



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

**AT HONIARA**

(Criminal Jurisdiction)

**Criminal Case No: 792 of 2020**

**REGINA**

-V-

**DARWIN KOPANA** (Consolidated with)

**Criminal Case No: 478 of 2019**

**REGINA**

-V-

**DARWIN KOPANA**

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

**Appearances:**

*Mr I Tebakota for the Crown (Police Prosecutions)*

*P None and M Fagani, Senior Legal Officers, PSO for the defendant in both cases*

Date of sentencing and Mitigation: 31<sup>st</sup> March 2020

Date of Sentence: 8<sup>th</sup> April 2020

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

**SENTENCE**

**INTRODUCTION**

1. The defendant Mr Darwin Kopana is charged with two counts of False Pretense contrary to section 308(a) of the *Penal Code* [Cap 26].
2. He pleaded guilty to both charges. I now pronounce his conviction for both charges based on the pleas entered.

### Antecedent

3. The defendant Mr Darwin Kopana is 39 years of age and a native of Shortland Islands in the Western Province.

### THE FACTS

#### COUNT 1:

4. The victim in this case is John Mark, a taxi driver originally from Santanaua village on Guadalcanal in Guadalcanal Province.
5. The first incident occurred on the 14<sup>th</sup> May 2019 in Honiara on Guadalcanal. The defendant falsely represented to the taxi driver that he would be paid SBD 500 that he obtained from the victim. The taxi driver took the defendant for a ride around the city, and he also asked the victim to take him to the Ranadi industrial site close to the Bank South Pacific building. He disembarked but refused to give the victim his SBD 500 that he borrowed, and he escaped.
6. On the next day, the victim saw the defendant at the Lei Clothing shopping Centre at Point Cruz in Honiara, and approached the defendant to give him his SBD 500. The defendant started making excuses and still refused to pay up the money.

#### COUNT 2:

7. The second incident occurred also on the 14<sup>th</sup> May 2019 in Honiara on Guadalcanal.
8. The victim is Ms Emmy Donga from North Malaita, Malaita Province who is presently a student.
9. On that said date, the defendant approached the victim and asked her if she wanted a laptop worth SBD 400. The victim said she was convinced with the attractive offer and withdrew the sum of SBD 800 which should be enough for two laptops.
10. The defendant then told the victim to wait for him at the Lei Clothing shop at Point Cruz whilst he went to collect the laptops.
11. The defendant failed to return on that day.
12. On the 15<sup>th</sup> May 2019, Ms Donga caught up with the defendant at the Lei Clothing shop. Whilst she was there, the taxi driver who is the victim in the first incident was also at the same shop confronting the defendant. Both victims demanded explanation from the defendant as to their money owed by the defendant.
13. The defendant and the victims ended up at the Central Police Station in Honiara to sort out their matters.

14. The victims informed the police about their existing issues concerning the sums of money owed by the defendant.
15. The defendant was then formally arrested and duly charged with the said counts of False Pretence contrary to section 308(a) of the *Penal Code* [Cap 26].

### DISCUSSION AND ANALYSIS

16. Section 308(a) of the *Penal Code* [Cap 26]<sup>1</sup> provides as follows:

#### *False pretences*

*308. Any person who by any false pretence -*

- (a) with intent to defraud, obtains from any other person any chattel, money or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person; or is guilty of a misdemeanour, and shall be liable to imprisonment for five years.*

17. Section 307 of the *Penal Code* [Cap 26]<sup>2</sup> defines 'false pretence' as follows:

#### *Definition of false pretence*

*307. Any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false, or does not believe to be true, is a false pretence.*

18. The elements of the offence of False Pretence are as follows:

- 1) The identity of the defendant or offender;*
- 2) By False Pretence*
- 3) With the Intent to defraud;*
- 4) Obtains from any person*
- 5) Money/chattels/security*
- 6) For the use or benefit of himself or other person.*

19. By pleading guilty to the said charges, the defendant, agreed that the said elements required for the conviction of an offender under section 308(a) of the *Penal Code* [Cap 26] are all present in both counts.

---

<sup>1</sup> *Penal Code* [Cap 26], s 308

<sup>2</sup> *Penal Code* [Cap 26], s307

### Aggravating features

20. The aggravating factors are as follows:
21. **Maximum Sentence.** The maximum sentence for false pretence contrary to section 308(a) of the *Penal Code* [Cap 26] is 5 year imprisonment. This shows that it is a fairly serious crime.
22. **Financial and economic loss.** In the first incident, the defendant borrowed the SBD 500 from the victim knowing quite well that he would not be able to repay the SBD 500. When he escaped and refused to pay the SBD 500.00, he caused a huge loss to the takings of the taxi driver for that day. I consider this as an aggravation. In the second incident, the unsuspecting student was tricked by the defendant into believing that she would easily purchase two laptops at an extremely cheap price of SBD 400 each. Hence, Ms Donga gave her SBD 800 equivalent to the price of two laptops as per the false representation by the defendant.

### Mitigating Features

23. The mitigating factors are as follows:
24. **Early guilty plea.** Mr Kopana entered an early guilty plea.
25. **Genuine Remorse.** Mr Kopana expressed his great remorse for what did and promised to become a transformed person after serving his prison sentence.
26. **First time offender.** The defendant has no previous conviction and a first time offender.
27. **Cooperation with the Police.** He cooperated with the Police during the course of investigation and made an early admission to the offence.
28. **Personal Circumstances.** The defendant is married and has a child. He is the breadwinner and responsible for his family's welfare. He is also responsible for the welfare of his wider extended family. He is 39 years of age and also has a high chance of rehabilitation.
29. **Time spent in Custody.** The pre-sentence custody is also taken into account.

### **Sentencing Principles**

30. The sentencing principles such as punishment, deterrence, and rehabilitation must always be taken into consideration in the process of formulating a sentence.
31. It is an established principle that each case must be decided based on its own merits, facts and circumstances.

## SENTENCING TARIFFS

32. In *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)<sup>3</sup>, the defendant, Jeffrey Kavei was charged with twelve counts of False Pretence contrary to section 308(a) of the *Penal Code* (cap. 26), and one count of carrying on banking business while not being licensed as a financial institution, contrary to section 3(2) (a) of the *Financial Institution Act* 1998. Between January 2014 to January 2015, he was engaged in fraudulent activities, and obtained money from numerous persons around the area he lived in at GPPOL, convincing them that an interest of about \$700 would be paid on top of each payments with big profits for those who participated in that form of investment he was promoting; a scheme akin to a pyramid money scheme with promises of high returns but in reality with little or nothing to show for it. There were a total of about nine persons who are the subject of the charges in this case. The total of the money that were borrowed were about \$68,600.00. Those money taken were never given back and no interest was ever paid to the victims. The moneys obtained ranged from \$400 to \$14,200 in some instances. During that time, he operated this scheme under guise of a business name "GPK Investment". He did not have any license to conduct such activity. He was sentenced for counts 1, 2, 6, and 9 for 3 years imprisonment each; whilst for counts 3, 5, 8, 10, 11 to a 2 years imprisonment each; and for Counts 4, 7, and 12 to a 2½ years' imprisonment each. However, the final sentence imposed was reduced to 5 years imprisonment. His Lordship Palmer CJ said:

*Taking into account the totality principle and noting that if each of the sentences are to be made consecutive (resulting in a total of 29½ years), will have the effect of a crushing sentence on him. Balancing the principles of deterrence, retribution, prevention and rehabilitation as much as is possible in the circumstances of this case, I am satisfied an appropriate sentence should be 5 years.*

33. In the present case, it must be classified towards the lower end of the scale in terms of its severity in consideration of the amount of money obtained, and other relevant factors.

### Starting Point

34. After having considered the relevant factors and the circumstances of this case, I am satisfied that it warrants an immediate custodial sentence with respect to both counts. It is my respectful view that a starting point of 24 months is appropriate for each of the counts.

### Count 1:

35. *Early guilty plea.* Mr Kopana entered an early guilty plea. I deduct 7 months.
36. *Genuine Remorse.* Mr Kopana expressed his great remorse for what did and promised to become a transformed person after serving his prison sentence. I deduct 3 months.
37. *First time offender.* The defendant has no previous conviction and a first time offender. I deduct 3 months.

---

<sup>3</sup> *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)

38. **Cooperation with the Police.** He cooperated with the Police during the course of investigation and made an early admission to the offence. I deduct 2 months.
39. **Personal Circumstances.** The defendant is married and responsible for his children's welfare. He is 39 years of age and also has a high chance of rehabilitation. I deduct 3 months.
40. **Time spent in Custody.** The pre-sentence custody is also taken into account.
41. I am satisfied that an imprisonment of 6 months is appropriate for the first count.

**Count 2:**

42. **Early guilty plea.** Mr Kopana entered an early guilty plea. I deduct 7 months.
43. **Genuine Remorse.** Mr Kopana expressed his great remorse for what did and promised to become a transformed person after serving his prison sentence. I deduct 3 months.
44. **First time offender.** The defendant has no previous conviction and a first time offender. I deduct 3 months.
45. **Cooperation with the Police.** He cooperated with the Police during the course of investigation and made an early admission to the offence. I deduct 3 months.
46. **Personal Circumstances.** The defendant is married and a bread winner. He is 39 years of age and also has a high chance of rehabilitation. I deduct 2 months.
47. **Time spent in Custody.** The pre-sentence custody is also taken into account.
48. I am satisfied that an imprisonment of 6 months is appropriate for the second count.
49. The next issue is whether or not the sentence for both offences and counts should be served concurrently or consecutively. The main consideration is whether or not the offences arose out of the same transaction. In *Bade v Reginam* [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988)<sup>4</sup>, His Lordship Ward CJ stated that:

*When considering sentence for a number of offences, the general rule must be that separate and consecutive sentences should be passed for the separate offences. It is trite to point out that a man who commits, say, five offences should receive a heavier sentence than a man who only commits one of them.*

*However there are two situations where this rule must be modified. The first, that where a number of offences arise out of the same single transaction and cause harm to the same person there may be*

---

<sup>4</sup> *Bade v Reginam* [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988)

*grounds for concurrent sentences, does not concern this appeal save to say that the learned magistrate correctly applied this principle in ordering a concurrent term for the malicious damage caused to Solo Lae's house during the burglary.*

*The second occasion for modifying the general rule arises where the aggregate of sentences would, if they are consecutive, amount to a total that is inappropriate in the particular case. Thus, once the court has decided what the appropriate sentence for each offence is, it should stand back and look at the total. If that is substantially over the normal level of sentence appropriate to the most serious offence for which the accused is being sentenced, the total should be reduced to a level that is "just and appropriate" to use the test suggested in *Smith v. R.* [1972] Crim.L.R. 124. Equally, if the total sentence, although not offending that test, would still in the particular circumstances of the person being sentenced, be a crushing penalty, the court should also consider a reduction of the total.*

50. The circumstances of the two present offences were as follows. Both offences and incidents occurred on the same day. In the first incident, he defrauded the taxi driver and refused to pay the SBD 500 owed. Secondly, he falsely represented to Ms Donga that he had laptops for sale at the price of SBD 400 each and that representation was acted upon by the victim. Hence, it is my considered opinion that the two offences are separate and distinct offences because the defendant committed them at two different locations in Honiara against two different victims and they cannot in any way be considered as arising out of the same transaction.
51. The two offences could be rightly regarded as arising out of the same transaction if the defendant made the false representation to the two victims at the same time and location, and the representation was acted upon by both defendants. In fact the two offences were committed by the defendant on the same day unbeknownst to the two victims which further suggests they did not arise from the same transaction.
52. In view of that, the sentences for both counts must run consecutive to each other.

### CONCLUSION

53. In the *Kavei case*,<sup>5</sup> his Lordship Palmer CJ said:

*I note concerns expressed in the common occurrences of this type of offences by cunning tricksters taking advantage of the weak and vulnerable members in the community who sadly readily fall prey to such persons resulting in the loss of hard earned money in the hope of quick and easy returns. In spite of warnings being issued by the police and banks to the public about these type of "quick get rich money schemes", members of the public continue to be caught out by such tricksters.*

54. I also wish to add that the members of our community must be protected by such cunning tricksters such as the defendant. It is common sense that there is no easy way getting money but only through hard work and commitment. People nowadays appear to easily succumb to the "quick to get rich" money schemes. For instance, in this present case, the second victim was led to believe that she can buy a laptop for the amount of SBD 400, and she decided not only to buy one but two so she gave the defendant SBD 800. The normal cost of a new brand laptop in Solomon Islands ranges from SBD 3000 to SBD 12,000 depending very much on the brands. The selling of a laptop for an extremely cheap

---

<sup>5</sup> *R v Kavei* [2019] SBIHC 69; HCSI-CRC 143 of 2017 (22 July 2019)

price of SBD 400 is overly generous and too good to be true and should trigger the mind of a reasonable person that the defendant might not be the owner of the property or it could be a stolen property or that the purported property is non-existent at all. On the date of the offending in 2019, the defendant never returned with any laptop at all as promised.

55. The offender and other potential offenders must be reminded that the law is there to protect the victims from such deceiving and devious actions. I take judicial notice of the fact that con artists such as the defendant are increasing and the emergences of fraudulent schemes are becoming quite common in Solomon Islands.
56. With respect to the first count, I now sentence Mr Kopana to 6 months imprisonment. Secondly, I also sentence Mr Kopana to 6 months imprisonment for the second count.
57. Both sentences shall be served consecutively. Hence, the resulting sentence is 12 months imprisonment (or 1 year). 5 months (equivalent to 42 percent) of the total sentence shall be suspended and the defendant shall serve only 7 months in prison. Moreover, taking into consideration that he has spent 7 months in custody since he was remanded in September 2019, I am satisfied that he has served a substantial time in prison and shall be released at the rising of the court. Mr Kopana shall serve the other 5 months with his family in which he is required to keep the peace and be of good behavior.
58. This should also be a lesson to the defendant, and should send a message of deterrence to the members of the public.

### **ORDERS**

59. The orders of the Court are as follows:
  - [1] The offender Mr Darwin Kopana is sentenced to an imprisonment term of 6 months for both counts which shall be served consecutively.
  - [2] Hence, the resulting sentence is 12 months or 1 year imprisonment. 5 months of the total sentence shall be suspended for 5 months which means he needs to serve only 7 months in prison. Given the fact that he has served around 7 months in prison already, I am satisfied that he should be released at the rising of the court. For the avoidance of doubt, the remaining 5 months shall be served outside of the prison at his home with his family.
  - [3] The total sentence shall be backdated to the date of first remand in 2019.
  - [4] Right of Appeal within 14 days.

  
**PRINCIPAL MAGISTRATE FELIX HOLLISON**  
**THE COURT**