

**REGINA v THOMAS PORAKA**

**Case Number** : Criminal Case No 13 of 2021  
**Decision Date** : 30 March 2021  
**Court** : Central Magistrates' Court – Honiara  
**Coram** : Deputy Chief Magistrate Ricky Iomea  
**Counsel Name(s)** : Geitaba Cleda G. Waletofea (ODPP) for the Prosecution  
Donation Houa (PSO) for the Accused



**SENTENCE**

Facts of the case

The accused, Thomas Poraka is from Tasman Island, Bougainville, Papua New Guinea. Between 7 am and 8 am on the 26<sup>th</sup> of December 2021, he entered into Solomon Islands territory at Pelau Islands, Ontong Java, Malaita Outer Islands.

On 27 March 2020, the Prime Minister signed into effect the Emergency Powers (COVID-19) (Restriction of Movement of Cruise ships and including small crafts vessel (OBM) Order 2020 (“the Small Craft vessels Order”) which effectively banned the entry amongst other vessels, small craft vessel and the Emergency Powers (COVID-19) (Prohibition of Entry of Non-Citizens) Order 2020. “The Non-Citizens Order” which also bans the entry of Non-Citizens.

The defendant entered in an Outboard Motor 30 horse power that belonged to Lester Kapua.

The defendant was intoxicated at the time and was looking for a locally brewed alcohol drink, Kaleve.

When approached and questioned by Ontong Java Police, the defendant accepted that he knew that the borders were closed. He has no valid PNG passport to enter or leave the Solomon Islands. He was not exempted to enter Solomon Islands or sought permission from the Prime Minister to enter the country according to Emergency Powers (COVID-19) (Prohibition of Entry of Non-Citizens) Order 2020 (Non-Citizen Order).

As a result of his entry into Solomon Islands, he was arrested and charged with the offence of unlawful entry by a non-citizen, contrary to Clause 4 of the Emergency Powers (COVID-19) (Prohibition of Entry of Non-Citizens) Order 2020 and Regulation 7(4) of the Emergency Powers (COVID-19) (No.4) Regulations 2020.

Those are the facts that constitute the charge against the accused.

Plea history

He had earlier pleaded ‘Not Guilty’ to the charge on 18<sup>th</sup> March 2021 but on 25<sup>th</sup> March 2021, he decided to change his earlier plea and asked to be re-arraigned. On re-arraignment, he changed his earlier plea and pleaded ‘Guilty’ to the charge.

### The law

Order 4 of the Emergency Powers (COVID-19) (Prohibition of Entry of Non-Citizens) Order 2020 states;

*"A non-citizen is prohibited from entering Solomon Islands during the emergency period".*

The maximum penalty is 10,000 penalty units or imprisonment for 5 years, or both.

### Aggravating factors

This offending is aggravated by the fact that the defendant was intoxicated at the time and his action of entering the Solomon Islands has put the lives of Solomon Islanders at risk of COVID-19.

### Mitigating factors

The accused has changed his plea to guilty. He is therefore convicted on his own guilty plea. The plea shows remorse by the accused and his willingness to accept responsibility for his action and face the consequence. The plea also saves everyone's time in dealing further with his case.

He is a young man of 19 years of age, unemployed and helped his family as a fisherman. He is a first time offender.

I am told that he does not have money to pay any fine if he is sentenced to a fine as he is unemployed and has no family member or relatives here in Solomon Islands. Defence however, submitted that the time already spent in custody is now enough punishment.

### Sentencing tariff

This is not the only accused to be sentenced under Order 4 of the Emergency Powers (COVID-19) (Prohibition of Entry of Non-Citizens) Order 2020 and Regulation 7(4) of the Emergency Powers (COVID-19) (No.4) Regulations 2020. The Magistrate's Court had, in the past imposed sentences against defendants who had been convicted under these Regulations. The following cases were submitted as guidelines by the Prosecution and the Defence.

In *R v Gee & Others*<sup>1</sup>, the three defendants pleaded guilty to one count of entering Solomon Islands during the emergency period contrary to Order 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) Regulation 2020 and Regulation 7 (1) and (4) of the Emergency Powers (COVID-19) (No.4) Regulation 2020. The defendants left Denarau in Fiji in their two yachts to Indonesia. On their way one of the yachts encountered an overheating and linkage to the engine, putting them in a distress situation. As a result, they entered Solomon Islands for assistance. They were sentenced to pay a fine of \$6,000.00 each, in default, 6 months imprisonment.

In *R v Hubbard*<sup>2</sup>, the accused provides helicopter and air taxi services called "Helicopter Support Solomon Islands Limited". On 10<sup>th</sup> May 2020, he flew to Vanuatu from Solomon

<sup>1</sup> [2020] SBMC CRC No.1098 of 2020

<sup>2</sup> [2020] Criminal Case No. 613 of 2020

Islands on AS350 Squirrel Helicopter registered in Solomon Islands as H4-EGH to assist in delivering relief supplies after Cyclone Harold had hit Vanuatu. On 22 May 2020, he flew from Vanuatu and came back to the Solomon Islands on the same registered helicopter. Upon his arrival he was placed in quarantine. He was not granted an exemption to enter into Solomon Islands. The main work that the defendant's company does in the Solomon Islands is providing support for RSIPF/AFP and Ministry of Health and Medical Services, including Medivac operations for NRH. The defendant has served this nation for a considerable number of years. He was sentenced to pay a fine of \$5,000.00.


In *R v Mitchell, Carter and Glenn*<sup>3</sup>, the defendants were also charged with entering the Solomon Islands during the emergency period and were sentenced to pay a fine of \$6,000.00 each after pleading guilty to the charge.

#### Sentence consideration

In the above cases, fines were imposed. The defendants in the above cases were at the time of sentencing were financially capable of paying any fines. Having assessed the present case, the accused might not be in a position to pay a fine. The Court is of the view, having assessed the facts of the, the aggravating and mitigating factors, including the plea of guilty, a short and sharp custodial sentence is appropriate as punishment and deterrence and to allow the accused to be released soon and return to his family in PNG.


I sentence the accused, Thomas Poraka to six (6) months imprisonment. The sentence is backdated to commence on when he was first remanded at Rove Correctional Centre. That was on January 21<sup>st</sup>, 2021.

The Court,



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Ricky Iomea - DCM



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<sup>3</sup> Unreported Criminal Case No. 686 of 2020