

IN THE SOLOMON ISLANDS MAGISTRATES' COURT
AT HONIARA
Criminal Case No. 1116 of 2014



REGINA
V
NELSON MAETA, JOHN ROSS AND GORDON MARK

Before: Principal Magistrate Ms. Fatimah Me'ere Taeburi
Mr. Andrew Kelesi (DPP) for the Crown
Ms. Serah Karani (PSO) for Nelson Maeta
Mr. Stanley Aupai (PSO) for John Ross
Mr. Henry Kausimae (PSO) for Gordon Mark

Date of Hearing: 7th September 2018 to 20th August 2020
Date of Sentence: 7th September 2020

RULING ON APPLICATION FOR NO CASE TO ANSWER

Introduction

1. The three defendants in this matter are all charged with one count each of false pretence contrary to section 308(a) of the Penal Code and one count each of intimidation contrary to section 231(1) of the Penal Code.¹
2. All three defendants are charged separately and independently. It was never the prosecution's case that the three men acted together in committing the offences.

Allegations

3. In respect of the false pretence charges, the crown's case is that each of the three defendants lied to the complainant that three metal bars of no value are made of gold. It is the prosecution's case that the defendants knew that the representations they made to the complainant were in fact false.

¹ Section 308(a) Penal Code [Cap 26]; section 231(1) Penal Code [Cap 26]

4. The crown's case is that on the basis of the false pretence, each of the defendants obtained various amounts of money from the complainant on different occasions which amounted to \$300,000.00.
5. In respect of the intimidation charge the crown's case is that each of the three defendants threatened and caused alarm to the complainant.
6. All defendants pleaded not guilty to the charges on the 7th of September 2018 and a trial ensued in the same year.
7. The prosecution called 4 witnesses in the following order; Stephen Ngaraidiri (PW1), Morris Malopa (PW2), Hypolite Taramae (PW3) and Wilson Lui (PW4). The first two witnesses are relevant to charge of intimidation against the defendants. The two latter witnesses are relevant to the charge of false pretence.
8. A total of 7 exhibits were tendered. They include the following; record of interview of John Nelson Ross (PEX1), record of interview of Gordon Billy Mark (PEX2), record of interview of Nelson Maeta dated 11 November 2014 (PEX3), record of interview of Nelson Maeta dated 31 October 2014 (PEX4), statement of Hypolite Taramae dated 22 September 2014 (DEX1), statement of Hypolite Taramae dated 8 October 2014 (DEX2), statement of Hypolite Taramae dated 14 November 2011 (DEX3).
9. The crown also tendered the 3 bars for identification purposes. They are marked as PI1, PI2 and PI3. These materials were never tendered as exhibits in the trial.

The law on no case to answer

10. At the close of the crown's case, all three defendants made applications on no case to answer.
11. The starting point in law in an application on no case to answer is section 197 of the Criminal Procedure Code which provides;

*If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit the accused.*²
12. In *Tome v Regina*, the Court of Appeal stated that the prosecution's evidence must be capable of supporting a conclusion beyond reasonable doubt that the accused is guilty.³

² Section 197 Criminal Procedure Code [Cap 7]

13. It is has also been held in numerous cases in both the High Court and the Court of Appeal that inconsistencies in the prosecution evidence are not matters for consideration at this stage. It is stated that the prosecution's case must be taken at its highest meaning the court is to consider the evidence most favourable to the crown.⁴
14. I consider the merits of the application by each defendant and the evidence against each of them.

Nelson Maeta

15. I start with the application raised by Mr. Nelson Maeta.
16. In her written submissions, it is clear that Counsel Ms. Karani on behalf of Mr. Maeta is not raising the application on the charge of intimidation. I therefore do not need to assess the prosecution evidence on the charge of intimidation against Mr. Nelson Maeta. The application raised in respect of Mr. Maeta is in relation to the charge of False Pretence.
17. The charge of false pretence against Mr. Maeta reads as follows;

That Nelson Maeta at Honiara on unknown dates between the 1st July 2011 and the 30th November 2011 by a false pretence to wit that three bars of non-precious metal were gold bars with intent to defraud did obtain from a person namely Hypolite Taramae a sum of money to wit \$300,000.00.⁵
18. Ms. Karani argued that there is no prosecution evidence that Nelson Maeta received an amount of \$300,000.00 from Mr. Taramae. She also argued that there is no evidence that Mr. Maeta had knowledge that the bars claimed to be made of gold are in fact non-precious metals.
19. The evidence relevant to this charge comes from Mr. Hypolite Taramae and Mr. Wilson Lui.
20. Mr. Taramae said that sometimes in July 2011, a group of men, who claim to be from the Guadalcanal Province, came and met him at his office at Anthony Saru Building.

³ [2004] SBCA 13

⁴ *R v Tara* [2005] SBHC 91; *Regina v Somae* [2005] SBCA 18; *Regina v Tome* [2004] SBCA 13

⁵ Charge filed on 6th September 2018

21. Mr. Taramae said that at the time, he was the Honourable Member of Parliament of the Central Makira Constituency and he was also the Minister of the Ministry of Unity, Reconciliation and Peace.
22. He said that three men who identified themselves as John Ross, Willie and Jeffery came and met with him on two occasions at his office. He said that the men wanted to borrow money from him to facilitate a reconciliation ceremony. In exchange for the money to be lent, the men offered to give him the so called 'gold bar' to hold on to as a form of security.
23. Mr. Taramae's evidence is that Mr. Maeta was not present in the first two meetings with the group. Mr. Taramae said that Maeta joined the group at the third meeting on an unknown date in 2011. He said that on that occasion, he met with Maeta, John Ross and Jeffery at the Pacific Casino. Taramae said that during this meeting, the group asked him for \$15,000.00. He said that in addition, they also asked for some money for room hiring and other expenses. He said that he gave them a total of \$16,190.00.
24. Mr. Wilson Lui said in his evidence that he knew Nelson Maeta through John Ross. Mr. Lui said that he used to hang out with Nelson Maeta and John Ross. He said that he overheard the group's plan to negotiate the sale of gold bars for Mr. Taramae.
25. He said that he was with the group on three occasions when they met with Mr. Taramae to negotiate the sale of gold bars. He said that he remembered Mr. Taramae gave money on those three occasions but that he does not of the amount of money given. He did not say specifically whether Nelson Maeta was present when money was passed from Taramae to the group.

John Nelson Ross

26. Like Mr. Maeta, Mr. John Ross is not raising the application on the charge of intimidation. His application is brought on the charge of false pretence. I therefore do not need to consider the prosecution's evidence on the charge of intimidation.
27. The charge of false pretence against Mr. Ross is as follows;

That John Nelson Ross at Honiara on unknown dates between the 1st of July 2011 and the 30th of November 2011 by a false pretence to wit that three bars of non-precious metal were gold bars with intent to defraud did obtain from a person namely Hypolite Taramae sum of money to wit \$300,000.00. ⁶

⁶ Charge filed on 6th September 2018

28. The crown's evidence against Mr. Ross on the false pretence charge are as follows;
29. Mr. Taramae said that he saw John Ross for the first time on the 1st of July 2011. He said that Mr. Ross, Willie and Jeffery came to his office at the Ministry of Unity, Reconciliation and Peace at the Anthony Saru Building on that day. He said they came to request assistance in terms of funding to facilitate a reconciliation ceremony.
30. He said that they agreed that the group will borrow some money from him and that they would repay the money when they sell a so called gold bar. They showed him a photo of the gold bar which was stored in their mobile phone. They also showed him a letter which appears to be written by the Minister of the Ministry of Mines, Energy and Rural Electrification. At the time Honourable Mr. David Day Pacha was the Minister of the Ministry of Mines. Mr. Taramae said that the letter was written and signed by the Honourable Minister Mr. David Day Pacha.
31. Mr. Taramae said that he requested to see the gold bar before he could agree to the deal. He said that at the next meeting, John Ross and the group brought an object which they said is a gold bar and which he believed to be made of gold. He said he had never seen gold before. He said that the letter purportedly written by the Minister of Mines and the appearance of the so called 'gold bar' led him to believe that the object was really gold.
32. On their request, he gave them \$20,300.00. He held onto the gold bar for security purposes. The agreement was that the group are going to negotiate the sale of the gold to a buyer from overseas. They would then repay Mr. Taramae with interest.
33. He said that after the second meeting, John Ross was in the same group who came and saw him on 6 more occasions. They requested money from him for various reasons relating to the claim to sell the gold bar and he gave them the amounts requested. The total amount he gave them during those 8 meetings in which John Ross was present is \$79,990.00.
34. Mr. Wilson Lui's evidence is that he is aware that John Ross and others were negotiating a deal to sell a gold bar with Mr. Taramae. He said that he remembered Taramae gave money to John Ross in relation to the deal on three occasions. He said that he does not know how much was given to John Ross on those occasions.

Gordon Billy Mark

35. Mr. Gordon Mark argues that he has no case to answer on both counts of false pretence and intimidation.

36. The charge of false pretence against Mr. Mark is as follows;

That Gordon Billy Mark at Honiara on unknown dates between the 1st of July 2011 and the 30th of November 2011 by a false pretence to wit that three bars of non-precious metal were gold bars with intent to defraud did obtain from a person namely Hypolite Taramae a sum of money to wit \$300,000.00. ⁷

37. The charge of intimidation against Mr. Mark is as follows;

That Gordon Billy Mark at Lunga in the Guadalcanal Province between 1st October 2014 and 30th October 2014 did intimidate a person namely PC Stephen Ngaraediri. ⁸

False pretence against Gordon Billy Mark

38. The crown's evidence against Mr. Mark on the charge of false pretence are as follows;

39. Mr. Taramae said that Gordon Mark was introduced to him by the group at his office at the Anthony Saru Building. He said Mr. Mark was said to be from Papua New Guinea and said to be someone who is experienced in selling gold. It was the understanding at the time that Mr. Mark was the one who had the right connections and would negotiate the sale of the so called gold bar.

40. According to Mr. Taramae after the first encounter with Mr. Mark, he met with Mr. Mark on another 5 occasions. He said that on one of these occasions, Mr. Mark brought another two gold bars one of which has the inscription "Ross Mining". He also said that on these five occasions during which Mr. Mark was present, requests were made for money to facilitate the sale of the gold bar. According to Mr. Taramae's evidence, he gave money to the group in the presence of Mr. Mark on three occasions and in the total amount of \$25,500.00.

41. Mr. Wilson Lui said that during the 3 meetings between Mr. Taramae and the group, Mr. Mark was present. He also said that money was requested by the group

⁷ Charge filed on 6th September 2018.

⁸ Refer to footnote #7

and that Mr. Taramae gave some money. He could not recall the amounts given on each occasion and he could not tell whether Mark benefited out of any of the money received by the group.

Intimidation against Gordon Billy Mark

42. The complainant in the charge of intimidation is Mr. Stephen Ngaraediri.
43. Mr. Ngaraediri said that he is a police officer in the rank of Police Constable. He was stationed at the Henderson Police Post. He said that he was the investigating officer into the allegations of false pretence involving the alleged fake gold bars against the three defendants.
44. Mr. Ngaraediri said that on the 5th of October 2014, he attended a fundraising at Lengakiki. He said that on the day, Maeta and few other men came and picked him and Mr. Morris Malope from Lengakiki in a car. He said during the car ride, Maeta uttered threatening words to him. He also said that Maeta told him to stay out of the investigations of the fake gold bar case. He also said that Maeta told him to release Gordon Billy Mark who was in police custody on the day in respect of the investigations of false pretence.
45. He said that from Lengakiki they went to Sun Valley where he saw John Ross. He said that John Ross also said threatening words to him at Sun Valley.
46. The evidence of Ngaraediri is that on the day Mr. Gordon Mark was in police custody. There is no evidence that on that particular day, Gordon Mark made any threats either directly or indirectly to Mr. Ngaraediri.
47. Mr. Gordon Mark is not charged jointly with Mr. Maeta and Mr. Ross on the allegations of intimidation. I agree with Counsel Mr. Kausimae, that I cannot use the evidence against Mr. Maeta and Mr. Ross to draw an adverse inference against Mr. Mark on the allegations of intimidation on the day that Gordon Mark was detained in police custody.
48. Mr. Ngaraediri said that similar threats have been made by this group before and after the car ride from Lengakiki to Sun Valley.
49. He said that on a separate day, he accompanied Mr. Maeta to go and meet with Mr. Gordon Mark at Leo Ridge. He said that Gordon Mark uttered threatening words to him as follows;

Gordon Mark threat taem mi and Maeta go pickem hem lo Lio Ridge. Hem se, "Tu must careful ia bro, mifala big group ia, bae mifala sa offum iu nomoa ia."

50. In paragraph 5 of his written submissions, Mr. Kelesi stated that "*Gordon Mark told him (Ngaraediri) that they have a big group and they were only sorry for him that is why they leave him or in other words did not want to do anything to him. He also told him not to risk his life and his family*".

51. I think that the record of the prosecution is not accurate on the evidence of Stephen Ngaraediri in this regard. I consider my records of the evidence as the accurate records of the proceedings.

52. Section 231(1) of the Penal Code creates the offence of intimidation. It provides;

Any person who intimidates or molests any other person shall be guilty of an offence and liable to imprisonment for three years.⁹

53. Section 231(2) of the Penal Code provides the definition of intimidation as follows;

A person intimidates another person who, with intent to cause alarm to that personcauses or threatens to cause unlawful injury to the person, reputation or property of that person....¹⁰

54. I find that the words alleged by Mr. Ngaraediri to have been spoken by Gordon Mark are intimidating in nature. I take judicial notice that the word "*offum*" in the *Pidjin English* language can only mean in the context of Solomon Islands threats to cause unlawful injury to another person.

55. I note that Mr. Ngaraediri was not specific in his evidence to state the exact location which he claims that Gordon Mark said the intimidating words. I also note that on the charge of intimidation against Gordon Mark that the crown alleges that the place of offence is Lunga.

56. I consider the remarks made in the case of *R v Galbraith* in which the court held;

If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty – the judge will stop the case. The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. Where the judge concludes that the prosecution evidence taken at its highest is such that a jury properly directed could not properly convict on it, it is his duty on a

⁹ Section 231(1) Penal Code [Cap 26]

¹⁰ Section 231(2) Penal Code [Cap 26]

submission being made to stop the case. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty then the judge should allow the matter to be tried by the jury.¹¹

57. It is my view in light of the legal principle laid down in *Galbraith*, that although the prosecution case is unclear as to the place of offending, there is evidence, though weak and vague that Gordon Mark said intimidating words to Ngaraediri. I therefore cannot stop the proceeding on the intimidation charge against Mr. Mark. The case must proceed to its next stage.

False pretence

58. In respect of the false pretence allegations, it is convenient that I analyse the evidence and the law against the three defendants together.
59. Mr. Kausimae generally argued that there is insufficient evidence against Mr. Mark and that I should acquit him at this stage.
60. The argument raised by Ms. Karani and Mr. Aupai is similar in the sense that they both argued firstly that there is no evidence that their clients Mr. Ross and Mr. Maeta obtained the full amount of \$300,000.00 from Mr. Taramae. It is the argument of counsels that the crown evidence discloses amounts obtained by the two defendants to be less than the amount alleged in the charge. I agree with counsels on the argument that the evidence discloses that lesser amounts of money were obtained by the two defendants.
61. I also agree that the prosecution's case is not premised on joint enterprise or common intention. Therefore I must consider the evidence against each of them separately and independently.
62. The second line of argument raised by Ms. Karani and Mr. Aupai is that there is no evidence that their clients knew that the alleged gold bars were in fact fake.
63. Section 307 of the Penal Code defines false pretence as follows;

¹¹ 73 Cr.App.R. 124 CA

*Any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false, or does not believe to be true, is a false pretence.*¹²

64. Section 308 of the Penal Code states;

Any person who by any false pretence –

(a) With intent to defraud, obtains from any other person any chattel, money or valuable security or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person

*Is guilty of a misdemeanour, and shall be liable to imprisonment for five years.*¹³

65. In the case of *Panjuboe v Director of Public Prosecutions*, the Court defined what is meant by intent to defraud. The Court held that,

*There must of course be an intent to defraud. To defraud is to deprive by deceit. It is sufficient if anyone may be prejudiced by the fraud.*¹⁴

66. The court went to state;

*I shall not attempt to construct a definition which will meet every case which might be suggested, but there is little danger in saying that whenever the words “fraud” or “intent to defraud” or “fraudulently” occur in the definition of a crime, two elements at least are essential to the commission of the crime; namely, first, deceit or an intention to deceive or in some cases mere secrecy; and secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy.*¹⁵

67. Coming back to the current case, I think the most crucial question is this – what is the deceit? In other words, what is the false representation?

68. On the element of intent to defraud, there must be some evidence sufficient to show that the defendants made a false representation or several false representations knowing that the representations were not true. In my view, it is prudent on the prosecution to firstly disclose by sufficient evidence, the falsity of the contents of the representation.

¹² Section 307 Penal Code [Cap 26]

¹³ Section 308 Penal Code [Cap 26]

¹⁴ [1985] SBHC 22

¹⁵ Refer to footnote #14

69. This means that a major part of the prosecution's case rests on whether or not the three objects produced in court and marked as PI1, PI2 and PI3 were actually made of gold.
70. In this case there is no evidence at all to confirm whether or not these objects are made of gold. There is no evidence of the actual contents and substance of these objects. The crown did not call any witness or lead any evidence to say that tests were carried out on these objects and to confirm their make-up.
71. Mr. Taramae said in court that he took the objects to a private individual who carried out tests and confirmed that the objects contain no element of gold. This evidence is technically hearsay and inadmissible.
72. It is stated in Archbold, as follows;
- The basic rule at Common Law was that hearsay evidence was inadmissible in criminal proceedings. The rule rendered inadmissible "any statement other than one made by a person while giving oral evidence in the proceedings....as evidence of any fact, or opinion stated."*¹⁶
73. For this reason, I disregard the parts of Mr. Taramae's testimony in which he referred to the tests carried out on the three objects.
74. Mr. Taramae also said that John Ross, Jeffery and Willie gave him a letter purportedly written by the Minister of the Ministry of Mines which certifies that the three objects are made of gold. That letter was not produced in court. It is said that Mr. David Day Pacha is the author of that letter. The crown did not call Mr. Pacha or any other witness from the Ministry of Mines to testify on the alleged letter.
75. There is also no evidence to suggest that the various statements and representations made by these defendants to Mr. Taramae which includes the trips to Weather coast, the Chupu, the buyer in Australia and all other arrangements for the sale of the so called 'gold bars' were in fact false.
76. At the end of the day, the crown has produced no evidence at all that firstly the defendants made false representations, and secondly which they knew were false or did not believe to be true. There is no prosecution evidence that the defendants had the intention to defraud.
77. I find that there is insufficient evidence on the charge of false pretence against all three defendants. I acquit them all on that charge.

¹⁶ Archbold 2006 page 1317

78. In respect of the intimidation charge against Mr. Gordon Mark, I find that he has a case to answer.
79. Right to appeal within 14 days.

Dated this 7th day of September 2020



Ms. Fatimah Me'ere Taeburi
Principal Magistrate