



IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 931 of 2019

REGINA

-V-

ERIC DAU

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Iete Tebakota for the Crown (Police Prosecutions)

Mr Michael Fagani of Public Solicitors Office for the Defendant

Date of Sentencing and Mitigation: 16 December 2019

Date of Ruling: 16th January 2020

Notice: This copy of the Court's Reasons for Sentence is subject to formal revision prior to publication.

SENTENCE

INTRODUCTION

1. On the of 4th December 2019, the defendant Mr Eric Dau pleaded guilty to one count of making liquor contrary to section 50(2) (c) of the *Liquor Act* [Cap 144].
2. I now convict Mr Eric Dau based on the plea entered.

Antecedent:

3. The defendant Mr Eric Dau is a native of Taba'a village, Malaita Province. He is currently 40 years of age and married. He also has children.
4. He has a previous conviction as well. He was sentenced on the 30th of September 2019, to a bound over for a period of six (6) months for one count of Domestic Violence contrary to section 4 and 58 of the *Family Protection Act 2014* (FPA) in the Criminal Case Number 563 of 2019(CC No. 563 of 2019).

FACTS

5. The relevant facts can be summarized as follows. On or about the 23rd of August 2019 at 1300hrs, the Liquor Unit and CRU team within the Royal Solomon Islands Police Force (“Police”) executed a snap operation at Vara Creek in central Honiara, including the defendant’s residence.
6. The Police found certain equipment and utensils that were used to brew liquor, including some bottles in the possession of the defendant that contained the illegally brewed alcohol famously known locally as Kwaso. In particular, the items are as follows:
 - 1) 15 yami bottle (1.5 litre)-empty
 - 2) 10 loose yami bottles (1.5 litre)-empty
 - 3) 4 energy bottles (1.5 litre)-empty
 - 4) 8 sasa bottles (1.5 litre)-empty
 - 5) 21 yami bottles (1.5 litre)- completely filled with illegally-brewed alcohol or Kwaso
 - 6) 3 yami bottles 1.5 litre 550 ml-completely filled with illegally-brewed alcohol or Kwaso
 - 7) 1 black bucket-contents not known
 - 8) 3 (2) litre red wine bottle-contents not known
 - 9) 1 mineral szeba bottle (1.5 litre) -empty
 - 10) 3 pvc pipe for cooling system
 - 11) 3 (14.2) kg cylinder
 - 12) 2 stoves (powered by saw dusts)
7. The police collected all the equipment and brought them to the Central Police Station in Honiara.
8. The defendant was arrested and charged with producing liquor without the proper authorization contrary to section 50(2) (b) of the *Liquor Act* [Cap 144].
9. I note that the defendant has a previous conviction of Domestic Violence contrary to the provisions of the FPA in CC No. 563 of 2019.

DISCUSSION AND ANALYSIS

10. Section 50(2)(c) of the *Liquor Act* [Cap 144]¹ provides as follows:

(2) A person who, without the prior approval of the Minister-(c) makes or assists in making liquor;

Is guilty of an offence and is liable to a fine of one thousand two hundred dollars or to imprisonment for three years or to both such fine and imprisonment.

11. The 1200 dollars maximum penalty has since been increased to 30, 000 penalty units following the enactment of the *Penalties Miscellaneous Amendment Act 2009* (No 14 of 2009)².

¹ *Liquor Act* [Cap 144], s 50(2)

² *Penalties Miscellaneous Amendment Act 2009* (No 14 of 2009)

Aggravating features

12. The aggravating factors are as follows:

- 1) The maximum penalty of three years or 30,000 penalty units or both shows that this is quite a serious offence. The increase of the penalty units shows that the Parliament took this issue of illegal brewing seriously in its efforts to curb the illegal production of liquor in the country.
- 2) The illegal production of liquor actually deprives the responsible authorities of the income they are rightly entitled to, through the paying of taxes and fees. It also deprives the genuine companies and investors who are producing liquor in the country. The availability and the cheap price of homebrew or *kwaso* means that most people who do not have the means to purchase beers will turn to such illegal alcohol to satisfy their desire for alcohol.
- 3) The presence of *Kwaso* in some of the bottles that were in the possession of the defendant not only confirms that he had the equipment and implements to produce illegal alcohol but he was in fact producing it.
- 4) The consumption of homebrew has raised serious health concerns in the past. People became sick and experienced other health problems. Being drunk can also be a catalyst to many problems.
- 5) The production of liquor within his residence at Vara Creek is totally wrong, makes *Kwaso* readily available, and shows a lack of respect for his own family especially his own children. In fact, he was committing an offence in front of his children and indirectly giving them the wrong teaching.

Mitigating Factors

13. The mitigating factors as follows:

- 1) **Early guilty plea.** Mr Dau entered an early guilty plea.
- 2) **Genuine Remorse.** This is directly related to the early guilty plea. The defendant apologized, expressed his remorse, and promised that he would not reoffend in the future again.
- 3) **Cooperation with police.** He cooperated well with the Police during the course of investigation. His admissions is also consistent with the guilty plea entered.
- 4) **Personal Circumstances.** Mr Dau is married with two children and he is responsible for the children's necessities and financial needs.
- 5) **Time Spent in Custody.** The accused was remanded in custody since 18 October 2019 up to now.

14. His other personal circumstances are as follows:

- 1) The defendant has recently been convicted and sentenced for one count of domestic violence contrary to the FPA in September 2019.

Sentencing Principles

15. These sentencing principles such as punishment, retribution, deterrence and rehabilitation must always be considered and given due consideration.
16. It is an established principle or rule that each case must be decided on its own merits, facts and circumstances.
17. As alluded to earlier on, the illegal production of homebrew has caused many social and health issues throughout the country, and the consumption of illegal beer is also a catalyst in the increase of other criminal activities when a person is under the influence of liquor.
18. Apart from his own admission that he committed the offence, the presence of alcohol or Kwaso in some of the bottles confirmed that the defendant was in fact producing liquor without the authorisation of the responsible Minister. I consider this as an aggravation.
19. Section 50(1) of the *Liquor Act* [Cap 144] requires that the “*Minister may, on application by a person and subject to such conditions as the Minister may deem fit to impose, grant approval in writing to the person to brew or distil liquor in Solomon Islands.*”³ Subsection (2) criminalises the production of liquor without the proper approval.⁴
20. I note that the defendant is a repeated offender. He was lucky to have been sentenced to only a bound over sentence for one count of domestic violence on the 30th September 2019 in CC No. 563 of 2019, but he did not use that opportunity to transform himself and become a better person, a well behaved father and a role model to his children.

Comparative Sentence and Sentencing Tariff

21. The sentencing tariff for the offence of illegal production of alcohol without a proper approval by the responsible Minister contrary to section 50(2) of the *Liquor Act* [Cap 144] ranges from bound-over sentences, penalty fines, and custodial sentences ranging from a few months up 2 years.
22. In *Regina v Ologa* [2016] SBMC 34; Criminal Case 1125 of 2013 (20 December 2016)⁵, the accused pleaded guilty to the two counts contrary to section 50(2) of the *Liquor Act* [Cap 144]. He was sentenced to 1 ½ years’ imprisonment for the first count and 2 years for the second count which were ordered to be served consecutively, and the total resulting sentence is 3 ½ years.
23. In *Sisione v Regina* [2004] SBHC 69; HC-CRAC 385 & 394 of 2004 (1 September 2004)⁶, his Lordship Palmer CJ, some sixteen (16) years ago, pertinently and articulately made the following remarks:

³ *Liquor Act* [Cap 144], s50

⁴ *Liquor Act* [Cap 144],

⁵ *Regina v Ologa* [2016] SBMC 34; Criminal Case 1125 of 2013 (20 December 2016),

⁶ *Sisione v Regina* [2004] SBHC 69; HC-CRAC 385 & 394 of 2004 (1 September 2004)

The brewing of liquor without approval under section 50(2) of the Liquor Act has been described as a regulatory offence. What this means is that if a person wishes to brew or distil liquor he must make application to the Minister responsible for approval first. This means he/she is not permitted to carry out such activities in the absence of a permit of approval from the Minister. Such activities are controlled or regulated by legislation. Now there is world of difference between a person who genuinely intends to get approval, whether a licence or permit from the Minister to carry out this activity, as opposed to the person who has no intention whatsoever and knowingly and blatantly carries out this activity for commercial or monetary gain. The person who falls into the former may receive some leniency and understanding from the courts and a fine would normally be the type of sentence envisaged, for the reason that the breach or failure may not have been intentional or deliberate. On the other hand, where it is clear on the evidence that the activities being conducted are but a deliberately flouting of the Liquor laws, then unless there are exceptional grounds or reasons given whether in mitigation or in the circumstances of the offence, must expect an immediate custodial sentence to be imposed. To that extent the decisions by the Magistrates Courts to impose a custodial sentence from the beginning is not wrong in principle or in law. That such powers of the courts are envisaged is to be seen in the penalty clause (section 50(2)) which provides for a sentence of imprisonment of up to three years and fine of up to one thousand two hundred dollars.

24. The sentiments echoed by his Lordship the Chief Justice are still relevant and applicable today.⁷ I note that in *Sisione v Regina*,⁸ the High Court imposed a sentence of 4 months imprisonment for both offenders, reducing the initial sentences of 12 months and 7 months, respectively.
25. I understand that this present case may not attract the same sentence as in the case of *Regina –v-Ologa* cited above⁹, however, it must commensurate with the severity of the offence.
26. I note the prevalence of the illegal production of liquor contrary to section 50(2) of the *Liquor Act* [Cap 144] throughout the country, and the past sentences that the courts have issued must have fallen on deaf ears, and it is my respectful view that a deterrent message should be given by the issuance of a heavier sentence. This is to warn potential offenders that the Court will issue punitive penalties due to the continuous occurrences of this offence, and one of the ways to deter it is by issuing a heavier sentence.¹⁰ The defendant is also someone who was serving a bound over sentence but failed to adhere to its conditions and he ought to expect a more serious sentence compared to a first time offender.

⁷ *Sisione v Regina* [2004] SBHC 69; HC-CRAC 385 & 394 of 2004 (1 September 2004)

⁸ *Sisione v Regina* [2004] SBHC 69; HC-CRAC 385 & 394 of 2004 (1 September 2004)

⁹ *Regina v Ologa* [2016] SBMC 34; Criminal Case 1125 of 2013 (20 December 2016)

¹⁰ In *Regina-v-Ologa* (2016), this Court stated: If past sentences and the sentencing trend has failed to deter this offending and this offending continued to be sky-rocketed, the Court must be sensitive to this failure and adjust its sentence correspondingly with the increase of this offending. To put it short, if this offending is one at present become too prevalent despite past sentences and the ongoing police awareness, and if the Court continued to impose remorseful sentences that in the face of it is indirectly encouraging future potential offenders then, that judicial mindset needs to be changed. Otherwise, the Court will continue to confine or even comforting itself with the pattern of sentence that does little, if not, one that fails to deter this particular offending in light of its prevalence.

27. In this present case, I must ensure that the sentence that I will hand down is one that will be resounding and send a message of deterrence to the offender and like-minded person not to involve in the illegal brewing of alcohol.

Starting Point

28. After having considered the circumstances of the case, and both the aggravating and the mitigating factors, I am satisfied that an immediate custodial sentence should be imposed.

29. After having considered the circumstances of the case and the aggravating factors, I am of the view that a starting point of 24 months is appropriate for this present case.

30. *Early guilty plea.* I deduct 4 months for the early guilty plea.

31. *Genuine Remorse.* I deduct 2 months for genuine remorse.

32. *Cooperation with police.* I deduct 3 months for his cooperation with the Police.

33. *Personal Circumstances.* Mr Dau is married with two children and he is responsible for the children's necessities in life and I deduct 3 months to reflect that.

34. *Time Spent in Custody.* The accused was remanded in custody since 18 October 2019 up to now and whatever sentence that will be imposed ought to be backdated to reflect the time already spent in custody.

35. As computed and enumerated above, I give credit to the defendant for the mitigating factors, and after having considered the circumstances of this present case and the defendant's personal circumstances, I am satisfied that a deduction of 12 months is merited.

36. Moreover, after having considered the relevant factors and having taken into account the sentencing principles such as punishment, deterrence and rehabilitation, I am satisfied that 12 months imprisonment is appropriate for this present case taking into account the severity of the offence.

CONCLUDING REMARKS

37. It is quite unfortunate that Mr Dau was serving his bound-over sentence in CC No. 563 of 2019 but imprudently opted to commit another offence. This is pure recklessness on his part. It also shows that he never learned any lesson at all when he was spared from any imprisonment sentence or penalty fine being imposed on him in CC No. 563 of 2019 on the 30th September 2019. It appears that he never took time to reflect on the sentence imposed on him in CC No. 563 of 2019.

38. I am mindful and must ensure that the court should not be over lenient with such people and the offender ought to be taught some hard lessons. He is now 40 years of age and should be in a position to make good choices and judgments in life. The punishments of what he did will not only affect him but his incarceration will definitely have adverse repercussions on his children and family. He should have foreseen the consequences of participating in or committing such illegal activities.

39. Kwaso and other alcohol related substances are hazardous and can cause detrimental health effects on the health of a person. This is very true given the fact that the percentage of alcohol within a homebrew, Kwaso and other related substances were not professionally determined by any legitimate and competent persons. It is obviously clear that no proper equipment and technology were used to ascertain the percentage of alcohol contained therein. In addition to that, such illegally produced alcohols were not certified by the local health authorities or other corresponding international bodies as a safe alcohol for consumption and use. I also consider this as an aggravation.
40. It is a fact that earning an income is not an easy thing. Someone has to sacrifice his time and energy in order to put food on the table. However, poverty, unemployment and hardships in life generally do not confer to a person the right to involve in an illegal activity in order to gain money. There are many ways that a person can do in order to gain money and feed his or her family but not through the illegal brewing of alcohol and selling of *Kwaso*.
41. I also wish to point out that apart from the laws that are in place, and the efforts that have been rendered, the Government of the day through its relevant agencies ought to do more in terms of awareness and most probably to produce efficient, relevant and appropriate policies that should curb and contain the continuous production of liquor without proper authorisation.
42. In view of the above, I now sentence Mr Dau to an imprisonment of twelve (12) months for one count of producing alcohol without the proper authorisation of the responsible Minister contrary to section 50(2) of the *Liquor Act [Cap 144]*.
43. This should be a lesson for Mr Dau and also it should send a message of deterrence to the members of the public that brewing of alcohol without the proper approval from the responsible minister is illegal and has consequences.
44. I therefore issue the following orders:
- 1] **The offender Mr Eric Dau is sentenced to an imprisonment term of 12 months (or 1 year imprisonment) for one count of illegal production of alcohol contrary to section 50(2) of the *Liquor Act [Cap 144]*.**
 - 2] **In his previous conviction in CC No. 563 of 2019, for one count of domestic violence contrary to sections 4 and 58 of the FPA, he was ordered to keep the peace and be of good behavior for six months and in default he would be imprisoned for 2 months. Since he is now convicted of a new offence, that two months imprisonment is now automatically invoked, and it shall be served consecutively with the sentence for this present case.**
 - 3] **Hence, that total sentence for both cases is 14 months or 1 year and 2 months. The sentence shall be backdated to the date when he was first remanded.**
 - 4] **All the items used in the commission of the offence and confiscated by the Police shall be forfeited to the Royal Solomon Islands Police Force and be destroyed forthwith.**
 - 5] **Right of Appeal within 14 days.**



**PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT**