



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

Criminal Case No. 659 of 2021

REGINA

-v-

**BEGA IOTOA
&
UPA TATAKI**

Date of plea: October 1, 2021
Date of hearing: October 1, 2021
Date of sentence: October 5, 2021

Nickson Tonowane for the Crown

Paul None for the Defendant

SENTENCE

- [1] The two defendants, Mr. Bega Iotoa, and Mr. Upa Tataki are charged together for an offence of *Restriction of Movement of Persons in Honiara* contrary to Clause 4 (1) and (2) (a) and (b) of the Emergency Powers (COVID-19) (Honiara Emergency Zone) (Restriction of Movement) Order 2021 and Regulation 15 (1) (a), (2) and (4) of the Emergency Powers (COVID-19) (No-2) Regulations 2021. They admitted to the offence on arraignment by entering guilty pleas. Therefore, the court has recorded criminal convictions accordingly.
- [2] The facts are that, on August 30, 2021 at 4:16 a.m., the defendants, without lawful excuse, were seen walking along Tuvaruhu public road, close to the China Town Police Post in Honiara, Guadalcanal Province. This was an area designated an Emergency Zone during the Restriction period by the Prime Minister of Solomon Islands.
- [3] It was accepted that from 10:00 p.m. to 4:00 a.m., they were drinking kava with their relatives at the Gilbertese Settlement next to the Fijian Memorial Site. After they finished drinking kava, they decided to walk back to their place of resident at Vavaya Ridge, although they knew of the lock down. It was when they were seen walking along the Tuvaruhu public road and arrested for breaching the order of the restriction of movement during the lock down period.
- [4] The statutory penalty for the offence of Restriction of Movement of Persons is 15,000 penalty units or 5 years' imprisonment, or both. It is accepted that the seriousness of the offence is judged by its maximum term, and thus, demonstrate the intention and

abhorrence of our legislature against such a crime, and the spread of covid-19 in Solomon Islands. However, the maximum term is reserved for the worst type of offending. And it is trite law that cases are judged on their own set of facts, and a blanket approach would entertain misconception.

- [5] It is accepted by both counsels that any sentence must fall on the lower end of the tariff, for reason that the novel corona virus (covid-19) have yet to reach our nation, and that this was a mock lock down, made in view to tighten up the nation's preparation in the event the virus enters the country. Also, to further elaborate on what I have stated, the origin of lock down orders was made in view of curbing the transmission of covid-19 in the community, thus the imposition of stay at home orders. The maximum penalty set was fixed identical to that purpose.
- [6] On the other hand, it has been enunciated in previous cases¹ that this mock lock down orders are important to our nation's preparation of confronting covid-19. The Government has seen it appropriate to do an exercise to test the nation on how we can deal with such long hours at home, and the real challenges that people may have in complying with the lock down orders. Obviously, there would be no time for going out to buy food and other daily necessities that people can access in a life without covid-19, and I would like to think that, among other things, to give a sense of what it would be like to our citizens who most of them are low income earners, farmers, self-employed people, government workers and the unemployed folks; so that they can identify their gaps, and make effort to improve on in preparing for a possible 'real' lock down.
- [7] In addition to the above, it is also to sharpen the frontliners and those who are currently manning our borders, including the police officers and other enforcement officers who are responsible in making sure people remain at their place of residence during lock down hours. Therefore, the need for citizens to obey such orders from our Government, which was made for the benefit of this nation and its citizens.
- [8] For the aggravating factors, I noted that although the knowledge of looming lockdown, they had chosen to drink kava at their relatives' place, next to Fijian Quarter, and deliberately decided to return to Vavaya ridge during the lock down hours. This in my view demonstrates carelessness and foolishness on their part.
- [9] I must say that the maximum penalty is not an aggravating factor. I have said this in previous cases² and have again said it. In *Tii v Regina* ³, His Lordships said at paragraph 22:

"The starting point should be consideration of the facts of the offence and of the appropriate range of penalty for the offence constituted by those facts. Then any aggravating circumstances should be identified." (Emphasis mine)

¹ R v Tela, R v Auga, R v Mae

² R v Mae

³ [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017)

- [10] It is the sentencing notion that cases are decided on their own facts⁴, thus, introducing the maximum penalty as an aggravating factor, is an attempt to displace this principle. While I may accept that it is significant to establishing the yardstick or the range, it should not be added as an aggravating factor, which would unnecessarily increase a starting point. This Court has made it clear in *R v Mae*⁵, where it said, “an aggravating factor must not form part of the elements of offence, nor from its maximum penalty, rather, from the defendant’s actions that infuriates the situation, which a trier of fact would consider it serious, as oppose to a mere breach or contravention to the law.”⁶
- [11] I acknowledged that both of them are young offenders and they are in Honiara for the provincial games as volleyball players. Mr. None of counsel for defendants submitted that the court should consider their youthfulness and their goals to become professional players in the future.
- [12] They both pleaded guilty to the offence at the outset, which has reserve costs and expenses to run a trial. They appeared remorseful in court, which shows their acceptance to impending penalty by the court, and the blame for their mistake. They are first-offenders, and today will be their first confrontation with the law. They cooperated well with police and have been faithful during their court proceedings as well.
- [13] I am grateful for counsel for the Crown to provide the court with previous case authorities, which have significantly assisted the court in establishing the tariff, and fixing the starting point. Counsel has referred the court to cases from the 2020 lockdown orders of which the court had imposed fine penalties ranging from \$500 to \$1,000. He submitted that given the circumstance of the offending and the defendants’ youthfulness, a \$300 fine penalty is appropriate.
- [14] In the recent case of *R v Auga*⁷ (“*Auga*”), the court had imposed a fine of \$300 on the defendant after a guilty plea. The facts were that, the defendant had went looking for cigarettes at Savo heights, and was not at his residence at Namoruka area, although he knew full well that it was during a lockdown period, and the area of which he went was part of the Emergency Zone. He was a young person in his early 20’s, and was working as a casual worker for Red Devil Company.
- [15] In *R v Tela & Others*⁸ (“*Tela*”), the facts were that, the defendants had thought the area located at the far eastern end of the Henderson airport was beyond or outside of the Emergency Zone. They had pleaded guilty to a count of Restriction of Movement of Persons in Honiara. The court imposed a good behavior bond for a year in the sum of \$500.

⁴ *Sahu v Regina* [2012] SBHC 122

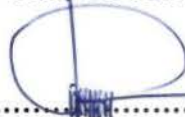
⁵ SBMC-Criminal Case No. 667 of 2021

⁶ At paragraph 10 of the sentence ruling in *R v Mae*

⁷ SBMC-Criminal Case No. 666 of 2021

⁸ SBMC-Criminal Case No. 657 of 2021

- [16] In *R v Mae*⁹ ("*Mae*"), the court imposed a good behavior bond on the defendant for 1 year in the sum of \$500.00. The facts were that, the defendant had gone to his uncle's place the night before the lockdown, and because that it was late, he remained at his uncle's residence until Monday afternoon. He was arrested after being seen walking along Vara Creek main road, a place close to his residence and part of the Emergency Zone. He was a Juvenile at the time of offence, hence, the sentence.
- [17] Therefore, it is established that the sentencing tariff for this offence of mock lockdown exercise, ranges from good behavior bond to \$1,000 fine, depending on its intrinsic facts, circumstances and factors.
- [18] For today, I see it fit to impose a fine sentence, accepting that a rehabilitative method is appropriate for the defendants, simply because they are young and first offenders. A fine sentence would reflect their deliberate disregard to the lockdown orders imposed by our Government.
- [19] The defendants, and the public must acknowledge and respect the importance of such measures implemented by the Government of this country. It is for our good, as such, the least we can do is to support them in working together for a covid-19 free nation, or to maintain our covid-19 free status.
- [20] After taking into account the merits of this case, weighing with the aggravating and mitigating factors, and after harmonizing it with comparative case authorities of this jurisdiction, I hereby impose the fine sentence as follows:
1. The defendants must pay the fine of **\$300.00 severally**.
 2. The fine must be paid by **18th of October 2021 at 4:30 p.m.**, considering the financial impacts and effects of covid-19.
 3. In default of payment, 20 days imprisonment.
 4. Criminal conviction entered.
 5. 14 days right of appeal applies.
 6. Order accordingly.

THE COURT**MR. LEONARD B. CHITE**

Principal Magistrate

Central Magistrates' Court



⁹ SBMC-Criminal Case No. 667 of 2021