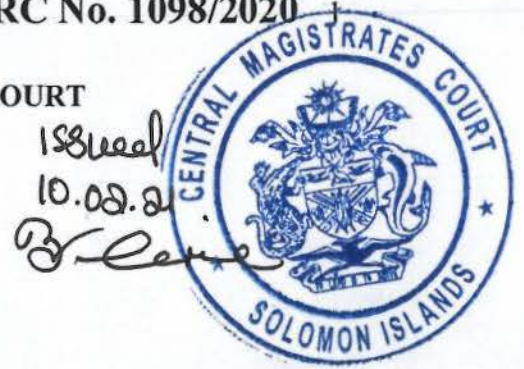


IN THE CENTRAL MAGISTRATE'S COURT  
OF SOLOMON ISLANDS  
CRIMINAL JURISDICTION



*Criminal Case No. 1098 of 2020*

REGINA

v

MICHAEL KURTLEY GEE,  
MARIA BERENA EUSTAQUIO AND WILLY MARTINUSSEN

**Date of Hearing:** 5<sup>th</sup> February 2021  
**Date of Verbal Sentence:** 5<sup>th</sup> February 2021  
**Date of Written Sentence:** 10<sup>th</sup> February 2021

Mr. E. V. Rizzu for the prosecution  
Mr. C. Gabilly for the three defendants

**SENTENCE**

1. The three defendants were charged and pleaded guilty to one count of the amended charge of Prohibition of Entry of Non-Citizens, contrary to Clause 4 of the EMERGENCY POWERS (COVID-19) (Prohibition of Entry of Non-Citizens) Order 2020, Regulation 6 (1) and (3) of the Emergency Powers (COVID-19)(No.3) Regulations 2020 and Regulation 7 (1) and (4) of the Emergency Powers (COVID-19)(No.4) Regulation 2020
2. The maximum penalty for this offence is \$10,000 (SBD) or 5 years imprisonment or both fine and imprisonment. The court has the discretion to impose any forms of these penalties.

3. The facts of this case that had been accepted and admitted into evidence shows that on 18<sup>th</sup> November 2020, these defendants left the port of Denarau in Fiji in their two yachts to Biak in Indonesia. Michael and Maria travelled in one yacht called, Roke while Willie in another yacht called, Bona Dea.
4. On their way, Michael's yacht encountered an overheating and linkage to the engine, rendering the situation in distress. Michael managed to fix the engine and linkage but there was damage to the housing that made him unable to put the water pump back. Because of this, he ran out of water. He tried to call channel 16 but there was no response for assistance. It was due to the need to fix the housing of the yacht and to collect water that they decided to enter Solomon Islands waters.
5. On 1<sup>st</sup> December 2020, they came shore and anchored in the Aola Harbour in East Guadalcanal. That was during the State of Public Emergency declared by the Solomon Islands government to prohibit entry of non-citizens (either by sea or air) into the country due to the Covid-19 pandemic.
6. On 3<sup>rd</sup> December 2020, they were escorted to Honiara by the Royal Solomon Islands Police Force. They underwent Covid-19 testing in Honiara and all tested negative. Their yachts were then detained by the Customs and Excise Department of Solomon Islands.
7. These following properties of the defendants were also detained and confiscated from them by Immigration and Customs and Excise departments during the course of investigation:
  - (i). Passports of Michael Gee Kirley, Berena Maria Eustaquio and Willy Martinussen, confiscated by the Immigration Department of Solomon Islands.
  - (ii). Documents of Yacht Roke confiscated by Customs and Excise such as; 1 x copy of certificate of clearance from Fiji Revenue and Custom Service, 1 x copy of certificate of ship registration, 1 x copy of outward report for

yachts/small craft from Fiji Revenue and Customs Service, 1 x copy of crew list, 1 x copy of statement of Master/Owner of Yacht on departure from Fiji, 1 x copy of certificate of clearance from Fiji and 1 x green coloured Log Book.

(iii). Documents of Yacht Bona Dea confiscated by Customs and Excise such as; 1 x copy of certificate of clearance from Fiji Revenue and Custom Service, 1 x copy of certificate of ship registration, 1 x copy of outward report for yachts/small craft from Fiji Revenue and Customs Service, 1 x copy of crew list, 1 x copy of statement of Master/Owner of Yacht on departure from Fiji, 1 x copy of certificate of clearance from Fiji and 1 x yellow coloured Log Book.

8. The matter proceeded in court for mention and arraignment. On 5<sup>th</sup> February 2021, they pleaded guilty to the amended charge and were sentenced.

9. These are the reasons in imposing the sentence.

10. I have noted, as revealed from the facts, that the circumstances in which the offence was committed was not a deliberate act to flout the laws of this country, but one that was committed due to the dire situation the defendants had encountered. That is, the need to fix the housing of the yacht and to collect water for their intended voyage to Indonesia, nothing more nothing less. The only default on their part is that, they had entered Solomon Islands without a visa and also during the State of Public Emergency due to the Covid – 19 pandemic. Viewed in this context, this case must be considered and decided in the light of that situation.

11. I understand the constraints faced by the defendants whilst at sea and that was the reason why they decided to enter Solomon Islands for assistance. Had it not for the distress situation, they would not have entered into our country. Hence, their case is almost akin to a case that the defendants had committed the offence for reasons of necessity.

12. I take into account all the mitigating factors submitted by their lawyer. I find there is no aggravating factor for this case. However, it is my view that their entry into Solomon Islands had caused alarm to the general public in light of the current covid – 19 pandemic especially when their medical status of the covid-19 before entering our country is not known. That poses insecurity to the border control efforts of our government.
13. The circumstance of this case does not require a custodial sentence but only a fine with other consequential orders in respect to their confiscated properties.
14. The defendants are therefore sentenced as follows:
  1. Each of the defendant is to pay a fine of \$6,000 (SBD), payable by close of business on 8<sup>th</sup> February 2021. In default of payment, each defendant is ordered to serve 6 months imprisonment.
  2. Consequent to Order 1 above, **the Royal Solomon Islands Police, the Immigration Department of Solomon Islands, the Customs and Excise of Solomon Islands and/or any concerned Authority of the Solomon Islands Government** are ordered to release forthwith the following properties to the defendants with immediate effect:
    - (i). The two yachts by the name of Roke and Bona Dea detained by the Customs and Excise of Solomon Islands.
    - (ii). Passports of Michael Gee Kirley, Berena Maria Eustaquio and Willy Martinussen, confiscated by the Immigration Department of Solomon Islands.
    - (iii). Documents of Yacht Roke confiscated by Customs and Excise such as; 1 x copy of certificate of clearance from Fiji Revenue and Custom Service, 1 x copy of certificate of ship registration, 1 x copy of outward report for yachts/small craft from Fiji Revenue and Customs Service, 1 x copy of crew list, 1 x copy of statement of Master/Owner of Yacht on departure

from Fiji, 1 x copy of certificate of clearance from Fiji and 1 x green coloured Log Book.

- (iv). Documents of Yacht Bona Dea confiscated by Customs and Excise such as; 1 x copy of certificate of clearance from Fiji Revenue and Custom Service, 1 x copy of certificate of ship registration, 1 x copy of outward report for yachts/small craft from Fiji Revenue and Customs Service, 1 x copy of crew list, 1 x copy of statement of Master/Owner of Yacht on departure from Fiji, 1 x copy of certificate of clearance from Fiji and 1 x yellow coloured Log Book.

3. 14 days right of appeal applies.



(Augustine Sylver Aulunga, Principal Magistrate)