



REGINA
V
ALBERT SAMANI

Before: Principal Magistrate Ms. Fatimah Me'ere Taeburi
Ms. Margaret Suifa'asia (DPP) for the Crown
Mr. George Gray and Mr. Donation Houa (PSO) for the Defendant

Date of Hearing: 24th and 25th August 2020
Date of Sentence: 28th August 2020

**RULING ON APPLICATION PURSUANT TO S.118 OF THE
EVIDENCE ACT**

Introduction

1. The defendant is charged with two counts of false pretence contrary to section 308(a) of the Penal Code.¹
2. The allegations against him are that on two occasions he wrote two letters to the complainant Mr. Ling Chunglong requesting \$1000 separately under false pretences that the monies were to be used for a police party and police food rations. The crown alleged that the defendant used the monies for himself.
3. As a matter of background, at the time of the offending, the accused was the Provincial Police Commander for the Choiseul Province. At the time, he was stationed at the Taro Police Post.
4. The complainant in this case is a Malaysian National who was also the Camp Manager of Surwood Logging Company. At the relevant time the complainant Mr.

¹ Refer to charge filed 6th November 2017

Ling was managing the company's camps including the Kekepongo Camp in the Choiseul Province.

The crown's application

5. The crown opened its case on the 24th of August 2020. This court was informed that the complainant Mr. Ling is not available in the country. The crown then brings the application under section 118 of the Evidence Act 2009 to render the statement of the complainant admissible.
6. The crown's submission is that the current situation on the threats of COVID-19 has made it impossible to bring Mr. Ling Chunglong into the country.
7. The statement of Mr. Ling was tendered in court for identification. For reference purposes I now refer to the statement as "LMI". It is dated 19th May 2013. It is a three paged handwritten statement in the English language.
8. The bottom of all three pages was signed and the last page of the document included a certification of the recording police officer.
9. The statement was taken by Staff Sergeant Mr. Hudson Manuvao.
10. In support of the application, the crown called Mr. Manuvao as a witness. He said that he interviewed Mr. Ling at the Kekepongo Logging Camp in May 2013 and recorded the statement in writing at the same time. He was shown the statement of Mr. Ling and he agreed that that is the statement he obtained from the complainant.
11. As a matter of general rule, hearsay evidence is inadmissible. One of the exceptions to the rule on hearsay is section 118 of the Evidence Act.
12. As a starting point, section 118 (2) of the Act requires the party who seeks to adduce hearsay evidence to give reasonable notice to the opposing party of the intention to rely on hearsay material.² I am satisfied that the crown has fulfilled this requirement by way of filing and serving a notice of its intention on the 14th of September 2018. I am satisfied that the notice was given in reasonable time. The notice was given about 2 years prior to the application being made in court.
13. Section 118(1) of the Evidence Act provides the circumstances in which hearsay evidence can be rendered admissible. The section provides;

² Section 118(2) Evidence Act 2009.

118.

1) *A hearsay statement is admissible in any proceeding if –*

a) The circumstances relating to the statement provide reasonable assurance that the statement is reliable; and

b) Either –

i. The maker of the statement is unavailable as a witness; or

ii. In any case where the court considers that undue expense and delay would be caused if the maker of the statement were required to be a witness.³

14. In the case of *Regina v Walenenea* [2013] SBHC 2 (CRC 141 of 2010) and *Regina v Milamae* HCSI CRC NO. 247 of 2017, the Courts discussed to great lengths the issue of the admissibility of hearsay evidence. In both cases, the courts have referred to the requirements provided in section 118 of the Evidence Act.⁴
15. The court must firstly consider whether the circumstances in which the statement was obtained provide reasonable assurance that the statement is reliable. The court must also consider whether the maker of the statement is unavailable as a witness or whether there would be undue delay and expense in producing the witness in court. The prosecution being the applicant is required to satisfy both requirements, namely whether the statement is reliable and whether the witness is unavailable or that it would be costly or undue delay would be caused to require the witness to be produced.
16. In the case of *Milamae*, the court held that the standard of proof in this application is beyond a reasonable doubt.⁵ I adopt that standard in this case. The prosecution being the applicant bears the burden of proof.
17. I now consider whether the statement of Mr. Ling Chunglong dated 19th September 2013 was obtained in circumstances in which I can be reasonably assured that the statement is reliable.
18. Staff Sergeant Mr. Manuvaø stated in his evidence that he interviewed Mr. Ling at the Kekepongo Logging Camp sometimes in May 2013. He said that he understands Mr. Ling to be a Malaysian National. He interview Mr. Ling in the Pidjin English language and he recorded the statement in the English language. He

³ Section 118(1) Evidence Act 2009

⁴ *Regina v Walenenea* [2013] SBHC 2 (CRC 141 of 2010) and *Regina v Milamae* HCSI CRC NO. 247 of 2017

⁵ Refer to footnote No. 4

said that Mr. Ling understands both languages. He said that he gave the opportunity to Mr. Ling to read through the statement. After reading and being satisfied of the contents of the statement, Mr. Ling then signed at the bottom of all three pages of the statement. Mr. Manuvao then certified the last page of the statement as the officer who recorded the evidence.

19. Mr. Manuvao agreed that he did not engage an interpreter during the interview. He said that he did not see it necessary to engage an interpreter because the complainant understands both Pidjin English and English.
20. The accused also gave evidence in court. He said that he has met Mr. Ling on several occasions during his time as the PPC for Choiseul Province. He said that during his visits, he would communicate with Mr. Ling in the Pidjin English language. He said that Mr. Ling does not speak Pidjin English very well and that Mr. Ling does not speak or understand the English language at all.
21. There is no other evidence produced by the Crown on the level of competency of Mr. Ling in both the Pidjin English and the English language. I consider that Mr. Ling is not a Solomon Islander, therefore I accept that Pidjin English is not his first language. In his statement he said that before the interview with Mr. Manuvao, he has been in the Solomon Islands for about a year. I am uncertain as to whether within the one year that he has been in this country, he has been able to learn and fully comprehend the Pidjin English language.
22. I consider that the meeting between Mr. Ling and S/Sergeant Mr. Manuvao during the interview at Kekepongo Camp was their first encounter. There is no evidence to suggest the duration of the interview. There is also no evidence to suggest how long Mr. Manuvao was at the camp. Mr. Manuvao's familiarity with Mr. Ling's competency in the Pidjin English and the English language is critical in this application. Mr. Manuvao's familiarity with Mr. Ling can be determined by the number of times they have met, the duration of their meetings and so forth. It can be generally accepted that the more time you spend conversing with another person, the more familiar you will be as to the person's style and manner of conversing, the language, personality, problems in speech or hearing if there is any, and many more.
23. It is my view that compared to Mr. Manuvao, the accused is in a better position to assess the level of competency of Mr. Ling in both the Pidjin English and the English language. This is because the accused's evidence is that he has met and communicated with Mr. Ling on several occasions. The accused would be more familiar with the competency of Mr. Ling to communicate and understand both languages.

24. I also have issues with Mr. Manuvao's evidence because after he recorded the evidence of Mr. Ling, he did not provide his own statement. I have doubts as whether he could clearly recall all the events of the interview with Mr. Ling out of his memory alone.
25. The crown did not call any other evidence from any of the previous work colleagues of Mr. Ling. In absence of that kind of evidence, I do not think that Mr. Ling is very competent in the both the Pidjin English and the English language.
26. I have considered section 118(4) of the Evidence Act which provides the factors that a court can take into account when determining whether the circumstances in which a statement was obtained are reliable or not⁶. I am not satisfied that the statement of Mr. Ling was obtained in circumstances in which I can be reasonably assured that it is reliable.
27. I now consider whether Mr. Ling is unavailable as a witness.
28. There is no evidence presented in this case as to the actual location and whereabouts of the witness. I accept that the crown has filed a notice to rely on the statement of Mr. Ling on the 14th of September 2018. Ms. Suifa'asia has informed the court that the witness is residing somewhere in the African continent. I am certain that the prosecutor is well aware that evidence cannot be given from the bar table. Evidence must be presented in the proper manner in court. It could be an honest oversight on the part of the prosecutor. In absence of the evidence, I am not satisfied that Mr. Ling is an unavailable witness.
29. I must thank counsels for the great assistance provided to the court in this case. I always hold the view that poor performance must be criticised and likewise good work must be commended.
30. Based on my findings, I refuse the application by the Crown.
31. Right to appeal within 14 days.



⁶ Section 118(4) Evidence Act 2009