the Penal Code and Counts 2 and 3 are Intimidations contrary to section 231 (1) of the Penal Code. He is therefore, convicted on his own guilty pleas.

The agreed facts

- 2) On the 10th April 2016 at about 06:30hrs the Complainant Mr. Hapa and his extended family were still sleeping when the defendant and his group entered their area, shouting and directing the complainant to walk out from his house. The complainant Mr. Hapa did and suddenly one of the men held his neck tightly that he could not breathe. He struggled and freed himself and escaped into the nearby bush. As he escaped, the defendant chased him and threw an SB can after him.
- 3) The defendant and his group shouted to the complainant saying iufala givem kam \$5000.00 and they threw stones at the complainant's house and damaged 12 louvre glasses of a window to one of the rooms in which two toddlers - a four months old girl and a one year old girl were sleeping at that time. It was so fortunate that the broken pieces of the louvre glasses did not cut the two children.
- 4) The defendant further damaged a bucket, dish and rail of the veranda of the complainant and they continued to demand the complainant and his family to give the sum of \$5000.00. In the course of that, the complainant gave them the sum of \$1,500.00 and a custom money called Matabala valued at \$3,000.00. The defendant and the group then went out. Those facts constitute the offence of demanding with menace.
- 5) On 25th August 2016 at about midnight at Aola Makolu Logging Camp, the Complainant Mr. Wong Sie Chuang was sleeping when the defendant appeared under the influence of liquor and woke up the complainant in an aggressive manner. Whilst the defendant was doing that, he uttered words to the effect "iu must givim \$500.00 for road access fee payment".
- 6)

- 7) The Director of the Logging Company, Wong Sie Chuang, the complainant had to explain to the defendant that it was midnight and that if he wanted to see him about that issue then it would be good to deal with that during working hours. The Director told the accused that he was disturbing him and the camp employees. The defendant refused to hear what was being said and angrily held on to a piece of timber of about 2 meters in length and moved to and fro emulating to strike the complainant with it. This had caused fear to the complainant and with the assistance of the security officers, they managed to lug out the defendant. This is what constitute the intimidation offence in count 2.
- 8) On 27th September 2016 at about 2200hrs at Tetesalau village, the complainant, Jonathan Asabola and his wife and his brother in-law were standing and chatting when the defendant appeared and lifted up a sea knife of about 30 cm in length with his right hand and pointed it directly to the complainant's eyes and uttered words to the effect "lu nao iu reportim dadl blong mi lo Police". This had caused fear to the complainant. This is what constitutes the intimidation offence in count 3.

Mitigating factors

- 9) The defendant has pleaded guilty to the charges. The pleas are clear demonstrations by the defendant that he is remorseful for what he had done and that the pleas have spared the complainants from coming to court and recount what had happened. Consequently, the pleas have also saved time and resources in conducting a trial in this matter. An appropriate discount to the overall sentence will be accorded in the sentencing orders to reflect the guilty pleas.
- 10) The defendant has no previous convictions. He was a law abiding citizen before he found himself in conflict with the law on these occasions and subsequently convicted in this case. He is a first time offender and I believe that any sentence that will be imposed on him will contribute in rehabilitating him to be a better and changed person in the future.

Aggravating features

- 11) The demanding with menace offence was committed whilst the defendant was part of a group and it was committed during the night when the defendant and his extended family were in bed. The group used stones to shoot the house of the complainant which resulted in damages being caused to louvre glasses to one of the windows. The actions of the defendant and the group clearly had no regard to the safety of the occupants of the house which include two toddlers, a four month old and a one year old. The defendant also damaged a bucket, a dish and railing of the complainant's veranda.
- 12) In both intimidation incidences, the defendant had used weapons – a two meter long timber and a sea knife to commit the offences. The offending against the Malaysian national was also committed at night, in the middle of the night. The defendant clearly disturbed the complainant and other employees of the logging company at a time when most would have been deep in their sleeps already.
- 13) In all the offendings, the reason given by the defendant for committing those offences is because of his disappointment with the complainants. The defendant must understand that

no reason or justification will justify any unlawful actions. The repeated manner in which the offences were committed because of disappointment indicates that he is someone who could not control his disappointments and allowed anger to control him. I believe he must have now realized that resorting to unlawful actions will result in serious and undesirable consequences.

- 14) The message that the courts continue to send out is that resorting to unlawful actions as a way of expressing one's disappointment will result in serious consequences that one do not desire. The courts will not tolerate unlawful behavior and will deter it with passing of appropriate sentences.

Sentence orders


- 15) Having considered the facts of the case and the aggravating factors that are present in this case, custodial sentences are inevitable. Since the offences were committed on separate dates and against separate victims, the sentences for each of the counts will run consecutive to each other. I am also conscious that any final sentence must take into account the principle of totality and most importantly, the sentence must be one that is just and proportionate to the overall offending. I am of the view that the appropriate starting points for each of the counts are as follows;

- Count 1 (demanding with menaces) – 22 months imprisonment
- Count 2 (intimidation) 6 months imprisonment
- Count 3 (intimidation) – 6 months imprisonment.

- 16) The total head sentence is 34 months imprisonment.

- 17) To reflect the pleas of guilty and the mitigating factors, I will deduct 12 months from the head sentence above. The total effective sentence to be served is 22 months imprisonment. This sentence is back dated to commence on when the defendant was first remanded in custody.

The Court,



Ricky R. Iomea - DCM

