

IN THE EASTERN-OUTER DISTRICT MAGISTRATES' COURT

AT LATA

Criminal Jurisdiction Criminal Case No. 629,630,631 of 2018

On the 10th day of August 2020

Mr. Ifuto'o for Clement Tauto

Ms. Rame for Jerry Meiyoko

BETWEEN:	REGINA	Complainant
AND:	CLEMENT TAUTO	Accused
AND	JERRY MEIYOKO	Accused

JUDGMENT

Background

The two defendant in this matter are Clement Tauto and Jerry Meiyoko. Clement Tauto is facing the charge of arson contrary to section 319 (b) of the Penal Code. Jerry Meiyoko is facing one count of simple larceny contrary to section 261 (1) of the Penal Code and one count of wilful damage, contrary to section 326 (1) of the Penal Code.

They were co-accused with the Felix Nina, Titus Meoblir and Simon Meabir who had been acquitted of the charges against them at the No Case to answer stage.

The Crown called eleven witnesses and tendered a number of documents in support of their case in proving the charges.

Both defendants exercised their rights to remain silent and called no further evidence in their cases. Thus, the only evidence available for assessment in this proceeding is the evidence adduced by the Crown.

The Prosecution Case against Clement Tauto

The Crown's case against Clement Tauto is that he was part of the group that included Titus Meoblir, Jerry Meiyoko and Simon Meabir who burnt four (4) bulldozers and two (2) excavators, the properties of Xian Lin Timber Company. The Crown alleges that the burning of the machines by Clement Tauto and others occurred between 27th and 28th of May 2018 at Nadirke bush, Santa Cruz, Temotu Province. The Crown alleges that that burning was unlawful.

The Prosecution's evidence in support of the charges against Clement Tauto.

The only evidence that the Crown relied on against the accused Clement Tauto is his admissions in his Record of Interview which was admitted into evidence for the trial proper and marked as Exhibit P1.

He admitted his involvement and participation in the burning of the two excavators and four bulldozers between 27th and 28th May 2018.

The admissions in the Police Record of Interview are as follows;

Q22: Allegation/Complaint

That long wanfala taem between Sunday 27th May 2018 and Monday 28th May 2018 long night, iu wetem somefala men nao name blo oketa Titus Meoblir, Simon Meabir and brother blong you Jerry Meiyoko, iufala go up nao long place wea oketa machines blong Xiang Lin Company stap and lightem fire long somefala machines ia. Oloketa machines ya nao olsem 2 excavator and four fala bulldozers.

Q23: Waswe you here nao what Police/mi readim kam long you? Waswe you clear long hem?

Ans: Ya

Q25: What nao bae you say long disfala complaint/stori me just readim long you?

Ans: Point wea mifala bonem machine ya, becos taem company come inside long Pora Log Pond hem no garem any license, no any timber right hearing, no anyone givim consent. Mi like for talem too that no proper consultation.

Q26: So iu talem lo Police that youfala nao bonem machine ya?

Ans: Ya.

Q27: Wetem long me ya nao hem pictures blo oketa machines wea iufala bonem. What nao bae you say lo photos ya?

Ans: Oketa machines ya nao mefala bonem ya.

Q28: Who nao talem iufala for bonem machines ya?

Ans: Titus Meoblir nao talem mefala for bonem machines ya.

Q29: How many long iufala nao go bonem machines ya?

Ans: Four fala

Q30: Who nao four fala ya?

Ans: Titus Meoblir, Simon Meabir, Jerry Meiyoko and mi.

Q31: Youfala go long what time?

Ans: Somewhere long 9 o'clock long night

Q32: Long what day nao you meanim?

Ans: Sunday night.

Q33: Ufala come back what time?

Ans: Somewhere 5 o'clock long morning.

Q34: What nao Meablir say long iufala time iufala go burnim machines?

Ans: Em say uni must go burnim oketa machines ya becos iumi write letter long company finish but em no herem iumi so iumi go for burnim oketa machines ya.

Q40: Ufala bonem machines how?

Ans: Mefala cuttem nao place wea oil flow ya and then pourem long machines ya and lightem/strikem matches long oloketa machines ya.

Q42. Iu meanim six fala machines ya?

Ans: Ya

Q44: Waswe you guilty long disfala allegation/complaint that youfala burnem machines long hem?

Ans: Ya me guilty long hem.

Q46: Anything further you like talem me about this fala matters iumi discussim today?

Ans: Ya me like talem nomo that me burnim machines long right blong mi and me tekem me olsem mi warrior.

Q52: What nao you like addim?

Ans: Mifala like for stoppem company for no go insaet lo Meingo land because mefala no stretem mefala out yet and place ya before long Allardyce Company Meato nao trustee long land ya but mefala like for shortem out fastaem.

Discussion

Section 167 of the Evidence Act 2009 states;

A confession is an admission made at any time by a person accused of an offence stating or suggesting that the person committed the offence.

The above confession was made in the presence of the Interviewing Police Officer who had performed the function of interviewing the accused as part of the investigation into the alleged burning of the machines.

Having found that the confession was made voluntarily, and there was no circumstances of unfairness that warranted an exercise of the Court's discretion to exclude the confessional record of interview, the record of interview which contained the admissions by Tauto were admissible evidence in the trial. Ultimately, this is the sole evidence against the accused in this proceeding.

The issue for the Court is how reliable is this piece of evidence in finding guilt? A confession made voluntarily by an accused to or in the presence of an investigating official, even without any other corroborative evidence is more than capable of proving beyond reasonable doubt the offence charged.

However, the Court must exercise caution when considering the weight to be attached to such evidence. In **Carr v The Queen** (1988) 165 CLR 314; Dean J said;

"I consider that, as a prima facie rule, those specific directions should, in a case where uncorroborated police evidence of the making of a disputed oral confession is the only, or substantially the only, evidence against an accused, include a further warning to the jury pointing to the danger involved in convicting upon the basis of that evidence alone. That further warning should be to the effect that, while it is ultimately a matter for them, the members of the jury should give careful consideration to the dangers involved in convicting an accused person in circumstances that where the only (or substantially the only) basis for a finding that his guilt has been established beyond reasonable doubt is uncorroborated and disputed police evidence of oral admissions allegedly made by him while he was held in custody by the police.

Having considered the confessional answers provided by the accused in the Record of Interview, there is not an inch of doubt in my mind about the reliability of the confession as a basis for establishing guilt in this case. The admission was in great detail and there is nothing to suggest that it cannot be true. I am satisfied beyond reasonable doubt that the accused,

Clement Tauto, had actively participated in the burning of the four bulldozers and the two excavators whether as an aider and abettor or as principal. The burnings occurred between 27th May 2018 and 28th May 2018. The machines were properties of Xiang Lin Company. The burnings were clearly unlawful. He is therefore convicted on the charge of arson.

I will now turn to the accused, Jerry Meiyoko.

Jerry Meiyoko

The Crown's case against Jerry Meiyoko in relation to the charges of simple larceny and wilful damage is that, on 27th May 2018, before the machines were burnt, he was present at the site where the six machines were and damaged the meter reader of one of the machines.

The Crown also alleges that Jerry Meiyoko also took keys from one of the machines and also removed a container of diesel and a spanner. The properties of Xian Lin Company. The Crown says that he had intention to permanently deprive the owner, the Company when he removed the said properties.

The Prosecution's evidence in support of the charges against Jerry Meiyoko and discussion of the evidence

The two Prosecution witnesses whose evidence relate to the two charges against Jerry Meiyoko are PW 4 - Warren Chris Mirdika and PW 5 - James Meaio.

PW 4's evidence is that on Sunday 27th May 2018, he was with James Meaio. They went to the bush at Mega. When they arrived at the first excavator he saw Jerry Meiyoko removed a shifter or spanner from the excavator at where the driver sits on the excavator. He said they walked to the second excavator and he went to have his rest on the excavator when Jerry Meiyoko came on the second excavator. He said he saw Jerry Meiyoko removed the keys from the excavator and pushed it in his (Jerry) bag.

He said that Jerry also pulled out the meter from the excavator and threw it down the valley.

PW 4 said in his evidence that he also saw Jerry Meiyoko took a container of diesel from a bulldozer and hid it at the side of the road.

He said they were at the machines at around 3 pm on that day. There were three machines there, two bulldozers and one excavator. He said he observed that Jerry Meiyoko was serious when he did those actions.

He said Jerry Meiyoko was well-known to him and he identified him in court.

In cross-examination PW 4 agreed that he gave the keys to Jerry.

PW 5'S evidence is that on 27th May 2018 they followed the road and then had their rest. They saw Jerry Meiyoko there. When they came to an excavator, Jerry then removed the key of the excavator and put it in his (Jerry) bag. He said he also saw Jerry pulled out the meter of the excavator and threw it in the bush.

He said he saw Jerry Meiyoko removed a container of diesel, one gallon from the bulldozer. He said Jerry took it and hid it.

He also said in his evidence that when they came down to a bulldozer Jerry then removed a spanner and put it in his (Jerry) bag.

He said they were at where the machines were in the afternoon of that day.

In cross-examination he agreed with the Defence proposition that it was Warren who climbed onto the excavator and pulled out key. He agreed with the Defence that he did not see who broke the meter of the excavator. He also agreed under cross-examination that Warren was the one who removed a spanner from the second excavator and put it in Jerry's bag.

Under re-examination, PW 5 confirmed that Jerry damaged the meter.

There were inconsistencies between the evidence of PW 4 and PW 5 about who removed the keys, spanner and diesel. However, those inconsistencies do not really affect the element of taking with intent to deprive. The evidence that remain intact after cross-examination is that the accused Jerry Meiyoko took the keys and spanner and put them in his bag and left with them. The evidence also shows that Jerry took the container of diesel and hid it in the bush.

The acts of putting the items in his bag and subsequently left with them and hiding the container of diesel in the bush points only to one conclusion and that is, the accused clearly had an intention to permanently deprive the owner of the properties. On that basis, I am satisfied beyond reasonable doubt that Jerry Meiyoko committed the offence of simple larceny as alleged in the charge. He is convicted on that charge.

I now turn to the charge of wilful damage. There is overwhelming evidence that the accused Jerry Meiyoko damaged the meter of one

of the excavators. I am satisfied beyond reasonable doubt that Jerry Meiyoko had wilfully damaged the meter of one of the excavators. He is guilty as charged and accordingly, convicted.

Orders

- a) Find both accused guilty as charged,
- b) Sentencing & mitigation submissions to be filed at the CMC Registry by 4:30 pm on 17th August 2020,
- c) Case adjourned for oral submissions by Counsel on 18th August 2020,
- d) Both accused are excused from appearing at CMC on 18th August 2020 and their bails are extended.
- e) Date for sentencing to be decided on 18th August 2020. Parties will be informed of the date for sentencing. The sentence will be delivered in Lata.

