

IN THE HONIARA CENTRAL MAGISTRATES COURT DISTRICT OF  
SOLOMON ISLANDS

[Criminal Jurisdiction]

Criminal Case No. 1043/2019

REGINA

Complainant

V

ANNET MADINA RONGOTA

Defendant

*Before: Clifton M. Ruele-Principal Magistrate  
Mr Steven Weago for the Defendant  
Mr Vernon E. Taupongi for the Crown*

*Date of sentencing hearing: 13<sup>th</sup> January 2020  
Date of sentence: 15<sup>th</sup> January 2020*

**SENTENCE**

**Introduction:**

1. The Defendant Ms Annet Madina Rongota pleaded guilty to a charge of Larceny by Servants contrary to section 273(a) (i) of the *Penal Code* [Cap 26].<sup>1</sup>

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<sup>1</sup> Refer to the charge filed with the court on 4<sup>th</sup> December 2019

### Agreed facts:

2. The Defendant was employed as a shop assistant at KC Enterprises shop, Kukum area, East Honiara for almost 2 years.
3. The offending occurred on the 27<sup>th</sup> November 2019.
4. On that date, Suzie Liang the owner of KC Enterprises shop went down to China town and collected \$67,750.00 from her customers. She then put the money inside a plastic bag together with a packet bag of milk tea.
5. At about 4:00pm, Suzie Liang returned to KC Enterprises at Kukum and instructed the defendant to hand-deliver the plastic bag containing the money and milk tea to the cashier of the shop.
6. The Defendant then went and put the plastic bag containing the money and milk tea at the cashier's counter.
7. The cashier asked her what was inside and the Defendant replied that it was a packet bag of milk tea.
8. The Defendant then went with the other employees of the shop to the wharf to do cargo delivery.
9. After the delivery, the Defendant returned to the shop and noticed that the plastic bag was still at the cashier's counter where she had left it. The Defendant then took the plastic bag containing the money and milk tea and left the shop.
10. The Defendant went and gave the plastic bag of money to an unknown person. The unknown person then gave her \$5,000.00.
11. On the 29<sup>th</sup> November 2019, the Defendant was arrested and \$8,750.00 was recovered by the Police.

### Max Penalty:

12. The maximum penalty for the offence of Larceny by servants is 14 years imprisonment. This shows how serious this offending was and the intention of the legislatures or law making body to deject such offending.

### Aggravating factors:

13. From the agreed facts, I find the following aggravating factors ;
  - (i) **Breach of position of trust-** You are employed by the complainant for almost 2 years as a shop assistant. Obviously the number of years you have been employed and the nature of your employment placed a degree of trust upon you. By committing this offence you breached the trust placed by your employer.
  - (ii) **Financial Lose-** Your employer had suffered financial loss of \$56,000.00, a substantial amount of money just because of your desirous thoughts and dishonest conduct.
  - (iii) **The offending involved pre-planning or is premeditated** –You knew that there was money in the plastic bag but did not disclose it to the cashier. You then came back after doing delivery at the wharf and saw that the plastic bag

was still at the cashier's counter so you took it and left. Obviously there is definitely some deep thoughts to carry out this offending.

**Mitigating factors:**

14. I consider the following mitigating factors in your case;

- (i) **Guilty plea & Remorse** – You entered an unequivocal guilty plea to the charge against you. Clearly it shows that you have own up to your wrongs and accept the consequences. Your guilty plea show remorse and saves court's time and resource to run a full trial.
- (ii) **First-time offender**– You're a first time offender with no prior criminal records.
- (iii) **Youthfulness** –you are a young person, 19 years old. Clearly, there's prospect of rehabilitation for yourself, that is, to learn from this case and turn away from such actions in the future.
- (iv) **Co – operation with police**- I noted that you co-operated well with the police, hence, I must give you credit for that as well.
- (v) **Recovery**- It is accepted that \$8,750.00 was recovered by the police.

**Case authorities:**

- 15. I have been referred to a number of similar cases which have come before the courts previously. I am grateful to counsel Taupongi and counsel Weago for their assistance to enable this court to reach an appropriate conclusion or sentence.
- 16. In *Elima v. R*<sup>2</sup>, the defendant pleaded guilty to the offence of larceny by a clerk contrary to section 273 (a) (i) of the Penal Code. Facts revealed that the defendant, an employer of the ANZ bank transferred \$132,400.00 from various bank accounts into his son's bank account. He was convicted and sentenced to 4 ½ years imprisonment.
- 17. In *R v Kofi*<sup>3</sup>, the defendant pleaded guilty to the offence of larceny by a clerk contrary to section 273 (a) (i) of the Penal Code . Facts revealed that the defendant stole \$65,519.66 from his employer, Bowmans Ltd. The Court imposed a sentence of 2 ½ years imprisonment.
- 18. In *R v Onga*<sup>4</sup>, the defendant pleaded guilty to theft of \$65,000.00 from his employee-QQQ Holdings Ltd. The Court imposed a Sentence of 2 ½ years imprisonment.

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<sup>2</sup> [2005] SBCA 7

<sup>3</sup> [1995] SBHC 100; HC-CRC 6 of 1995 (23 March 1995)

<sup>4</sup> [2017] SBMC 23

19. In *R v Ofia*<sup>5</sup>, the defendant pleaded guilty to 2 counts of Larceny by clerk. She stole \$54,688.00. Facts revealed that \$14,000.00 was recovered whilst \$40,688.00 was never recovered. The Court imposed a total imprisonment term of 21 months. However, 6 months was suspended for 1 year resulting to an imprisonment term of 15 months imprisonment.

**Sentencing principle:**

20. The English guidelines on the proper level of sentence to be imposed in dishonest cases are set down in the case of *John Barrick* [1985] Cr. App and this was adopted in Solomon Islands too by His Lordship Palmer J in the case of *R v Kobi*<sup>6</sup> which I see as equally relevant to this present case in assessing the appropriate sentence for this Defendant.
21. The first guideline is the quality and degree of trust repose in the offender in the present case. I noted that the Defendant was a shop assistant and has been employed for almost 2 years. The duration of her employment obviously placed a degree of trust on her by her employer.
22. The other guideline which I see relevant to this case is the use to which the money or property dishonestly taken was put; I noted that it was spent on herself. Only \$8,750.00 was recovered from the Defendant when she was apprehended by the Police.
23. The other guideline applicable to this present case is the effect on fellow employees and the public and public confidence.
24. I therefore see that the present case is of the same category as the above cases. It involved a breach of trust by a person who has been placed in a position which demands the highest standard of trust and honesty. The Defendant has breached that trust and has become dishonest. In that regard, I must ponder upon the words of Ward C.J. in *Edward Fiuadi v Reginam*<sup>7</sup> at page 152:
- 'It must be clearly understood that, in any offence where a breach of trust is involved, a sentence of imprisonment will always be appropriate.'*
25. Furthermore, I am also mindful of the sentiments in the case of *Bati v Director of Public Prosecutions*<sup>8</sup>, where the Court of Appeal held that youth is one of the most effective mitigating factors and when an offender below the age of 21 years old is sentenced to imprisonment, the sentence will normally be considerably shorter than would be awarded to a man of mature years for the same offence.<sup>9</sup>

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<sup>5</sup> [2020] SBMC

<sup>6</sup> [1995] SBHC 100; HC-CRC 6 of 1995 (23 March 1995)

<sup>7</sup> [1988-89] SILR 150

<sup>8</sup> [1985 – 86] SILR 268 the Court of Appeal

<sup>9</sup> [1985 – 86] SILR 268 the Court of Appeal

**Starting point:**

26. Having considered all the aggravating and mitigating factors mentioned herein and the range of sentences passed in respect of previous similar cases as well as the need for deterrence, I see that the appropriate starting point is 36 months imprisonment.

**Sentencing consideration:**

27. I hereby reduce 9 months for your early guilty plea to reflect the 25% discount as provided for in the case of *R v Qoloni*.  
28. I further reduce 3 months to consider the fact that you are a first-time offender.  
29. I further reduce 6 months to reflect your youthfulness and the other mitigating factors raised herein.  
30. The resulting sentence is therefore, 18 months imprisonment.

**Sentencing Order:**

31. I hereby sentence you Ms Annet Medina Rongota to **18 months' imprisonment**.  
32. Time spent in custody or any pre-detention period must be deducted from this head sentence.  
33. 14 days right of appeal applies.  
34. Order accordingly.

THE COURT

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MR. CLIFTON M. RUELE  
Principal Magistrate