



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

(Criminal Jurisdiction)

Criminal Case No: 1008 of 2020

REGINA

-V-

WILLIAM AMA, CHRIS OSBORN, AND MANLOS AMA (*Consolidated with*)

Criminal Case No: 1007 of 2020

REGINA

-V-

WILLIAM AMA

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Ms Patricia Tabepuda, Senior Legal Officer, ODPP, for the Crown in Criminal Case No. 1008 of 2020, and Ms Francisca Luza, Senior Legal Officer, ODPP, for the Crown in Criminal Case No. 1007 of 2020

Mr Stanley Aupai, Principal Legal Officer, PSO, for the Defendants in both cases

Date of Ruling: 13th April 2021

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

SENTENCE

INTRODUCTION

1. The defendants Mr William Ama, Chris Osborn and Manlos Ama pleaded guilty to one count of house breaking contrary to section 301(a) of the *Penal Code* [Cap 26] read with section 21 of the same Act. I now pronounce their convictions. The fourth defendant Mr Selwyn Gaza has entered a not guilty plea, and his matter will be dealt with in due course. His matter is listed for mention on the 16th of April 2021 here in the Central Magistrates Court in Honiara.
2. In the Criminal Case No. 1007 of 2020, Mr William Ama is the sole defendant and he pleaded guilty to one count of simple larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. I

also record a conviction against his name. For the purposes of sentencing, both cases against Mr William Ama are consolidated and are dealt with in this ruling.

Basic background of the defendants and the Complainant

3. Mr William Ama and Mr Osborn were 27 years of age at the time of the offending. The third defendant Mr Manlos Ama was 20 years of age at the time of offending. William and Manlos are biological brothers. The defendants are natives of Kolopakisa village, Havulei Ward in the Isabel Province.
4. The complainant in both cases is Ms Kymberlee Bryce, an Australian national, who is the manager and owner of the Papatara Island Resort in the Isabel Province.

FACTS

5. On an unknown date between the 4th of May 2020 and 8th of May 2020, at around 11pm to 12am at night, the three named defendants travelled by boat to the Papatara Island Resort on Papatara in the Isabel Province. All the defendants were former employees of the said resort.
6. They arrived at the said resort and went to the complainant's house. The complainant at that time was away in Honiara. The complainant's dwelling house was built by the defendants when they were employed by the complainant at the Papatara Island Resort.
7. The defendants entered the complainant's house through the main door. Once they were inside the house, they went upstairs to the complainant's bedroom. The complainant's bedroom has a window that was open to the storage room. The storage room of the house was on the first floor.
8. The defendants removed the louvres of the window and went through the window to the storage room. They took seven (7) bottles of spirit (hot stuff) from the storage and climbed the back through the window. They left the house through the front door.
9. The cost of one bottle of spirit is about SBD 500.
10. On the 20th May 2020, the complainant discovered that some items from the storage room were missing including the spirits. The complainant then reported the matter to the Buala police and the investigation was being carried out.
11. The defendants were later charged, and in the recent Isabel Court circuit in March earlier this year, they all pleaded guilty to the charges laid against them with the exception of Mr Gaza.

FACTS IN CC NO. 1007 OF 2020

12. The only defendant in the Criminal Case No. 1007 of 2020 is William Ama.
13. The complainant is Kymberlee Bryce.
14. On the 22nd September 2020, at about 8pm, the defendant stole one bottle of spirit (hot stuff), the property of the complainant.
15. Mr James Sau, an employee of the Papatara Island Resort recovered the bottle of Spirit (hot stuff) from the defendant.
16. The defendant was charged with one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26] for the offence he committed on the 22nd of September 2020 at the Papatara Island Resort.

DISCUSSION AND ANALYSIS

17. In *Farsy v Reginam* [2004] SBHC 120; HC-CRC 063 of 2004 (24 July 2004)¹; his Lordship Palmer CJ stated as follows and I quote:

When considering what sentence to impose or would be appropriate, the courts have developed four guiding principles. These were referred to by Lawton LJ in R v. Sargeant²¹ as the classical principles of sentencing:

"Those classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing." [Emphasis added]

18. Thus, the archetypical principles of sentencing alluded to in *Farsy* should and must always be considered.

House Breaking with the Intent to commit a felony contrary to section 301(a) of the *Penal Code* [Cap 26]

19. Section 301(a) of the *Penal Code* [Cap 26]² provides as follows:

301. Any person who, with intent to commit any felony therein-

¹ *Farsy v Reginam* [2004] SBHC 120; HC-CRC 063 of 2004 (24 July 2004)

² *Penal Code* [Cap 26], s 301(a)

(a) enters any dwelling-house in the night; or
is guilty of a felony, and shall be liable to imprisonment for seven years.

Aggravating features

20. The aggravating factors are as follows:
21. **Maximum Sentence.** The maximum sentence for this offence is 7 years imprisonment which means it is a felony and quite a serious offence.³
22. **The offence was committed at night.** The commission of the offence at night (although an element of this offence) normally renders the victims more vulnerable compared to an offence that is committed in broad daylight. In *Regina v Funifaka* [1997] SBHC 31; HC-CRC 033 of 1996 (6 June 1997)⁴, Palmer J (as he then was) stated at page 16-17 as follows:
- People are entitled to feel safe and secure in their homes (whether they have a fence around and good locks on their doors or not), and to have a good nights sleep and rest without being disturbed. It is plain common sense that a person's house is out of bounds to anyone whether in custom, the law or whatever religious beliefs that one might have. (In English law, an Englishman's home is known as his castle, a place of refuge and safety). It is the same here, and the courts have a duty to protect society from such persons with criminal minds. The element of deterrence therefore must be borne in mind and applied so that at least persons who are minded to do such things can at least think twice or again before venturing out in such activities knowing fully well what they might face if brought to the courts.*
23. **Seriousness of the Crime.** Apart from the maximum sentence, the constitutional rights of the complainant such as the rights to protection from deprivation of property and protection for privacy of home and other property provided for by sections 8 and 9 of the *Constitution of Solomon Islands 1978* arguably have been breached.⁵
24. **Pre-Meditation and Planning.** The offence was premeditated. The defendants knew very well the structure of the house since they were involved in building the house, and also they were former employees of the resort.
25. **Group or gang offending.** The offence was committed by the three defendants as a group and this must be considered as an aggravation.

³ *Penal Code* [Cap 26], s 301(a)

⁴ *Regina v Funifaka* [1997] SBHC 31; HC-CRC 033 of 1996 (6 June 1997)

⁵ *Constitution of Solomon Islands 1978*, ss 8 and 9

26. **Loss of Business.** The complainant as a foreign investor was permanently deprived from the use and enjoyment of her personal properties. The stolen bottles of spirit were meant for guests of the resort. The total estimated cost of the loss is approximately between SBD 3000 to 4000. This is a great loss to the earnings and income of the resort.

CC No. 1007 of 2020

27. **Maximum sentence.** The maximum sentence for the offence of simple larceny is 5 years imprisonment.⁶

28. **Commission of the offence at night.** The defendant Mr William Ama again on the 22nd September 2020 at around 8am committed the offence of simple larceny or theft against the same complainant on Papatara Island. Earlier in May of 2020, he was part of the group that committed the offence of house breaking at the same resort.

29. **Repetitive Offender.** His double conviction for the offences of house breaking and theft committed in May and September respectively in 2020 against the same tourism operator in these two present cases shows that he is a repetitive offender.

30. **Manner of Stealing.** Despite the fact that he had returned the bottle of spirit (hot stuff) to one of the employees of the Papatara Island Resort, he was in the process of escaping when he saw flash light that night. His intention at the time was to steal and had he not been caught at the time, nobody would have known that he stole the bottle of spirit (hot stuff) and it could not have been recovered at all.⁷

Mitigating Features

31. The mitigating factors for the defendants are as follows: early guilty plea, genuine remorse, no prior convictions, cooperation with the police, rehabilitative prospects of all the defendants, and their personal circumstances. For the second offence of simple larceny in which Mr William Ama is the only defendant, he is entitled to the same mitigating factors, and addition to that, the recovery of the stolen property. These will be addressed later in this ruling.

⁶ *Penal Code* [Cap 26]

⁷ This is quite different in the circumstances of the case of *Eapa -v- Regina*.

COMPARATIVE SENTENCES

House Breaking

32. In *Regina v Onumumu* [2016] SBMC 15; Criminal Case 181 of 2016 (13 June 2016)⁸; the defendants were sentenced to 30 and 31 months imprisonment respectively for one count of office break-in contrary to section 300(a) of the *Penal Code* [Cap 26]. The difference is that in *Onumumu*, the defendant was charged under section 300 of the *Penal Code* [Cap 26] which attracts a higher imprisonment term as a maximum but in this present case, the defendants were charged under section 301(a), which carries only 7 years imprisonment as a maximum sentence.
33. In *Regina v Meke* [2018] SBHC 13; HCSI-CRC 123 of 2017 (22 January 2018)⁹; the defendant pleaded guilty to one count of house breaking with intent to commit felony, contrary to section 301 of the *Penal Code*. Further, he pleaded guilty to two counts of rape, contrary 136 F (i) (a) of the Penal Code (Amendment) Sexual Offences Act 2016 (Cap. 26). The defendant was sentenced to two years imprisonment for the offence of house breaking and eight years imprisonment each for the two counts of rape which were all ordered to run concurrently.
34. In *Gore v Reginam* [2007] SBHC 53; HCSI-CRC 84 of 2006 (25 May 2007)¹⁰; the defendant was convicted in the magistrate's court for the following offences:
- 1) Stealing one black basket, two blankets, two pillow cases from a dwelling house belonging to Tom Seka on the 18th of March 2005.
 - 2) Stealing the sum of \$52.00, one tool bag and one pocket knife from the Methodist Church Office at Gizo on 16th March 2005.
 - 3) Stealing \$320.00 from a woman in the same house he was living in on 18th March 2005.
 - 4) Breaking into the Gizo Community High School and stealing a large number of property, with total value of \$1,415.00 on 16 March 2005.
 - 5) Escaping from lawful custody on 28th March 2005.
- He was sentenced to 12 months imprisonment for one count of breaking into the Gizo Community High School and for committing theft. The High Court although allowed the appeals for the other counts, it did not disturb the sentence with respect to one count of house breaking and confirmed the 12 months imprisonment imposed in the Magistrates Court.
35. The offences of burglary or house breaking contrary to sections 300 and 301 of the *Penal Code* [Cap 26] customarily would attract immediate custodial sentences. The normal sentencing range for this offence ranges from custodial sentences from a couple of months up to 3 years imprisonment. In this present case, the offence was under section 301(a) of the *Penal Code* [Cap 26] in which the maximum sentence is 7 years imprisonment. A total of 7 bottles of spirit or alcohol were stolen from the Papatara Island resort.

⁸ *Regina v Onumumu* [2016] SBMC 15; Criminal Case 181 of 2016 (13 June 2016);

⁹ *Regina v Meke* [2018] SBHC 13; HCSI-CRC 123 of 2017 (22 January 2018)

¹⁰ *Gore v Reginam* [2007] SBHC 53; HCSI-CRC 84 of 2006 (25 May 2007);

Starting Point

36. Thus, I am of the view that an immediate custodial sentence must be imposed for all the three defendants. The appropriate starting point in my view is 28 months imprisonment for all the three defendants.
37. **Guilty plea.** The defendants were first charged in 2020 and entered a not guilty. However, in the recent court circuit on Isabel in March 2021, they pleaded guilty to the said offence. I note that the plea was not made earlier at the first available opportunity. The defendants entered the guilty plea just at the eleventh hour when the trial proper was about to commence on the 17th of March 2021 at Kia. Nevertheless, I deduct 5 months from the starting point for each of the defendants.
38. **Genuine Remorse.** The guilty plea entered is an indication of the defendants' remorse and that they accept full responsibility for the offence that they had committed. I deduct 2 months for all the defendants.
39. **No prior convictions.** The defendants are first time offenders. They had no prior convictions which means that they were law abiding citizens prior to the commission of this offence. I deduct 2 months for all the defendants.
40. **Cooperation with the Police.** The three defendants cooperated well with the Police. An allowance must be given for this. I deduct 2 months for all the defendants.

High chances of rehabilitation/young adults

41. Mr Chris Osborn and William Ama were both 27 years at the time of offending. They should be by now 28 years of age.
42. Moreover, Mr Manlos Ama was only 20 when he committed the offence.
43. Mr Aupai of counsel for the defendants submitted that while the defendants are not "young persons" for the purposes of the *Juvenile Offenders Act* [Cap 14], they are all young adults who are all in their 20s, and that the prospects of their rehabilitation are an important mitigating factor. He relied also on the case of *Bati -v- Director of Public Prosecutions* [1986] SBCA 2; CA-CRAC 004 of 1986 (19 December 1986).¹¹

¹¹ *Bati v Director of Public Prosecutions* [1986] SBCA 2; CA-CRAC 004 of 1986 (19 December 1986). "Youth is one of the most effective mitigating factors. As has been shown the Court strongly favours the use of individualised measures for offenders under 21.... Where an offender of this group is sentenced to imprisonment, the sentence will normally be considerably shorter than would be awarded to a man of mature years for the same offence".

44. I agree that the defendants all have high chances of rehabilitation. I deduct 3 months for each of the three defendants.

Personal circumstances of the defendants

William Ama

45. Mr Ama (William) was 27 years at the time of the offending and he is currently single. He is the elder brother of Manlos Ama, one of the three defendants in this case. He is an important member of their family and he supports his parents in terms of gardening and other household chores.

Chris Osborn

46. Mr Osborn was 27 years of age at the time of offending. He is the first born in the family of three brothers.

47. Mr Osborn got married in 2019. He has an 8 months old daughter. His wife and the child lives with his parents at Kolopakisa village. He resides at Mas Pacific Logging Company camp at Suavanao. He normally went back to the village during the weekends when he is not busy with work.

48. He attended Lilika Community High School until form 3. Despite his limited education, he is able to read and write basic English.

49. He works as a surveyor with Mas Pacific Logging Company. He earns a monthly wage of SBD 1500. He provides financial support to buy food for his daughter. He also buys fuel to transport his daughter to Baolo clinic for medical attention when the child is sick. He also provides support to his parents and other siblings.

Mr Manlos Ama

50. Mr Ama (Manlos) was 20 years of age at the time of the offending. He is the last born in his family of 3 brothers and 3 sisters. Mr Ama got engaged with his wife in 2019 and they both reside at Kolopakisa village.

51. Mr Ama is a crew in a timber milling operation at his home village. He earns around SBD 300 after every timber milling operation.

52. He attended Allardyce Secondary School until he was expelled from school. Despite his limited education, Mr Ama is able to read and speak in English.
53. I am satisfied that the personal circumstances of the three defendants must be taken into account.
54. Therefore, I deduct 2 months each for the three defendants to reflect their personal circumstances.

Appropriate sentences

55. After having done my own computation above (28 months-16 months), I am satisfied that 12 months imprisonment is appropriate for Mr William Ama, Mr Osborn and Mr Manlos Ama with respect to the first case of house breaking contrary to section 301(a) of the *Penal Code* [Cap 26].

Simple Larceny in CC No. 1007 of 2020-William Ama

56. I will now proceed to deal with the second case in the Criminal Case No. 1007 of 2020 which concerns only Mr William Ama. The comparative sentences for simple larceny cases are as follows:
57. In *Eapa-v-Reginam* [2001] CC No. 248 of 2001¹², the offender was sentenced to a term of 9 months imprisonment in the Magistrates Court for one count of simple larceny. The matter was then appealed to the High Court, and the learned High Court Judge ordered that the sentence be suspended for two years on the basis that the property stolen was recovered and given back to the owner.
58. In *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)¹³, the defendants pleaded guilty to one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. Mr David Junior Malefo was sentenced to an imprisonment term of 1 ½ years' imprisonment whilst Mr Tome Gagame Junior was sentenced to an imprisonment term of 2 years. The basic facts of that case were that on the 11th of September 2017, the defendants stole the following items which were owned by an expatriate business man Mr Jonathan Pestana: SBD10, 000 and USD 5,000 that the victim left in his car parked behind his shop at the Kukum Highway in Honiara.

¹² *Eapa v Reginam* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

¹³ *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)

59. In *Regina v Hala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017)¹⁴; the defendant was sentenced to 12 months of imprisonment for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. The defendant was also sentenced for other offences.
60. In *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)¹⁵, the defendant was sentenced to 18 months imprisonment term for one count of Simple Larceny contrary to section 261(1) of the *Penal Code*[Cap 26]. Mr Kemakeza was also sentenced for other offences which were ordered to be served concurrently with the simple larceny charge.
61. The sentences for simple larceny in this jurisdiction ranges from a good behavior bond, penalty fine, suspended and custodial sentences. In this present case, the defendant had stolen 1 bottle of spirit but it was recovered because he was caught. However, this must be differentiated with the case of *Eapa-v- Regina*¹⁶, in which the defendant voluntarily returned the property as opposed to this present case where the defendant only returned it because he was caught. I am of the view, that since he is a repetitive offender, this case must also attract an immediate custodial sentence.

Starting Point

62. The starting point of 12 months should be appropriate for the charge of simple larceny. After taking into account the mitigating factors enumerated above for Mr Ama (William), and including the fact that the stolen property was recovered, I am satisfied that eight months should be deducted to reflect all the mitigating factors.¹⁷
63. Hence, I am of the view that 4 months imprisonment should be proportionate to the present count of simple larceny contrary to section 261. of the *Penal Code* [Cap 26].

CONCLUSION

64. Sections 8 and 9 of the *Constitution* provides for the protection of deprivation of property, and privacy of home and other property respectively.¹⁸ The *Constitution* not only protects the

¹⁴ *Regina v Hala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017);

¹⁵ *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

¹⁶ *Eapa v Regiam* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

¹⁷ Early guilty plea (2), genuine remorse(1), no prior convictions before his double convictions in both cases (1), cooperation with the police(1), rehabilitative prospects of William Ama (1), his personal circumstances(1) and recovery of property (1).

¹⁸ *Constitution 1978 (Solomon Islands)*, s9. "9.-(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

citizens of this country but each and every person who live here regardless of nationality. Section 3 of the *Constitution* could not be clearer on its application pertaining to the fundamental freedoms where it states and I quote:

3. Whereas every person in Solomon Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:-
(a) life, liberty, security of the person and the protection of the law;
(b); and
(c) protection for the privacy of his home and other property and from deprivation of property without compensation.

65. Foreign investors must be respected and shown the courtesy that they rightly deserve. They play pivotal roles in the socio-economic development of this country through the provision of employment opportunities, market for the locally produced vegetables, goods or even artefacts, and the paying of taxes to the government. Such bad attitudes as shown in these two cases will only tarnish the reputation of our country regionally and internationally with respect to our economic climate and business environment.

66. These offences committed by the defendants against foreign investors such as the owners of the Papatara Island Resort are an insult and affront to the economic development of this country especially in the tourism sector. It is common knowledge that the tourism industry has been grappling with the unprecedented effects of Covid-19 globally and Solomon Islands is no exception, and that such offences only exacerbated the already struggling tourism sector in the country. Such offences must be condemned in no uncertain terms and a deterrent message must be translated into appropriate sentences proportionate to the magnitude of the offences.

House breaking

67. After assessing and balancing the core principles of sentencing such as punishment, deterrence and rehabilitation, I am satisfied that a sentence of 12 months imprisonment is appropriate for each of the defendants as it reflects the magnitude of the offence committed. Having said that, I now sentence Mr William Ama to 12 months imprisonment for one count of house breaking contrary to section 301 of the *Penal Code* [Cap 26] read with section 21 of the same Act. Concerning the second defendant, I now sentence Mr Chris Osborn to 12 months imprisonment for one count of house breaking contrary to section 301 of the *Penal Code* [Cap 26] read with section 21 of the same Act. Thirdly, I now sentence Mr Manlos Ama to 12 months imprisonment for one count of house breaking contrary to section 301 of the *Penal Code* [Cap 26] read with section 21 of the same Act.

Simple Larceny

68. After having taken into account the relevant factors in this case and the sentencing principles, I now sentence Mr William Ama to 4 months imprisonment for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. I rule out the possibility of suspending the sentence for the offence simple larceny because Mr William Ama is a repetitive offender and in the first case he had committed a house breaking offence against the same victims in May 2020, and around 4 months later he committed this offence of theft.
69. Mr William Ama's sentences in both cases and or charges must run consecutively as they did not arise from the same transaction.¹⁹
70. The defendants in both cases should learn from the punishments imposed against them, and transform their lives for the better as they still have high rehabilitative prospects with the objective to become useful and law abiding citizens in the future.
71. Pre-Sentence-custody. The defendants were remanded since the 17th of March 2021 and therefore the sentences shall be retrospectively commenced on the said date.²⁰

ORDERS

72. The orders of the Court are as follows:

- [1] Mr William Ama is sentenced to 12 months (equivalent to 1 year) imprisonment for one count of house breaking contrary to section 301 of the *Penal Code* [Cap 26] read with section 21 of the same Act.
- [2] Mr Chris Osborn is sentenced to 12 months (equivalent to 1 year) imprisonment for one count of house breaking contrary to section 301 of the *Penal Code* [Cap 26] read with section 21 of the same Act.
- [3] Mr Manlos Ama is sentenced to 12 months (equivalent to 1 year) imprisonment for one count of house breaking contrary to section 301 of the *Penal Code* [Cap 26] read with section 21 of the same Act.
- [4] In Criminal Case No. 1007 of 2020, Mr William Ama is sentenced to 4 months imprisonment for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26].

¹⁹ *Angitalo v Regina* [2005] SBCA 5; CA-CRAC 024 of 2004 (4 August 2005);

²⁰ *Damusia v R* [2021] SBCA 7; SICOA-CRAC 46 of 2019 (1 February 2021); *Dagi v R* [2021] SBCA 13; SICOA-CRAC 9 of 2020 (1 February 2021)

William Ama's sentences in both cases: consecutive

- [5] Mr William Ama's sentences in both cases shall run consequent to each other. Hence, his total sentence is 16 months (which is equivalent to 1 year and 4 months) imprisonment.

Retrospective commencement of all sentences

- [6] The sentences for all the said defendants shall retrospectively be commenced on the 17th March 2021, being the first day of remand for the three defendants.
- [7] Mr Selwyn Gaza's case in Criminal Case No. 1008 of 2020 shall be mentioned on the 16th of April 2021 for the confirmation of trial dates.
- [8] Right of Appeal within 14 days.



PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT