

IN THE HONIARA CENTRAL MAGISTRATES COURT DISTRICT OF
SOLOMON ISLANDS
(Criminal Jurisdiction)



CRIMINAL CASE NO.379 of 2020

BETWEEN:

REGINA

Complainant

AND:

**Kevin Tarifiu, Junior Lesley Tata and Hilton Jeffrey
Maetarau**

Defendant

Before: Emma Garo Chief Magistrate

*Ms. Dalcy Belapitu Director Public Prosecutions for
the Crown*

Mr. Howard Lawry Public Solicitor for the defendants

Date of hearing: 9th 10th 11th June 2020.

Date of Judgement: 17th June 2020

Judgment

INTRODUCTION

1. The three defendants are charged with the offence of restriction of movement contrary to Regulation 12(1) and (3) of the Emergency Powers (Covid 19) 2020 and Order 4(1)(a)(i) and (b) of the Emergency Powers (Covid-19) (Restriction of Movement in

Honiara) Order 2020, as read with section 21 (a) of the Penal Code Cap 26.¹

2. The particulars of the offence charged against the defendant Kevin Tarifiu reads:

"That Mr. Kevin Tarifiu at Honiara in Guadalcanal Province on the 10th April 2020 at Forest Valley Public Road, Honiara, Guadalcanal Province on the 10th April 2020, at about 23 hours was not at his place of residence namely Forest Valley, that he was seen drinking alcohol together with Jeffrey Hilton Maetarau and Lesley Junior along the Forest Valley public road, an area designated an Emergency Zone during the restriction period by Prime Minister of Solomon Islands"²

3. The particulars of the offence charged against defendant Mr. Hilton Maetarau, reads:

"That Mr Hilton Maetarau at Honiara in Guadalcanal Province on the 10th April 2020 at Forest Valley Public Road, Honiara, at about 2300 hours was not at his place of residence namely Forest Valley that he was seen drinking alcohol together with Lelsely Junior and Kevin Tarafia along the first Forest Valley Public road an area designated an emergency zone during the restriction period by the Prime Minister of Solomon Islands."³

4. The particulars of the offence charged against defendant Lesly junior reads:

"That Mr. Lesly Junior at Honiara in the Guadalcanal Province on the 10th April 2020, at Forest Valley public road, Honiara Guadalcanal Province at about 2300 hours was

¹ Refer to charge filed with court on 11th April 2020

² Refer to charge filed with court on 11th April 2020

³ Refer to charge filed with court on 11th April 2020

not at his place of residence namely Forest Valley that he was seen drinking alcohol together with Jeffrey Hilton Maetarau and Kevin Tarafiu along the Forest Valley Public road, an area designated an emergency zone during the restriction period by Prime Minister of Solomon Islands"⁴

5. The defendants pleaded not guilty. I remind myself that the prosecution carries the burden to prove the charge against the defendants. The standard of proof is one of proof beyond a reasonable doubt. The burden of proof placed on the prosecution never shifts.

PROSECUTION CASE

6. The case for the prosecution is that on 10th April 2020, the three defendants Kevin Tarafiu, Leslie Junior Ata, and Jeffrey Hilton without any lawful reason were not at their place of residence, but were seen walking along the Forest Valley public road, an area designated an Emergency Zone during the restriction period by the Prime Minister of Solomon Islands.
7. The prosecution called four witnesses to prove the charges against the defendants. 5 exhibits were also tendered by consent.

THE EVIDENCE PRESENTED BY THE PROSECUTION.

PW 1 Chief Bualea

8. The first witness called by the prosecution is Chief Hendry Bualea. Chief Bualea gave evidence that he is the paramount chief of Forest Valley Community. Chief Bualea gave evidence that Forest Valley is in West Honiara, White River and that he resides on crown land. Chief Bualea explained that

⁴ Refer to charge filed with court on 11th April 2020

the crown land he referred to is government land because it's been plotted.

9. Chief Bualea said that on the night of the 10th April 2020, at 11 pm he was already in his house getting ready to go to sleep. Chief Bualea said that he knew about the curfew because the police drove along the public road and made announcements about the curfew during the day at about 5pm.
10. Chief Bualea gave evidence that in his community, he rings the late bell for children at 6pm. Chief Bualea explained that after 6pm all children in his community are expected to return to their homes and remain at their houses. Chief Bualea said that after the police made the announcement about the curfew starting at 8pm that night, he went around the community and informed members of his community about the curfew that would start at 8pm.
11. Chief Bualea said that at about 11pm that night he heard the sound of music. Chief Bualea said that he then went out of his house towards the main road and he saw the three defendants and one other person sitting down on the side of the road. Chief Bualea said he stood about 5 metres away from the defendants and told them that they were breaching the curfew order made by the Prime Minister which everyone should respect. Chief Bualea said the defendants swore at him.
12. Chief Bualea said that defendant Tarifiu told him (Bualea) that he did not register his plot of land. Chief Bualea gave evidence that when he realised that the defendants were drunk, he moved back to his house. Chief Bualea said that as he walked back to his house, he saw Police officer Timo. Chief Bualea's house is about 10 meters from the road where he said the defendants were, and that he was standing about 5 metres away from the defendants.

13. Chief Bualea in his evidence said that the homes of Jeffrey and Lesley Junior are about 15 to 20 metres away from his house and Tarifiu's home is about 150 metres away from his house. Chief Bualea in his evidence said that when Police Officer Timo arrived he told the defendants that he had contacted the police, and after that, the defendants left. In his evidence, Chief Bualea said the defendants followed the same road and went to the house of Jeffrey. Chief Bualea in his evidence said that he was still standing when he saw the police arrived and arrested the defendants at the house of Jeffrey. In his evidence, Chief Bualea marked "A" on the map [PE4] where the laundry valley road begins and the letter "B" as where the Forest Valley road begins.
14. Chief Bualea was asked to look at Exhibit PE4 and confirm if Forest Valley is part of Honiara. Chief Bualea said yes and explained that Forest Valley is in Honiara because the land where his residence is located is government land.
15. Chief Bualea was asked if he knew why the police went around announcing the curfew and he said this was because the Order was made by the Prime Minister. Chief Bualea marked the Forest Valley area on the map [PE4] with the letter "Y".
16. When cross-examined by Mr Lawry, Chief Bualea agreed that there was a market stall between his house and Allan's house but said that the market stall was destroyed before the 10th April 2020. Chief Bualea said during cross-examination that there was no one at the place where the market stall used to be at that time. Chief Bualea said that the music he heard was not coming from the area where the market stall used to be, and that it was the defendants who were playing the music he heard and that he did not see anyone else. He

said he saw the defendants and another person named Toby. Chief Bualea marked the location of Allan's house on a map [Exhibit PE4] with the letter "Z" and his house with the letter "A". Chief Bualea denied being cross with the defendants at that time, and agreed that only one of the defendants spoke to him, swore at him and insulted him.

17. Chief Bualea during cross-examination said that after one of the defendants swore at him, the defendants walked along the Forest Valley road. Chief Bualea said a little later the defendants returned, and officer Timo told them he had telephoned the police. The defendants left and went to Jeffrey's house. Chief Bualea said the police arrived after about half an hour.
18. When asked during cross-examination what ward in Guadalcanal Province he resides in Chief Bualea said West Honiara Constituency. When told during cross-examination that the question was about Provincial Government Wards, Chief Bualea explained that he was not sure about what Mr Lawry was talking about, and said that they have a seat.

PW2 MOFFAT MESACH

19. The second witness called by the prosecution is Moffat Mesach. Mr Mesach said he lives at Forest Valley and that Forest Valley is at Tasahe West Honiara. When asked to explain why he said Forest Valley is in West Honiara, Mr Mesach said this was because Tasahe is located in West Honiara and the land his residence is located on is owned by the Government. When further asked to explain why he said that the land he occupies is government land, Mr Mesach said that the land is owned by the government because it was plotted and marked with pegs.

20. Mr Mesach in his evidence said that the defendants were drinking kwaso and making a lot of noise. Mr Mesach said he was in his house when he heard the noise, and then went to the house of Chief Bualea. Mr Mesach said that by the time he arrived at Chief Bualea's house, he saw Chief Bualea talking to the defendants and telling the defendants about the curfew and that they should not be on the public road making noise but at home and that they should go home.
21. In his evidence Mr Mesach said that it was the defendant Tarifiu who swore at and insulted Chief Bualea. In his evidence, Mr Mesach said that it was whilst Tarifiu was swearing at and insulting chief Bualea that officer Timo arrived and spoke to the defendants. Chief Bualea said that when officer Timo arrived he spoke to the defendants and then the defendants left.
22. During cross-examination, Mr Mesach said that after the defendants left, Chief Bualea, officer Timo and he were standing together when officer Timo rang the police and not long the police arrived, went and arrested the defendants at Jeffrey's house. Mr Mesach said Jeffrey's house is about 50 meters away from the Forest Valley public road, Junior Lesley Ata's house about 100 meters from the road and Tarifiu's house about 150 meters away from the road.
23. Mr Mesach in his evidence pointed out on exhibit PE5 and said lot 17/58 is where chief Bualea's house is located and lot 17/56 is where Jeffrey's house is located and he marked "MM" to identify the Tasahe road

PW3 TIMOTHY BILDAM.

24. The third witness called by the prosecution is Officer Timothy Bildam. Officer Timothy Bildam is a member of the Royal Solomon Islands Police Force attached to the Marine time unit. It is not

disputed that officer Bildam is the person referred to as Timo in the evidence of chief Bualea and Moffat Mesach.

25. Officer Bildam in his evidence said that he lives at Forest Valley, West Honiara. Officer Bildam explained that he said that Forest Valley is located in West Honiara because Forest Valley is located at the Western end of Honiara and that according to his understanding, the land where his residence is located is crown land and the title to the said property is in the name of the Commissioner of Lands.
26. Officer Bildam said that on the night of the 10th April 2020, because of the curfew he stayed at home. Officer Bildam said that at about 11pm he heard male voices making noise and so he left his house to see what was happening. Officer Bildam said he recognised chief Bualea's voice. Officer Bildam said that when he arrived, the defendants were standing, talking and laughing loudly. Officer Bildam said he was about less than five meters away when he heard chief Bualea told the defendants about the curfew and that they should go back to their houses. Officer Bildam said that he spoke to the defendants and told them he would ring the police. Officer Bildam said after he spoke to the defendants, the defendants left walking along the Forest Valley road.
27. Officer Bildam said that one of the defendants swore at him. He however went to chief Bualea and as they were talking, the defendants returned to where they were earlier and continued to laugh, talk and make a lot of noise. It was at this point that officer Bildam decided to telephone the police. The police responded to officer Bildam's call and within a short time arrived at the scene, went to the house of Jeffrey and arrested the three defendants. Officer Bildam marked on exhibit PE4 with an arrow the Forest Valley area.

28. When cross-examined by Mr Lawry, Officer Bildam agreed that there is a market stall there and a few people were at the market stall that night. This aspect of officer Bildam's evidence is in stark inconsistency with the evidence of chief Bualea and Moffat Mesach who both said that the market stall had been destroyed and no one else was there except the defendants.

PW4 GEOFFREY MEESA

29. The fourth witness called by the prosecution is Police Constable Geoffrey Meesa. PC Meesa is attached to the white River Police station and is the officer who with other officers arrested the defendants at Forest Valley. PC Meesa in his evidence said that the Western Zone policed by White River Police station is located in West Honiara. PC Meesa in his evidence said that Honiara had been divided into three zones; the East Zone, the Central Zone and the Western Zone.

30. PC Meesa in his evidence described the Western Zone as being from Rove, and going along the road up to Ngossi, Tasahe A, and then to SINPF, down to Tasahe B and to White River as far as the Savo Market.

31. PC Meesa in his evidence described the Eastern Zone as being from the area going up Saint Barnabas Cathedral road and as far as Burns Creek to Lunga River. PC Meesa in his evidence described the Central Zone as the area from western side of Saint Barnabas Cathedral road to Koloale road as far as the Rove road and that all three zones are located within Honiara city. PC Meesa in his evidence said that all three zones were established before the curfew and still exist.

32. When cross-examined by Mr Lawry PC Meesa was only able to identify on the satellite map the area of Wind Valley. PC Meesa when asked during cross-examination if he knew about the Act of Parliament

that defined the Honiara City Boundary, he said no and that he only knew about the zones.

33. When asked by the Court to explain his answer about the zones he referred to, he said that he does not know about who established the zones but that he knew the three zones as police operation zones.

34. After PC Meesa gave evidence, the prosecution sought an adjournment to organise to call Jonathan Fifiiale. Mr Lawry informed the Court that no statement from Jonathan Fifiiale had been disclosed to the defence. Ms Belapitu informed the court that no statement had yet been obtained from Jonathan Fifiiale by the police. I find it strange that the prosecution could decide to call a witness whose statement had not yet been obtained by Police. Ms Belapitu did not explain to the Court why Mr Fifiiale's statement had not been obtained, nor, the relevance or the nature of the evidence he will give to assist the Court.

35. The Court granted the adjournment, with directions that the statement of Mr Fifiiale be obtained and provided to defence counsel by 8:30 am 10th June 2020 and the matter adjourned to 10 am 11th June 2020 for continuation of trial.

36. When Court resumed at 10 am 11th June 2020, Ms Belapitu informed the court that the police did not obtain the statement requested and as such the prosecution would no longer be seeking to call Mr Fifiiale to give evidence. Ms Belapitu then informed the Court that the prosecution closed its case.

DEFENCE CASE.

37. The defendants elected not to give evidence and not to call evidence.

AGREED FACTS

38. From the evidence and the documents submitted, the following facts are not disputed:

- a) All the defendants reside at Forest Valley
- b) The three defendants had been drinking alcohol in the evening of the 10th April 2020.
- c) The incident occurred at the Forest Valley area.
- d) The Emergency Powers (Covid-19) (Restriction of movement in Honiara) Order-2020 was in force at that time⁵
- e) None of the defendants at the relevant time was exempted under the Order.

ISSUES

39. The issues to be determined by the court are:

- i) Whether the place of residence of the defendants that is Forest Valley is within the emergency zone;
- ii) Whether each of the defendants was in a public place within the Honiara Emergency Zone on the 10th April 2020 at 11pm?

PROSECUTION CASE

40. The prosecution case at its highest is that the three defendants were seen at the public road at

⁵ Legal Notice no. 38

Forest Valley drunk, noisy and disorderly on the night of the 10th of April 2020. At that time the Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order, made by the Prime Minister of Solomon Islands was in force. The prosecution case is that Forest Valley is an area designated by the Prime Minister as a designated emergency zone. Therefore by not being at their home or place of residence during the restriction period, in this case from 8pm 10th April 2020, to 5 am 11th April 2020, the defendants have breached the Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order 2020 and should be convicted.

ANNALYSIS OF THE APPLICABLE LAW

41. I think the starting point for consideration is the provisions of regulation 12 of the Emergency Powers (Covid-19) Regulations 2020.⁶ Regulation 12(1)(a) of the Emergency Powers (Covid-19) regulations 2020 reads:

*"The Prime Minister may, by Order, restrict the movement of a person if it is necessary for the maintenance of order and security of the Public in an emergency zone."*⁷

42. Regulation 3 of the Emergency Powers (Covid-19) Regulations 2020:

*"A person commits an offence if the person is present at a public place contrary to the time specified in the Order. Maximum penalty 10,000 penalty units or imprisonment for 5 years, or both"*⁸

⁶ Legal Notice 47

⁷ Regulation 12(1) of the Emergency Powers (Covid-19) Regulations No 2 2020.

⁸ Regulation 12(1) of the Emergency Powers (Covid-19) Regulations No 2 2020

43. A combined reading of regulations (1) and (3) of Emergency Powers (Covid -19) Regulations 2020 is clear that a person seen in a public place during any period of restriction of movement made by the Prime Minister pursuant to the powers conferred upon him would be in breach of any such Orders for restriction of movement made by the Prime Minister.

44. The next relevant regulation to consider is the Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order 2020.⁹

45. Order 4 (1)(a)(i)(ii) (b) of the Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order 2020 reads:

(1) A person must:-

(a) be at the person's place of residence, and remain there, on and from 8pm on each of the following days;

(i) Friday, 10th April 2020; and

(ii) Saturday, 11th April 2020; and

(b) Note leave or be away from the person's place of residence from 8pm on each of those days until 5 am on the following day.¹⁰

46. Regulation 3 of the Emergency Powers (Covid-19) (Restriction Movement in Honiara) Order 2020 defines emergency zone to mean:

"the emergency zone declared by the Emergency Powers (COVID-19) (Declaration of Honiara

⁹ Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order 2020

¹⁰ Order 4(1)(a)(i) and(ii) and (b) of the Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order 2020

as Emergency Zone) Order 2020 (Legal Notice 34 of 2020)"¹¹

47. Regulation 3 of the Emergency Powers (Covid-19) (Declaration of Honiara as Emergency Zone) Order 2020 reads:

"In this order, "Honiara" means the area of land:

- (a) from the central business district of the capital city to Alligator Creek; and*
- (b) from the central business district of the Capital city to Poha River"*¹²

48. when regulation 3 of Emergency Powers (Restriction of Movement in Honiara) Order 2020¹³ is read together with Regulation 3 of the Emergency Powers (Covid-19) (Declaration of Honiara as Emergency Zone) Order 2020, the boundary of Honiara, for the purposes of enforcing the Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order 2020, would be *"from the central business district of the capital city to Alligator Creek; and from the central business district of the Capital city to Poha River"*¹⁴

49. So whilst, it is common knowledge that Poha River and Alligator Creek are for all other purposes, considered to be areas located within Guadalcanal Province boundary, for the purposes of the Emergency Powers (Covid-19) (Declaration of Honiara as Emergency Zone) and the Emergency Powers (Covid-19) (Restriction of Movement in Honiara) order 2020, the Poha River area and the

¹¹ Regulation 3 of the Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order 2020

¹² Regulation 3 of the Emergency Powers (Covid-19) (Declaration of Honiara as Emergency Zone Order 2020)

¹³ Regulation 3 of Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order 2020

¹⁴ Regulation 3 of the Emergency Powers (Covid-19) (Declaration of Honiara as Emergency Zone Order 2020)

Alligator Creek area are part of the area comprising the Honiara Emergency Zone as declared by the Prime Minister.

50. This then brings us to the two main issues to be determined by the Court. These are;

- i) *Whether the place of residence of the defendants that is Forest Valley is within the emergency zone; and*
- ii) *Whether each of the defendants was in a public place within the emergency zone on 10th April 2020 at 11pm?*

NO CLOSING SUBMISSION FROM THE PROSECUTION

51. Following the close of the prosecution case, the defendants through counsel informed the court that they will not call evidence nor give evidence and will proceed to closing submissions. Mr Lawry pointed out to the Court the provisions of 273 of the Criminal Procedure Code Cap 7 and section 143 of the Criminal Procedure Code Cap 7. The Court granted an adjournment to allow Ms Belapitu to consult with Director Public Prosecution on the position to be taken by the crown. Following the adjournment granted, Ms Belapitu informed the court that the crown concedes that it has no right to address the court because the defendants did not call evidence. The prosecution did not address the court during the closing submissions. This court is therefore left with the evidence adduced by the prosecution and the closing submission by the defence to determine these issues.

WHETHER OR NOT FOREST VALLEY IS WITHIN THE EMERGENCY ZONE.

52. Public Solicitor Mr Lawry for the defendants submitted that the prosecution is required to

prove beyond reasonable doubt that the place of residence of the defendants (Forest Valley) is in the Honiara Emergency Zone boundary because it is to those persons that the Emergency Powers (Covid-19) (Restriction of Movement in Honiara) Order 2020 applies.

53. The upshot of the defence submission by Mr Lawry is that, for there to be an area of land there must be boundaries as in a criminal trial there must be certainty about what is or is not in the emergency zone. Mr Lawry submitted that there is nothing in the definition of Honiara in the Order to extend the boundaries as far as the Capital Territory of Honiara. Mr Lawry submits that the ends of the area being defined as Alligator Creek in the East and Poha River in the West are not the same as the boundaries of Honiara city.
54. The Prosecution on the 5th June 2020, when this matter was set for trial indicated it would argue that the Emergency Zone went as far as the Honiara City Boundary Limits. Firstly no evidence had been adduced by the prosecution to point to a reasonable inference that, such an inference is a finding that is open to this court to reach by on the evidence to enable the court impute that the to the definition of the Honiara Emergency Zone boundary includes the boundary of Honiara city.
55. I have addressed my mind to the issue of whether or not the Honiara City Boundary could by inference be said to be included in the definition of the Emergency Zone under regulation 3 of the Emergency Powers (Covid-19) (Declaration of Honiara as Emergency Zone) Order 2020¹⁵
56. In the case of Minister for Provincial Government v Guadalcanal Provincial Assembly [1997] SBCA1; CA-

¹⁵ Legal Notice no. 34 of 2020

CAC 003 of 1997 (11th July 1997)Goldsborough JA pointed out that:

"Section 114(1) of Part XII of the Constitution which provides that:

"(1) Notwithstanding anything contained in the Solomon Islands Independence Order, 1978, Solomon Islands shall be divided into Honiara City and provinces.

(2) Parliament shall by law-

*(a) prescribe the number of provinces and boundaries of Honiara City and the provinces after considering advice from the Constituency Boundaries Commission...."*¹⁶

57. From the point of view of the sources of power to define the boundaries, the Constitution conferred the power on Parliament under section 114(2) of Part XII to determine the boundary of Honiara City by way of an Act of Parliament. Parliament through the Town and Country Planning Act Cap 154 defined Honiara to mean:

*"the area the boundaries of which are delineated on plan 1981 deposited in Office of the Surveyor General."*¹⁷

58. Regulation 3 of the Emergency Powers (Covid-19) Regulations 2020 defines "emergency zone" to mean a public place declared by the Prime Minister by Order under Regulation 11. Regulation 11 of the Emergency Powers (Covid-19) Regulations 2020 reads:

*"The Prime Minister may, by Order, declare a public place to be an emergency zone"*¹⁸

¹⁶ Minister for Provincial Government v Guadalcanal Provincial Assembly [1997]SBCA1; CA-CAC 003 of 1997 (11th July 1997) at page 21

¹⁷ Section 2 of the Town and Country Planning Board Act Cap 154.

¹⁸ Regulation 11 of the Emergency Powers (Covid-19) Regulations 2020

59. Parliament derived its power to define the Honiara City boundary from the section 114(2) of Part XII of Constitution. The Prime Minister in this case derives his power to declare a public place an emergency zone, from regulations 3 and 11 of the Emergency Powers (Covid-19) Regulations 2020.
60. It is not disputed on the evidence, that there is no map delineating or a plan delineating on a map the actual physical boundaries on the ground, of the area comprising the emergency zone as declared by the Prime Minister.
61. The prosecution evidence presented at its highest is that, the defendants reside at Forest Valley, Forest Valley, is in West Honiara, West Honiara is in Honiara City and Honiara City.
62. The second limb of the prosecution case is that at about 11 pm on the night of the 10th April 2020, the defendants were seen drunk and disorderly on the road at the Forest Valley a public place designated by the Prime Minister to be an emergency zone.
63. Chief Bualea, Moffat Mesach and Officer Timo all gave evidence that Forest Valley is located in West Honiara because the land they occupy is own by the government and is registered land.
64. Whether or not land is registered under the Torrens system of Land Registration that we inherit, is not a factor for determining the boundary of Honiara City. Police Constable Meesa gave evidence about the police operational boundaries divided into three zones being the Western Zone, Eastern Zone and Central Zone. Police operational boundaries determined by the Police Executives are again not a factor to determine the boundary of Honiara City.

65. Section 2 of the Town and Country Planning Act Cap 154 as amended is very clear in that the legal keeper of the area the boundaries of which are delineated on plan 1981 is the Surveyor General. In my view, the proper person to produce that map showing and explaining the boundary of Honiara City is the Surveyor General. I am further supported in this my view by the provisions of section 180 of the Criminal Procedure Code Cap 7.

66. Section 180(1) and (2) of the Criminal Procedure Code Cap 7 reads:

"(1) Any document purporting to be a plan made by a surveyor or a report under the hand of any analyst or geologist in the employment of the Government or of a medical practitioner upon any matter or thing submitted to him for examination or analysis and report may be used as evidence in any enquiry or other proceedings under this code.

(2) The Court may presume that the signature to the document is genuine and that the person signing it held the qualification or office which he professed to hold at that time when he signed it.

*(3) When any document is so used, the court may, if it thinks fit, summon the surveyor, analyst, geologist, or medical practitioner, as the case may be, and may examine him as to the subject matter of such document."*¹⁹

67. A provision with similar effect to that of section 180 of the Criminal Procedure Code Cap 7, is, section 105 of the Evidence Act 2009. Section 105 of the Evidence Act 2009 reads:

¹⁹ Section 180(1)(2) and (3) of the Criminal Procedure Code Cap 7.

"Evidence of Government public records

105. (1) Evidence of a record or of a public record of the Government may be adduced by producing a document that -

(a) purports to be such a record and to be signed or sealed by -

(i) a Permanent Secretary, or a Provincial Secretary, as the case requires; or

(ii) a person who might reasonably be supposed to have custody of the record; or

(b) purports to be a copy of or extract from the record that is certified to be a true copy or extract by -

(i) a Permanent Secretary, or a Provincial Secretary, as the case requires; or

(ii) a person who might reasonably be supposed to have custody of the record.

(2) If such a document is produced, it is presumed, unless evidence that is sufficient to raise doubt about the presumption is adduced, that -

(a) the document is the record, copy or extract that it purports to be; and

(b) the Permanent Secretary, Provincial Secretary or person -

(i) signed or sealed the record; or

(ii) certified the copy or extract as a true copy or extract"²⁰

68. A combined reading of the provisions, of section 2 of the Town and Country Planning Act Cap 145, as amended, section 180 of the Criminal Procedure Code

²⁰ Section 105 of the Evidence Act 2009.

Cap 7, and section 105 of the Evidence Act 2009, in my view make it clear that, only the Surveyor General or a representative from his office can be called to give evidence about the Honiara city boundary as defined by section 2 of the Town and Country Planning Act Cap 154 as ammended.

69. The end result is that, I cannot rely on the evidence of any of the prosecution witnesses called to make a finding of fact on the issue of whether or not Forest Valley is located within Honiara City as defined by section 2 of the Town and Country Planning Act Cap 154 as amended or the Emergency Zone as declared by the Prime Minister.
70. The Surveyor General has not been called to provide the Court with a copy of the map referred to in section 2 of the Town and Country Planning Act Cap 154 as amended and to explain the boundary of Honiara City as defined in section 2 of the said legislation. The end result is that, there is no evidence before this court to enable this court to decide whether or not Forest Valley area is within the Honiara City boundary.
71. The Honiara emergency zone is defined as the area from central business district to Alligator Creek and from central business district to Poha River. On the evidence it is agreed that there is no map or plan on which the emergency zone area is delineated.
72. Could this Court infer that the boundary of Honiara City forms part of the Emergency Zone? Could this court infer that the boundary of the Western end of the Emergency Zone ends at the bridge at Poha River? Could this court infer that the Eastern end of the emergency zone ends at the bridge at Alligator creek? Could this court infer that the emergency zone runs along the main road from Poha River to Alligator Creek?

73. The Southern boundary of the Emergency Zone has not been delineated. The Northern Boundary of the Emergency Zone has not been delineated. The central point, in terms of the co-ordinates, to clearly delineate, the point at the central business district, which demarcate, the point of origin of the Eastern Boundary, and the point of origin of the Western Boundary, of the Emergency Zone has not been delineated.

74. The Prime Minister in my view is the only person who could clarify the boundary of the Emergency Zone. The Prime Minister has not been called to give evidence about actual physical boundary on the ground of the Emergency Zone, and to explain the boundaries of the Emergency Zone. All that this court is left with is a vague definition of the Emergency Zone.

75. It is not for this court to go beyond the evidence available, to infer the boundary of the emergency zone.

76. The end result is that, I find that the prosecution has failed to prove beyond a reasonable doubt that Forest Valley, where the defendants reside is within the Honiara Emergency Zone boundary to which the Order applies. I also find that the prosecution has failed to prove beyond a reasonable doubt that the Forest Valley road is a public place within the boundary of Honiara Emergency Zone to which the Order applies. I find that the prosecution has failed to prove the charge against the defendants beyond a reasonable doubt. I find the defendants not guilty.

77. Verdict: Kevin Tarifiu: Not Guilty,
Junior Lesly Ata: Not Guilty
Jeffrey Hilton Maetarau: Not guilty

Dated the 17th day of June 2020



Emma Garo
Chief Magistrate

