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IN THE CENTRAL MAGISTRATES COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)

Criminal Case No: 53/2020

REGINA

-V-

EXEKIEL IRO

STRIKE OFF DECISION

Prosecutor: Mr. Tei from the Police Prosecutions Department

Defence counsel: Mr. Weago of the Public Solicitors Office for the Defendant.

Plea: Friday 21st Feb 2020

Oral Ruling: Fri 21st Feb 2020

Written Ruling: Fri 28 Feb 2020

BACKGROUND:

This is a freshly filed matter for this year. The Defendant Mr. Ezekiel IRO has been charged with assaulting a police officer contrary to section 247 of the Police Act. This is found on the charge filed on 14th Jan 2020.

During the mention stage on 14th Feb 2020, when it was listed for possible plea, defence indicated their willingness to plead guilty to the offending. However they found that the charge was defective. Therefore they raised it in court and also to the prosecutions to inform them of such to remedy before proper plea is taken. The plea was then adjourned so prosecutions could amend their charge and properly serve it on defence to ensure they take their plea on the next court date.

I gave the time for prosecution noting that the amendment is just changing the section number of the Police Act to validate it. I therefore gave 1 week for this to be addressed and the plea can then be taken. I further gave orders for prosecutions to file the charge before the next court date and serve a copy on defence.

FRIDAY 21ST FEB 2020:

When it was listed again for plea for the 2nd time on Friday 21st Feb 2020, prosecutions again failed to correct the section and apologised. After apologising he indicated that he would need further time to amend the charge again and therefore applied for adjournment. He did provide explanations for his failure by stating that he was in a trial and could not attend to this. I totally understand busyness of having trials but the work required for him on this particular matter was to only change the section number on the charge and file in court again in the span of one week. This means he has had 7 days to change the numbers accordingly. The number should have been 190 and not 247. I emphasised this during the oral court proceedings over this matter and prosecutions eventually agreed that he had failed to change the section number.

I could not tolerate or be flexible on this application for another adjournment as the only work required for what has been pending for a week was to change section 247 on the current charge and insert 190. Other parts of the charge are all fine and valid. This is a very minor work on the part of the prosecution and is in my view want of prosecutions behaviour. The following are my reasons highlighted during court:

1. The amendment is only changing numbers 247 to 190 which takes only a few seconds to do,
2. This should have been noted by prosecutions as they should always check their Penal Code, Police Act and other relevant legislations whenever they are charging people. In this case the verification should have come from the Police Act itself.
3. Oversight for these kind of matters is totally unacceptable to me and should not be tolerated. Especially when 7 days is given for the change of numbers and yet more time is needed.

DEFENCE STATUS:

Defence on the other hand insisted to take his plea as he does not wish to prolong the matter further.

Given the above events, I saw no good reason to grant the application for another adjournment. I therefore could not adjourn further for the 3rd time for prosecutions to correctly draft their charge and have it ready for defence who are so keen to finalise the case.

I found want of prosecution on this situation as the failure of prosecutions was too obvious in this case. And the failure is unacceptable.

Because of the above assessment, since section 247 is not existent on law meaning there is no such section as 247 in the Police Act, I found that to be a defective charge as already highlighted by defence. The Police Act actually has sections up to 228. Section 247 is absent.

The case of *Kemakeza v Regina* [2008] SBHC 44; HCSI-CRC 478 of 2007 (22 August 2008) is a good case authority that goes into great length in explaining defective charge and what it denotes. The principles explained in that case is applied in this case to verify my position on how I find the section to be defective.

Prosecutions failure is not satisfactory in my view and therefore I must rule on the failure committed by him at that point of time than adjourning further which is unreasonable.

COURT ORDERS:

1. Find the charge for the defendant as defective as section 247 is not in the Police Act.
2. Acquit the Defendant accordingly.
3. Right of appeal within 14 days from today.



Beneteti

Tearo R Beneteti

Principal Magistrate