



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

CRIMINAL CASE NO.1333 of 2018

BETWEEN:

REGINA

Complainant

AND:

NGIE KWONG PAU

Defendant

Before: Emma Garo Chief Magistrate

Date of hearing: 17th and 18th July 2020

Date of judgement: 27th July 2020

*Mr John Wesley Zoze for Director Public Prosecutions
Mr Lazarus Kwaiga L&L Lawyers for the defendant*

Judgment

CHARGES AND PARTICULARS OF THE OFFENCE

1. The defendant is charged with 1 count of unlawful possession instruments of gaming contrary to section 10(a) of the Gaming and Lotteries Act Cap 139.
2. Section 10(a) of the Gaming and Lotteries Act reads:

"Any person who, without lawful excuse (the proof whereof shall lie on him) has in his possession any instrument designated or adapted for gaming

shall be guilty of an offence and liable on summary conviction-

(a) in the case of a first conviction, to a fine of one thousand dollars or to imprisonment for one year or to both such fine and imprisonment; and.."¹

3. The particulars of the offence for the charge against the defendant read:

"That Mr Ngie Kwong Pau of Sarawak, Malaysia, at Honiara in the Guadalcanal Province, on 22nd of December 2018, without lawful excuse has in possession instruments designed for gaming to wit value chips ranging from 100,000, 50,000, 10,000, 5000, 1000, cards, Majong chips, gaming table, rectangle glass with design of casino fixtures and Chinese chips, chess and dices."²

PLEA

4. The defendant pleaded not guilty to the charges.

BURDEN OF PROOF AND STANDARD OF PROOF

5. The burden of proof in a criminal trial except for strict liability offences rests with the prosecution from the start. That burden is to prove each and every element of the offences charged.
6. The standard of proof is one of proof beyond reasonable doubt. This means the prosecution carries to burden of proof to prove each and every element of the offences charged beyond a

¹ Section 10(a) of the Gaming and Lotteries Act Cap 139

² Refer to the particulars of the offence pleaded in the charge filed with the court on 17th July 2020

reasonable doubt. If I have a doubt, a reasonable doubt, that reasonable doubt must go in favour of the defendant.

7. The offence of unlawful possession of instruments designated or adapted for gaming is a strict liability offence. There need not be an intention to play any game of chance whilst in possession of any equipment designed and or adapted for gaming.

ELEMENTS OF THE OFFENCE OF POSSESSION OF INSTRUMENT OF GAMING CONTRARY TO SECTION 10(a) OF THE GAMING AND LOTTERIES ACT CAP 139.

8. The elements for the offence of possession of instruments of gaming contrary to section 10(a) of the Gaming and Lotteries Act cap 139 are:

- i) There must be a defendant;
- ii) There must be place where the offence was committed;
- iii) The date when the offence took place;
- iv) The defendant must be in possession of equipment designated or adapted for gaming.

PROSECUTION CASE

9. The case for the prosecution in its opening address is that offence occurred on 22nd December 2018 when the defendant without lawful excuse was in possession of instruments designed or adapted for gaming. The instruments alleged by the prosecution to be unlawfully in the possession of the defendant are; value chips ranging from 100,000, 50,000, 10,000, 5000, 1000, cards, Majong chips, gaming table, rectangle glass with design of casino fixtures and Chinese chips, chess and dices.

DEFENCE CASE

10. Following the close of the prosecution case, the court invited submissions on whether or not it should find that the defendant has no case to answer.
11. I remind myself that the defendant does not have to prove anything. It is for the prosecution to prove at this stage of the proceedings that the defendant has a case to answer.

THE EVIDENCE ADDUCED BY THE PROSECUTION

12. The prosecution called three witnesses and tendered 20 exhibits.

EVIDENCE OF CHAIRMAN GAMES AND LOTTERIES BOARD

13. The first witness called by the prosecution is the chairman to the Gaming and Lotteries Board. Mr Ne'e is the current Chairman of the Gaming and Lotteries Board. Mr Ne'e gave evidence that he has been the chairperson to the Gaming and Lotteries Board since 2014. In his evidence Mr Ne'e explained the functions of the Gaming and Lotteries Board as is set out in section 20 of the Gaming and Lotteries Act. Mr Ne'e gave evidence that it is also part of the boards function to inspect machines and to verify gaming materials such as cards and chips. Mr Ne'e in his evidence said they also act as inspectors to inspect types of gaming activities.
14. In his evidence Mr Ne'e explained that the board normally receive applications from others and based on information provided, relevant licences from other authorities, the Board will consider the application in line with the Gaming and Lotteries Act. Mr Ne'e in his evidence

explained that the issuance of a licence or a permit is a collective decision of the board.

15. Mr Ne'e in evidence explained that when an applicant applies for a licence, the applicant must include the types of gaming in their application. Mr Ne'e explained that from the time he held the chairmanship position in 2014, only two companies operate the casino business. The companies are the Pacific Casino and Coral Seas. When asked by the Court to identify what section of the Gaming and Lotteries Act restricts the number of casinos to only two, Mr Ne'e was unable to say so. Mr Ne'e however explained that the number one reason mostly used to reject applications is that the Gaming and Lotteries Act Cap 103, only allows for two casinos to be operated within Honiara City. Mr Ne'e in his evidence confirmed that apart from Coral seas and Pacific Casino, no other business houses had been issued with a permit to operate gaming activities. Mr Ne'e in his evidence explained that in 2017, and 2018 they also considered applications but no applications were approved for any other business because of the restriction imposed by law.

16. Mr Ne'e confirmed during examination in chief that he was aware of the search warrant executed at the premises in a room at Capital Park in 2018. Mr Ne'e in his evidence said the Gaming and Lotteries Board received Intel information and the police were requested by the Board to go and see if they have Casino gaming materials. Mr Ne'e in his evidence said that he was also present at the scene during the execution of the search warrant and gave evidence that the police took disc chips that can facilitate roulette or black

Jack and other casino activities. When asked during examination about whether he was involved in the search of the premises, Mr Ne'e said he was called to inspect the materials on site. Mr Ne'e in his evidence said that after the police carried out the search he went up to a room located upstairs at the Capital Park to observe. Mr Ne'e was not able to identify the room or the room number he went in. Mr Ne'e gave evidence that there was no room number. Mr Ne'e in his evidence said he saw gaming materials on a table, some in the draws with easy access. Mr Ne'e in his evidence said he saw tables drawn with designs for games and he saw chips and cards and thought gaming was carried out in the premises.

17. Mr Ne'e in his evidence said he saw customers but did not speak with them and said that most of them pretended to not understand English. Mr Ne'e in his evidence said that from his observations the chips and cards are regulated by the Gaming and Lotteries Act. Mr Ne'e in his evidence said that the items he said he saw were inspected and taken Police nto police custody.

18. Mr Ne'e in his evidence stated that he did not know who owned the place. Mr Ne'e said in his evidence said that the Gaming and Lotteries Board did not receive any application from Winners Club Limited to operate a casino. Mr Ne'e in his evidence said that anyone who is in possession of chips without proper licence is in breach of the Act.

19. Mr Ne'e during cross-examination said that for amusement games where they have computers, fishing games and soccer games the Board does not

regulate these. During cross-examination, Mr Ne'e explained, that the Gaming and Lotteries Board normally advice police to check to see if they have machines without a proper permit. Mr Ne'e in his evidence in chief agreed that the Intel information received by the board did not name anyone or any company. Mr Ne'e agreed during cross-examination that there were people drinking beverages. Mr Ne'e during cross-examination agreed that Foreign Investment Board document showed that Winners Club Limited had permit to provide food service and beverage service activities. Mr. Ne'e agreed that he did not see any monies exchanged. Mr Ne'e agreed he did not see monies on the tables or in the draws. Mr Ne'e in his evidence agreed that if any company operate the 4 activities described in the FIB approved list of activities to be carried out by Winners Club that would not be illegal.

20. Mr Ne'e during cross-examination agreed that he inspected the confiscated items at Capital Park to identify gaming instruments after information was compiled by the police. When asked why he (Mr Ne'e) and his Board Members did not carry out an inspection at the premises, Mr Ne'e explained that they would need police assistance to carry out such an inspection. During cross-examination Mr Ne'e agreed he did not see any one gaming when he attended to the scene. Mr Ne'e agreed he would not recognise the defendant. Mr Ne'e agreed that did not know who owned the premises.

PROSECUTION WITNESS TWO FAYE SIAPU

21. The second witness called by prosecution is Office Faye Siapu. The relevant aspect of her evidence is that, she was part of the team of

officers who went to execute a search warrant on the night of the 22nd December 2018 at one of the rooms at Capital Park. Officer Siapu in her evidence said that Sergeant Salopuka lead the team officers that night. Officer Siapu said in her evidence, that when they arrived, Sergeant Salopuka first entered the building alone and served the search warrant, after that they were called in to conduct the search. Officer Siapu in her evidence said she did not know who Officer Salopuka served the warrant on. Officer Siapu in her evidence said she conducted the search at the reception area where she said she recorded chips and note books. Officer Siapu in her evidence explained that the books she took and recorded had figures written inside the book but that the records were written in Chinese characters. Officer Siapu in her evidence said she did not see any person because she remained at the reception area the whole time, until she packed the items she recorded went left them at the police station and then went home. Officer Siapu in her evidence said she saw chips and cards but that's all she knows because she does not go to the casino.

22. In evidence in chief officer Siapu said she did not know the room number of the premises searched.

23. During cross-examination officer Siapu agreed that the name Winners Club was displayed at the reception area. Officer Siapu agreed during cross-examination that the person Kwong Ing Kion was the person taken to the police station on the night of 22nd December 2018. Officer Siapu agreed

that the person she saw remanded at the Police Station was Kwong Ing Kion.

Evidence of PW3 Officer Martin Haga

24. The evidence of Officer Martin Haga in essence is that he was part of the team of officers who went and conducted the search at a room at Capital Park on 22nd December 2018. The evidence of Officer Martin Haga is that on the 22nd December 2018 he assisted in conducting a search at the premises at the Capital Park Building East of Honiara. During the search officer Haga said they found playing cards and casino chips and a round table. Officer Haga in his evidence said that he did see a number in front of the room but did not remember the room number. Officer Haga said the room looked very much like a drinking place, a club or a pub. In his evidence officer Haga said he saw a cooler in which drinks are stored and one side of the room has small dancing floor. In his evidence officer Haga said he saw a person standing behind the counter and there were about four or five people on the other side of what he described looked like a small dancing floor. Officer Haga in his evidence said those people were drinking and that they were all Asians. Officer Haga said he saw decks of cards on the table. Officer Haga in his evidence said he did not speak to any of the persons who were there and he did not know who owns the place. Officer Haga in his evidence said he found a box containing green chips with different numbers and yellow chips with same numbers. Officer Haga in his evidence said they collected the chips and then went to the police station with the person who stood behind the

counter. Officer Haga during cross-examination identified seeing Wong Ing Kiong at the Police station. Officer Haga agreed during cross-examination that any information he had about this case came from Sergeant Salopuka who was the officer in charge of leading the team to execute the search warrant on the premises.

EXHIBITS TENDERED BY CONSENT OF THE PARTIES

25. The following exhibits had been tendered by consent:

- a) Record of interview of Pau Ngie Kwong dated 24th December 2018.³
- b) Statement of Victor Hui and album of photographs taken during the search carried out on 22nd December 2018.⁴
- c) Letter from Office of Registrar of Companies confirming that Winners Club Limited was incorporated on the 25th August 2017.⁵
- d) Certificate of incorporation Winners Club Limited⁶
- e) Company Extract Winners Club Limited⁷
- f) Letter from Director Foreign Investment Division confirming History of Winners Club Limited History and Registration.⁸
- g) Business Plan Winners Club Limited.⁹
- h) Certificate of Registration Foreign Investment Winners Club.¹⁰
- i) Foreign Investment Extract Winners Club¹¹

³ Exhibit PE 1

⁴ Exhibit PE 2

⁵ Exhibit PE 3

⁶ Exhibit PE4

⁷ Exhibit PE5

⁸ Exhibit PE 6

⁹ Exhibit PE 7

¹⁰ Exhibit PE 8

¹¹ Exhibit PE 9

- j) General Hardware Tenancy Agreement.¹²
- k) General Hardware Tenancy Agreement.¹³
- l) Property Seizure Record¹⁴
- m) Statement of Officer Jonathan Aihari dated 6th January 2019¹⁵
- n) Work Permit Ngie Kwong Pau¹⁶
- o) Work Permit Ngie Kwong Pau¹⁷
- p) Company Extract KWAN-GE IMPORT AND EXPORT CO. LIMITED¹⁸
- q) Company Extract Winners Club Limited¹⁹
- r) Biopage Data passport of Pau Ngie Kwong²⁰
- s) Biopage Data passport of Fung Fa Kiong²¹
- t) Biopage Data passport of Wong Wei Ping²²

26. Following the close of the prosecution case, the court invited submissions as to why it should not find that the defendant has no case to answer, dismiss the charge and find the defendant not guilty.

ASSESSMENT OF THE EVIDENCE

27. The evidence of Mr Wilson Ne'e, Officer Faye Siapu and Officer Martin Haga, the three witnesses called by the prosecution failed to link the defendant to and put the defendant at the premises searched by the police on the night of the 22nd December 2018.

¹² Exhibit PE10
¹³ Exhibit PE 11
¹⁴ Exhibit PE 12
¹⁵ Exhibit PE 13
¹⁶ Exhibit PE 14
¹⁷ Exhibit PE 15
¹⁸ Exhibit PE 16
¹⁹ Exhibit PE 17
²⁰ Exhibit PE 18
²¹ Exhibit PE 19
²² Exhibit PE 20

28. Mr Ne'e gave evidence to the effect that the law only allows two casinos to operate in Honiara City boundary. Section 20 of the Gaming and Lotteries Act Cap 139 had been amended by the Gaming and Lotteries (Amendment) Act 2004 to the effect that; *"Notwithstanding the provisions of paragraph (a) of subsection(2), the board shall not in respect of the city of Honiara grant commercial gaming permits in excess of two."*²³

29. Once this position is accepted, it becomes clear that the Gaming and Lotteries Board would only be considering the renewal of licences for the Coral Seas and Pacific Casino and no other new applications. Because by virtue of the operation of the law, unless the licence of one of the two companies (Coral seas or Pacific casino) is not renewed or is cancelled then for Honiara City, no application for commercial gaming from any other applicant should even be considered.

30. In this case if I accept that the defendant is in possession of instruments or equipment designated or designed for gaming, then the prosecution case is made out.

ASSESSMENT OF THE DOCUMENTARY EVIDENCE TENDERED

31. Exhibit PE 3 is the letter dated 7th February 2019 written by Tobit Taravu confirming that Winners Club Limited was incorporated on 25th August 2017.

32. Exhibit PE5 confirmed that the Directors of Winners Club are Fa Kiong Fu and Wei Ping Wong. Exhibit PE5 also confirmed that the registered

²³Section 7 Gaming and Lotteries (Amendment) Act 2004

office of Winners Club is Suit 3, 1st Floor, Capital Park Building, Burns Creek Honiara, and P.O. Box 1808, Honiara. The Contact person for Winners Club Limited as listed is Henry Pau.

33. In Exhibit PE6, Mr Derrick Aihari Director Foreign Investment stated at "7. Contact Person: Mr Henry Pau, of P.O. Box 1808, Honiara, Solomon Islands...I cannot verify if this is Ngie Kwong Pau who is currently investigated over this case, however he is not the owner of this company, Winners Club Limited according to certificate issued by this office and the office of the Registrar of companies."²⁴

34. The prosecution had failed to explain to this court whether Henry Pau the person listed as the contact person for Winners Club Limited at that time of its incorporation, is the same person as Ngie Kwong Pau the defendant in this case. Director Foreign Investment was not able to clarify this. This court cannot conjecture the evidence to conclude that Ngie Kwong Pau is the same person as Hendry Pau named as the contact person at the time the company Winners Club Limited was incorporated.

35. Mr Zoze had submitted that the defendant signed as tenant for Suite 3, Second Floor of Capital Park Building from 5th September 2017²⁵ to 1st September 2020 and then again from 8th August 2017 to 8th June 2020²⁶. The argument put forward by Mr Zoze is that the defendant in signing as the tenant for Suite 3 must be deemed to have knowledge of what was going on in the building

²⁴ Paragraph 2 number 7 paragraph 3 of Exhibit PE 5.

²⁵ Exhibit PE 8

²⁶ Exhibit PE 11

where the search was conducted gaming equipment confiscated by Police.

36. This aspect of the submission by Mr Zoze is not supported by the documentary evidence. Firstly, Exhibit PE 6 and Exhibit PE8 put the Principal Business Location of Winners Club Limited at Lot 4 Suite 3, 1st Floor Capital Park Building. On the other hand, Exhibit PE 10 and PE 11 are tenancy agreements entered into between AJ General Hardware (Landlord) and Headway Wholesale and Retail Co. Limited, P.O. Box 1808, Ranadi Honiara (Tenant). The defendant signed on these two occasions but in a sense of signing on behalf of a company and not in his personal capacity. Secondly the two tenancy agreements were executed in respect of a Suite 3, on the second floor of the Capital Park Building. The prosecution has failed to show the any link between Headway Whole Sale and Retail Co. Limited and Winners Club Limited. Two different companies one located one on the first floor of the Capital Park Building and the other located on the 2nd floor of the Capital Park Building. The failure by the prosecution witnesses to clearly state the room number and the location of the room where the search was conducted by the police does not take the prosecution case any further. Mr Kwaiga's submission that there was no evidence to link the two companies with Winners club Limited is the most reasonable and logical argument to accept based on the evidence.

37. I find it strange that the prosecution did not provide this court with a copy of the search warrant order issued by the court. I also find it strange that the prosecution did not call Sergeant Salopuka to give evidence about who he

served the search warrant to and where in terms of which room at the Capital Park Building he executed and carried out the search and confiscation of items with officers of the Royal Solomon Islands Police Force.

38. Exhibit PE12 is the Royal Solomon Islands Police Force Property Seizure Record. This document contains a description of all the items seized by the police on 22nd December 2018. The place searched was not described in Exhibit PE 12. Exhibit PE 12 was signed by warrant holder officer Zachariah Salopuka, Property Officer Philip Foufaka, Exhibit Register Officer Estrella Ilapi and the defendant. Mr Zoze submitted that Exhibit PE12 confirmed all the items seized by the Police on 22nd December 2018. PE 12 had been signed by the three officers and the defendant. Mr Zoze submitted the defendant signed as the owner or person in possession of those items seized. Mr Zoze submitted that the defendant signed as owner of or the person in whose possession the items listed were seized. Mr Zoze submitted that exhibit PE 12 is crucial documentary evidence linking the defendant to the chips, cards Majong chips, gaming table, rectangle glass with design of casino fixtures and Chinese chips and dices.

39. The flaw in the submission by Mr Zoze is that not one single item described in the property seizure record had been tendered in court as exhibit or part of the evidence. It is not for this court to go beyond the evidence and conjecture that what had been described in the list of items seized is part of the evidence presented when not a single item had been

tendered as exhibit or part of the prosecution evidence to the court. The prosecution by failing to produce the instruments it say the defendant was unlawfully in possession of under the Gaming and Lotteries Act Cap 139, has tactically disadvantaged its own case, by shooting its own case in the foot. The prosecution failed to produce and present the equipment to the court as part of its case. The prosecution failed to explain how each instrument/equipment is used in the game of chance.

40. The court does not know where the items/instruments or equipment seized by the Police are kept. The only thing that is certain is that, the items seized by the police had not been tendered in court as part of the evidence in the crown's case against the defendant. This in my view is fatal to the prosecution case.

SUBMISSION BY DEFENCE

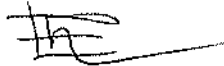
41. I accept the submission by Mr Kwaiga that the prosecution failed to adduce any evidence to show that the defendant was the owner of the rented premises raided at the Capital Park Building. I accept the submission by Mr Kwaiga that the prosecution failed to produce evidence to show that the defendant is in possession of the said instruments and or equipment.

FLAWS IN THE PROSECUTION:

42. When all the flaws in the whole of the prosecution case as presented are put together, the only reasonable conclusion to reach is to find that the defendant has no case to answer. Once I reach this finding, I have a duty to stop

the trial. I dismiss the charge of unlawful possession of equipment designated or adapted for gaming against the defendant. I find the defendant not guilty.

Dated the 27th July 2020



Emma Garo
Chief Magistrate

