



**IN THE CENTRAL MAGISTRATES
COURT OF SOLOMON ISLANDS
Criminal Jurisdiction**

CRC Case No: 1075/2020

REGINA

-VS-

RICHARD KONG SING NGEA

COURT'S JUDGMENT

Verbal Ruling: Wed 9th Dec 2020

Written Ruling: Friday 18th Dec 2020

Coram: Miss Tearo Beneteti (PM)

Prosecution: Mr. Rano for the Director of Public Prosecutions

Defence: Mr. Marahare for the Defendant

Defendant appeared in court on bail

BACKGROUND:

This is a case involving environmental prosecutions. It captures the Defendant namely Richard Kong SING NGEA of Malaysian origin and ethnicity particularly from Kuching, Sarawak (as seen on the filed charge dated 23rd Nov 2020). He was charged for 3 environmental crimes.

PRIVATE PROSECUTION:

This is a privately prosecuted matter approved and sanctioned by the DPP Madam Mrs. Olutimayin as provided for and allowed by law under section 71 of the Criminal Procedure Code (CPC). This provision provides the legal authority of the DPP to appoint certain person (s) to prosecute matters accordingly.

I appreciate the formalities transacted for this matter to comply with the laws of our country to bring this matter to court given the nature of the case and the circumstances surrounding it as seen and understood from the documents provided to this court on the background of how and why Mr. Rano was appointed to privately prosecute on behalf of the DPP.

WARNING AGAINST PRIVATELY EMAILING AND COMMUNICATING WITH THE COURT:

Before going into the main and substantive aspect of this sentencing ruling I also am obliged and wish to disclose to parties the following issues which I strongly condemn against and have no tolerance for, as well as all matters I preside over.

On Tue 8 Dec 2020, a person named Peter Teddy emailed me on my official email which I now provide to parties a copy of it (Clerk Gerald photocopied and issued copies to both Counsels Mr. Rano and Mr. Marahare in court on 9th Dec 2020 during court proceedings). I informed parties that upon reading the email as I reach the 3rd line stating "We are writing in connection to the above matter which we note that you are in courage of..." I stopped reading and left it there as I strongly suspected it was in relation to one of my cases in court. I also read the title relating to Tubi at Isabel and knew then it was this matter. Upon noting this I did not reply but printed it for the file copy so it can be conveyed to all parties in the court. This is my normal approach for all cases I attend to as I do not encourage or tolerate such being done outside court. I also checked the address at the end of the email and noted Whitlam Togamae lawyers as well so felt it must have been a Peter Teddy from this firm or relating to this firm somehow. I took it then that whoever the person is (Peter Teddy) they must have emailed to try and manipulate or influence me on how I should finalize and penalize this Defendant. I must therefore say it now in court that I do not accept these approaches and warn parties to please stop doing this to the court. The court does not exist to be privately influenced in any way and more so if the person emailing me is a lawyer then he should know better. Doing this will have detrimental effects to our future generations as we are paving the way for them to have a better court and justice system for tomorrow. Parties were informed in court that if they have issues relating to any case before me in court then the proper place to advocate or raise them is through the proper legal avenues like through the lawyer appearing relevant for their story to be heard. This should then come through in open court during proceedings so the court can know their side of the story and consider if it sees fit. For instance if the email sent was in favour of the Defendant represented by Mr. Marahare, then the person emailing or persons should have gone to him to raise the issues with him so he can update me in open court with the Prosecutor being aware of it. If it is for Rano's side (Prosecution) of the case, then the person (s) should have gone to him and never email the way he has done.

Furthermore, after receipt of the email, a letter was also filed in court where the clerk attending the person directed that the letter be given to Mr. Rano (Prosecutor) if it is for his side of the case. The person insisted so the clerk gave me the envelope. Upon hearing what happened at the registry I refused to open the letter and now disclose to the parties. If any of the party's wish to file criminal complaint against the person for trying to pervert justice in this

case (which is obviously the approach employed to privately email me as Judicial Officer), then parties must note that the letter is on file and can be copied from registry so parties can use it for the complaint filed. Parties can do this if they wish to do as this approach and attitude must be stopped so cases can be properly dealt with.

I also asked parties if they would want me to recuse myself upon informing them what had transpired through email and the letter sent to me. Parties though informed of all that had transpired and got copies of the email, they both assured confidence for me to complete the matter and finalize the sentencing ruling to be handed down on that date. I therefore proceeded with their consent on this matter.

SENTENCING PROPER:

SPECIFIC CHARGES FOR THE DEFENDANT:

The 3 charges for the Defendant are:

1. Illegal harvesting of restricted species without license.
2. Export or attempt 2 export restricted species under Schedule 11 without being an approved person and without a valid permit.
3. Possession of illegally obtained species.

The maximum penalties as agreed to by both counsels and filed on 2nd Dec 2020 are as follows;

1. Count 1- \$3000 fine /2 years imprisonment
2. \$50,000-00/ 5 year's imprisonment
3. \$50,000-00/ 5 year's imprisonment.

FACTS OF THE CASE:

The Defendant is a shareholder and Director of Sunrise Investment Limited at all material times and was a Principal Officer of the same said Company at the relevant time of the offending.

Between 1 May 2020 and 20 July 2020 the Sunrise Company entered Korona customary land on San Jorge Island, Isabel Province and felled tubi. It was estimated that more than 9000 cubic meters of tubi in round log form was felled and extracted. These were taken to the log pond and prepared to be exported.

During these dealings and work on tubi at Korona Customary land, the Defendant did not have approvals relating to the tubi specie to be

included in the felling activities as also highlighted in the facts filed in the case.

Ministry of Forestry and Resources confirmed this as well stating that the Defendant had no permit or license, nor any exemption and no authority to do what he did relating to the tubi specie.

GUILTY PLEA AND PROSECUTIONS SENTENCING SUBMISSIONS:

The Defendant pleaded Guilty to the 3 charges laid against him by the Prosecution and I therefore entered conviction against him for the 3 charges.

During sentencing proceedings stage I had actually enquired for some details to assist me to finalise his penalty. These were:

1. To fully understand in realistic form how much is 9000 cubic meter, Prosecution could not provide further details on this.
2. I also asked about the damages done to the customary land that these incidents occurred in and around. More particularly Korona customary land. The Prosecution stated that the areas affected were not too far from villages, the maps of the relevant areas also showed signs of streams around the areas, and these were close to the mining area. Prosecution further explained that there was an Environmental Impact Assessment (EIA) done but it was not on tubi specifically. It was for the logging operation that was approved for the Defendant so it only focused on that aspect of development activity on the said land areas.
3. Prosecution also highlighted that the court should consider the fact that tubi is a rare specie of tree that is why it is a restricted specie. This is an important factor that the court must factor in.
4. I enquired on section 27 of the Penal Code to check if the Victims of the case (which should be the land owners of the Korona Customary land) would seek court for compensation for what the Defendant had done. Prosecution however stated that in this case, the customary land owners are in dispute and not sorted out well. Therefore he could not assist the court for this matter.
5. Prosecution also requested for the maximum penalties to be imposed. This is as argued by him, supported by the fact that the fines have recently been increased by Legislatures and shows that there is public interest supporting the increase of fines enacted.

I gathered information from Prosecution and did further research in environmental damage cases. I found in my readings of the cases at the higher courts that this is a difficult area to calculate and more

detailed information is usually required to make a proper calculation to be used by the courts. Overall it was accepted that these issues though difficult to calculate actually also portray that the damages done to the environment take years to recover and recuperate.

I also asked for the entry permit of the Defendant to do foreign investment here in this country. This is because for such permits the Immigration would usually provide conditions relating to how they should enter the country and be good and law abiding investors. They therefore should not commit any offence during their stay in this country as part of the conditions of making business here. Prosecutions however stated that this is not their primary focus and they have factored it in on their advancement of recommending that the maximum penalties be imposed.

MITIGATION:

1. Defence submitted that Early Guilty plea is a mitigating factor present in the case. His record of interview (ROI) showed that he has been cooperating well with police and appeared to be a very cooperative person in court when dealt with as well. This is also reflected by the 3 court dates proceedings we have had to engage in to finalize his case. The court dates were 25th Nov 2020, 2nd Dec 2020 and today which is the 9th Dec 2020. We started off with the first mention stage and disclosure, we had the 2nd day of hearing for his plea and straight on to sentencing proceedings. The 3rd day we finalized by the court issuing his penalty. This is by far one of the shortest court proceedings for such new criminal offending matter (private prosecuted environmental matter). Counsels are commended highly and appreciated for their hard work in putting all things together for completion of the matter without any delay in any way.
2. The Defendant is also a first time Offender.
3. The Defendant is remorseful as shown in his early guilty plea to the charges and being a 1st time offender.
4. Because of his early guilty plea the Court and the parties in this case (both counsels) have saved their time and resources which could have been used to call witnesses and run a full trial.
5. Defence mitigated strongly that tubi is only a restricted species and not prohibited specie. Therefore it is not as serious to have done such to it compared to it being a prohibited species.
6. Defence also informed me that there is a current civil High Court case on foot that will deal with all other pertinent issues relating to this matter. One which he indicated was that there was or seem to have been a Gazette approving the felling of tubi at the relevant time but there were issues relating to that Gazette thus he could not strongly advance that aspect of his client's case in court for now. He also stated that this is also the reason why he would object to the court considering section

- 27 of the Penal Code (discretion for the court to impose compensation for Victims of crimes).
7. The antecedent sheet filed by Prosecution did not give much detailed information of the Defendant. I therefore enquired on the Personal Circumstances of the Defendant or antecedent to also consider those before finalizing the matter. His counsel stated that he has Dependent's living overseas and he has 1 Dependent living with him here in the country.
 8. Finally the Defendant has been a good investor helping the country in terms of revenue collected through his business activities. This is therefore also considered as a mitigating factor for him.
 9. As to the maximum penalty being recommended by Prosecution, Defence counsel stated that they have no issues with it and stated that it should not be the precedent case for such matters. In my view he had in effect waived his right to have the court properly assess the sentencing penalty to be imposed and conceded to Prosecutions recommendation for the maximum penalty.

COURTS ASSESSMENT:

I understand that this may be the first and foremost case to be privately prosecuted and involving environmental offences. I commend Mr. Rano for his willingness to take this up and supported and blessed by the DPP. This is a legal avenue for such matters which is admired given our very critical problems encountered with environmental issues.

I have also read on case authorities around such matters like the case of *Maina v Kalola*¹. I understand that the environmental damages arising from such offences are massive and can affect lives in a very negative light. Their cost as seen in this case is in the millions but again depending on the circumstances of the case and the land mass and all other relevant considerations.

I have also captured and factored in the circumstances surrounding this case, the aggravating features highlighted by Prosecution and the factors of mitigation advanced by Defence along with the personal circumstances of the Defendant. I would factor in the deterrence and rehabilitation aspect of sentencing in this case as they are strongly applicable given its circumstances and nature of offending. I therefore must strongly condemn this environmental damage to this specie and generally the environment affected to remind the general public and particularly investors like the Defendant that this is not accepted in any form as reflected by our laws. The deterrence aspect of sentencing is emphasized here generally and specifically. The Defendant is also reminded not to engage in such again in the future

¹ [2019] SBHC 8; HCSI-CC 413 of 2014 (8 February 2019).

but to maintain good business activity to assist in our economy. I would also factor in rehabilitation principle of sentencing to assist the Defendant to change from this and become a better investor in the future as he is a first time offender and has had a clean history of doing business.

Though I have considered the relevant sentencing principles above to analyze and arrive on the final penalty to be imposed, I note that Prosecution has recommended that maximum penalties be imposed with no objection by Defence during sentencing proceedings of the case on 2nd Dec 2020. I therefore would impose the maximum penalty and put aside the usual balancing exercise that courts usually do to arrive at the appropriate penalty. The penalty would have been different if Defence had not accepted prosecutions recommendations. This is because the maximum penalties are usually reserved for the gravest offending of the particular offence (s).

The maximum penalties are imposed in terms of fine for each of these offences except for their in default imprisonment term (as it would be totally unjust to impose the maximum years of imprisonment given all the aggravating, mitigating and personal circumstances of the case) and also make the penalty concurrent as the 3 offences are inter related and occurred around the same time (same date period for the 3 offences as seen on the charges and affecting the same land area).

COURT ORDERS:

1. Count 1- \$3000 fine in default 8 months imprisonment
2. Count 2- \$50,000 fine in default 10 months imprisonment
3. Count 3- \$50,000 fine in default 10 months imprisonment
4. The penalties are made concurrent and therefore the only penalty for the Defendant would be \$50,000 fine or in default 10 months imprisonment for this matter.
5. The forfeiture done by the Minister for Forestry is also imposed and therefore he is to deal with the forfeited Tubi related to this case as required and in accordance to the relevant laws on this.
6. The due date for the Defendant to pay the \$50,000 fine is 23rd Dec 2020 which is 2 weeks from now. He is to come and make payments at the registry before 330pm when our registry closes.
7. Right of appeal by any aggrieved party can be exercised within 14 days from today.

Benetech

Miss Teana Rabua Beneteti
Principal Magistrate

