

IN THE TULAGI MAGISTRATE COURT
Criminal Case 337 of 2021

REGINA
V
PATTERSON LOKEA



P/C Kangea for the Crown
Counsel Mr. Harunari for the Defendant

Date of Hearing: 30th June 2021
Date of Judgment: 1st July 2021

RULING ON APPLICATION TO WITHDRAW CHARGE PURSUANT
TO SECTION 190(2)(B)(II)

PM Taeburi,

1. The accused is charged with one count of illegal sale of liquor contrary to section 57(1) of the Liquor Act.
2. On 30th June 2021, when the matter was called the crown applied to withdraw the charge pursuant to section 190(2)(b)(ii) of the Criminal Procedure Code for insufficiency of evidence. The brief facts of the case is that the accused sold liquor commonly known as 'kwaso' without licence on the 5th of March 2021. I take judicial notice that 'kwaso' is a locally brewed and distilled liquid and consumed as alcohol.
3. The crown agreed with the defence counsel that there is no certification from any expert to prove that 'kwaso' is liquor under the interpretation in the Liquor Act.
4. I invited submissions from parties. This is the ruling on the issue.
5. First of all, I examine the operations of section 190(2)(b)(ii) of the Criminal Procedure Code. The provision states,

190. – (1) The prosecutor may with the consent of the court at any time before a final order is passed in any ease under this Part withdraw the complaint.

(2) On any withdrawal as aforesaid –

(a)

(b) Where the withdrawal is made before the accused person is called upon to make his defence, the court shall subject to the provisions of section 197 in its discretion make one or other of the following order –

(i) An order acquitting the accused;

(ii) An order discharging the accused.

6. My interpretation of the provision in section 190 of the CPC is that any withdrawal of any charge by way of an order for acquittal or discharge of the accused maybe made on the consent of the court upon the application from a prosecutor.

7. Based on the interpretation, I refuse to grant the application when it was made. I adjourned the matter to conduct a research on the issue raised by the defence counsel. The issue is whether or not 'kwaso' satisfies the definition of 'liquor' in the Liquor Act.
8. The starting point is section 57 of the Liquor Act which creates the offence of illegal sale of liquor. The section provides,

57. – (1) Any person who sells liquor without holding a licence authorising the sale thereof shall be guilty of an offence and shall be liable –

- (a) For a first offence to a fine of two hundred dollars, and*
- (b) For a second or subsequent offence to a fine of four hundred dollars or to imprisonment for one or to both such fine and such imprisonment.....*

9. In section 2 of the Liquor Act, the word liquor is defined as follows,

2. In this Act, unless the context otherwise requires –

“liquor” means any wine, spirits, beer, or any liquid containing alcohol ordinarily used or fit for use as a beverage, or any other liquid which the Minister may by notice declare to be liquor for the purposes of this Act, but does not include any alcohol or spirits the importation of which is restricted under section 34 of the Customs and Excise Act;

10. In my interpretation, the definition means that 'liquor' can either be (i) any liquid containing alcohol, ordinary used as beverage or fit for use as beverage or (ii) any other liquid which the Minister may by notice declare to be liquor for the purposes of this Act.
11. This means that the elements of liquor are; (i) liquid, (ii) contains alcohol, (iii) ordinarily used or fit for use, and (iv) as beverage.
12. The word 'beverage' is not defined in the Liquor Act. In the Oxford Dictionary, it is defined as a drink other than water. That is the ordinary meaning of the word 'beverage'. I adopt the ordinary interpretation.
13. Kwaso is in a drink in liquid form and it is not water, thus in my view can be considered as a beverage.
14. The word 'alcohol' is also not defined in the Liquor Act. There are various definitions of alcohol. In some scientific definitions, alcohol is defined by its components. Some say it's a liquid that contains an element known in chemistry as ethanol or ethyl alcohol.
15. In some other definitions for instance the Cambridge English Dictionary, a more ordinary definition is given to the word 'alcohol'. It is defined as a noun and it refers to a liquid that is produced in making wine, beer, spirits and that can cause changes in the behaviour of people who drink it.
16. The effects of kwaso when consumed is not a mystery in this society. When consumed it does make people drunk and it does affect the behaviour of the person who drinks it.

17. I find that 'kwaso' is a liquid, which is ordinarily used as beverage and that it contains alcohol.
18. I refuse to grant the application to withdraw the charge under section 190(2)(b)(ii).
19. The matter is stood down for plea.
20. Right to appeal within 14 days.



Principal Magistrate

Ms. Fatimah Me'ere Taeburi