

**IN THE CENTAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT HONIARA**

(Criminal Jurisdiction)

Criminal Case No: 416 of 2018

REGINA



-V-

ALICK DELEMANI

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr John P Teula and Mr Hendry Oneone for the Crown (Police Prosecutions)

Mr Andrew Bosa, Senior Legal Officer, Public Solicitors Office, for the Defendant

Date of sentencing and Mitigation: 19th December 2020

Date of Ruling: 20th January 2020

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

SENTENCE

INTRODUCTION

1. On 19th December 2019, the Defendant Mr Alick Delemani pleaded guilty to one count of making liquor without the proper ministerial approval and authorization contrary to section 50(2) (c) of the *Liquor Act* [Cap 144].
2. I now convict him based on the plea entered.

Antecedent:

3. The defendant Mr Alick Delemani is a native of Malaita Province. He is currently 24 years of age and married. He has a child.
4. The defendant resides at Lengakiki, West Honiara, on Guadalcanal Province.

FACTS

5. On the 5th April 2018, Police officers received information that there were some people who were involved in the illegal production of alcohol notoriously known as kwaso locally, somewhere in Honiara's Botanical garden. The incident was said to have occurred at the Forestry area, along a stream at the Botanical garden, close to the Solomon Islands Broadcasting Cooperation and the Correctional Facility at Rove in West Honiara.
6. At 1610hrs on the said day, certain Police officers arrived at the said location and proceeded south along a footpath beside the stream. As they were travelling, the Police officers noticed the emission of smoke generated by a fire in a distance not far from them. Shortly after that, the Police officers apprehended the first suspect Mr John Hota with another female suspect.
7. As Police advanced further south, they came across Mr Alick Delemani who was sitting beside a cylinder which was on the fire with a cooling system connected to it. In fact, he was in the process of producing illegal homebrew or kwaso.
8. In addition to that, the following items were also found; a bottle of wine, a blue container, and a bucket. The items were confiscated and recorded as exhibits.
9. Mr Delemani, together with the other three suspects, were arrested and charged with one count of producing liquor contrary to section 50(2)(c) *Liquor Act* [Cap 26].

DISCUSSION AND ANALYSIS

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

11. In 2009, the *Penalties Miscellaneous Amendment Act 2009* (No 14 of 2009) had increased the 1200 dollars maximum penalty to 30, 000 penalty units.²

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.

¹ *Liquor Act* [Cap 144], s 50(2).

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

- 2) The presence of the equipment and materials, and the fact that he was caught in the process distilling and producing Kwaso confirms is an aggravation. This means the offence was premediated.
- 3) The consumption of homebrew or Kwaso has adverse health repercussions. The percentage of alcohol contained in an illegally brewed alcohol such as Kwaso is not professionally ascertained, and no certification confirming it safe for consumption.
- 4) Although there is no suggestion that the defendant would sell the illegally brewed alcohol but normally kwaso is sold at an extremely cheaper price which could be unfair to the genuine companies such as Solbrew. The brewing and selling of alcohol attracts certain licensing fees and this activity effectively robs the governmental authorities of their rightful income.

Mitigating Factors

13. The mitigating factors as follows:

- 1) *Early guilty plea.* Mr Delemani entered an early guilty plea and this must be considered as a mitigating factor.
- 2) *First Time offender.* Mr Delemani is a first time offender and has no previous conviction.
- 3) *Genuine Remorse.* This is directly related to the early guilty plea. The defendant through his lawyer apologized to the court. He promised that he would not reoffend in the future again.
- 4) *Cooperation with police.* He cooperated well with the Police during the course of investigation.
- 5) *Personal Circumstances.* Mr Delemani is 24 years of age and has a high chance of rehabilitation.
- 6) *Time Spent in Custody.* The accused was remanded in custody since 18 November 2019 up to now.

Sentencing Principles

14. The sentencing principles such as punishment, retribution, deterrence and rehabilitation must always be taken into account and considered when formulating and ascertaining the appropriate sentence for a case.
15. The sentence to be imposed must be based on its own merits, and essentially, it should be proportionate to the gravity of the offence.
16. 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 without the proper approval.⁴ Hence, this is a regulatory offence where a person can only be allowed to produce alcohol after his/her/it's application is approved by the responsible Minister in writing.

Comparative Sentence and Sentencing Tariff

17. The sentencing tariff for the offence of illegal production of alcohol without the proper approval of the responsible Minister ranges from bound-over sentences, penalty fines, and custodial sentences ranging from a few months up to 2 years.
18. In *Sisione v Regina* [2004] SBHC 69; HC-CRAC 385 & 394 of 2004 (1 September 2004)⁵, his Lordship Palmer CJ, made the following remarks:

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.

19. The comments of his Lordship CJ Palmer in *Sisione v Regina* [2004]⁶ are still relevant and applicable to our situation in the present.
20. In this present case, I must ensure that the sentence that I will hand down is one that will send a message of deterrence to the offender and like-minded person not to involve in the illegal brewing of alcohol or kwaso.

³ *Liquor Act* [Cap 144], s50 (1)

⁴ *Liquor Act* [Cap 144], s 50(1)

⁵ *Sisione v Regina* [2004] SBHC 69; HC-CRAC 385 & 394 of 2004 (1 September 2004)

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

21. In comparison to other past cases, I understand that this present case is not as serious with respect to the quantity of the kwaso.⁷ However, the defendant was caught in the process of distilling and producing illegal liquor, and I consider this as an aggravation.
22. 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.

Starting Point

23. After having considered the circumstances of the case and the aggravating factors, I am of the view that a starting point of 12 months is appropriate for this present case.
24. *Early guilty plea.* Mr Delemani entered an early guilty plea. I deduct 3 months.
25. *First Time offender.* Mr Delemani is a first time offender. I deduct 1 month.
26. *Genuine Remorse.* This is directly related to the early guilty plea. He also apologized to the court as well. I deduct 1 month.
27. *Cooperation with police.* He cooperated well with the Police during the course of the investigation. I deduct 1 month.
28. *Personal Circumstances.* Mr Delemani is 24 years of age and married with a child, and has a high chance of rehabilitation and I also deduct 1 month.
29. Hence, this would give Mr Delemani five (5) months to serve in the prison.
30. *Time Spent in Custody.* The accused was remanded in custody since 18 November 2019 up to now and it is proper that I take this into account.

CONCLUSION

31. The illegal production of alcohol, and also the consumption of the illegally brewed alcohol have caused many social and health problems throughout the country.
32. Challenges and hardships are part of everyone's journey in life and at times, such challenges would prompt and tempt someone to involve in illegal activities such as the production of liquor without prior ministerial approval, for the purposes of generating income. However, I must say that there are many legitimate ways and options out there that a person could do to gain an income or money other than the illegal production of liquor.

⁷ *Regina v Ologa* [2016] SBMC 34; Criminal Case 1125 of 2013 (20 December 2016)

33. I hope this short and sharp imprisonment term will teach Mr Delemani a lesson, and also it should send a message of deterrence to the members of the public that brewing of alcohol without the proper ministerial approval as required under the *Liquor Act* [Cap 144]⁸ is illegal and has consequences.
34. In view of the above, I now sentence Mr Delemani to an imprisonment of 5 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].

ORDERS

35. The orders of the Court are as follows:

- [1] The offender Mr Alick Delemani is sentenced to an imprisonment term of 5 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]. The sentence shall be backdated to the date that he was first remanded.
- 1] 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.
- 2] Right of Appeal within 14 days.




PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT

⁸ *Liquor Act* [Cap 144], s50 (1) and (2)