

REGINA v PATRICK SOEASI MAELAU



Case Number : Criminal Case No. 781 of 2019
Date of Sentence : July 21, 2021
Court : Central Magistrate's Court – Honiara
Coram : Deputy Chief Magistrate Ricky Iomea
Counsel Name(s) : Steward Tonowane (ODPP) for the Prosecution
: Allen Tinoni (PSO) for the accused

1. The accused has been found guilty after trial and was convicted on six (6) Counts of Larceny by servant, contrary to section 273(a)(ii) of the Penal Code. These are Counts 1, 2, 6, 7, 8, and 9 on the Charge Sheet filed on 15th July 2020.
2. The maximum penalty prescribed by Parliament for the offence of Larceny by clerk or servant is fourteen years imprisonment.
3. The issue is what would be the appropriate sentences to be imposed against the Accused.
4. The facts as found by the Court at trial are that it was the accused who presented and fraudulently cashed the cheques, the subject of Count 1 (Exhibit PE 6), Count 2 (Exhibit PE 7), Count 6 (Exhibit PE 11), Count 7 (Exhibit PE 12), Count 8 (Exhibit PE 13) and Count 9 (Exhibit PE 14). The Court found that the fact that the defendant changed names when presenting some of the cheques at the Bank reflects the fraudulent intent of the defendant and his intention to permanently deprive the owner that is Solomon Forest Association.
5. The particulars of the Counts upon which the Accused is convicted are;
6. Count 1: That Patrick Soeasi Maelaua of A'ala village, West Kwara'ae, Malaita Province at Honiara, in the Guadalcanal Province on 30 September 2016 did fraudulently embezzled the whole Pan Oceanic Bank cheque no. 118529 in the amount of \$30,000.00, taken into possession by him in the name of his employer Solomon Forest Association.
7. Count 2: That Patrick Soeasi Maelaua of A'ala village, West Kwara'ae, Malaita Province at Honiara, in the Guadalcanal Province on 6 October 2016 did fraudulently embezzled the whole Pan Oceanic Bank cheque no. 158531 in the amount of \$15,000.00, taken into possession by him in the name of his employer Solomon Forest Association.

8. Count 6: That Patrick Soeasi Maelaua of A'ala village, West Kwara'ae, Malaita Province at Honiara, in the Guadalcanal Province on 18 November 2016 did fraudulently embezzled the whole Pan Oceanic Bank cheque no. 158555 in the amount of \$10,000.00, taken into possession by him in the name of his employer Solomon Forest Association.
9. Count 7: That Patrick Soeasi Maelaua of A'ala village, West Kwara'ae, Malaita Province at Honiara, in the Guadalcanal Province on 24 November 2016 did fraudulently embezzled the whole Pan Oceanic Bank cheque no. 158561 in the amount of \$35,000.00, taken into possession by him in the name of his employer Solomon Forest Association.
10. Count 8: That Patrick Soeasi Maelaua of A'ala village, West Kwara'ae, Malaita Province at Honiara, in the Guadalcanal Province on 9 December 2016 did fraudulently embezzled the whole Pan Oceanic Bank cheque no. 158567 in the amount of \$30,000.00, taken into possession by him in the name of his employer Solomon Forest Association.
11. Count 9: That Patrick Soeasi Maelaua of A'ala village, West Kwara'ae, Malaita Province at Honiara, in the Guadalcanal Province on 14 December 2016 did fraudulently embezzled the whole Pan Oceanic Bank cheque no. 158568 in the amount of \$20,000.00, taken into possession by him in the name of his employer Solomon Forest Association.
12. The facts as found by the Court and the particulars of the offences in the six Counts, reveal the circumstances of the offending on the six occasions.
13. The overall offending is aggravated by the following factors:
 14. First, this is a breach of trust. He was the Accountant or Account clerk for Solomon Forest Association and because of the nature of his employment, he was entrusted with and had access to the Solomon Forest Association Cheque Book. He had breached that trust.
 15. Second, the offending was repeated. He had engaged in this behavior not once but on six occasions. He should have rethink his action after he had fraudulently embezzled the first cheque and cashed it but he did not.
 16. Thirdly, although the Association is made up of Logging Companies, the offending by the accused had resulted in a loss of \$140,000 to the Association. This is a substantial amount of money.
 17. This is the kind of offending where the principles of general and specific deterrence are considered important. Any sentence must send the message clear that those who breach the trust of their employers must expect immediate custodial sentences to be imposed against them especially when the offending involves substantial amounts of money.

18. The Accused is 44 years old is married with children. I am told that he supports his family and pays the school fees of his children. It is not clear which schools his children are attending. He is a first time offender.
19. Counsel submitted on behalf of the accused that he is sorry for what he did and he is looking forward to reconcile with the owners of the Association.
20. The Defence submitted that delay should be considered. I have perused the Court file and it appears that the matter was instituted in Court in September 2019. It is not clear why the matter was not instituted earlier. The accused has also contributed to the delay because he failed to appear and a warrant of arrest was issued on 18th October 2019. The warrant was executed on 6th March 2020 and the accused was remanded until he was released on bail on 3rd April 2020. Non-appearance of Lawyers in carriage of the matter in court at times and lack of instructions provided also contribute to the delay. I do not think that delay should have an impact on the sentence.
21. I have been referred to a number of comparative cases and I thank Counsel for the assistance rendered in providing those cases. They are useful guidelines in terms of sentencing for similar offences however, it is also a well-established principle that the facts of each are unique and therefore, each case must be considered on its own set of facts.
22. Having considered the facts, the aggravating factors and the need for deterrence, both specific and general, I am of the view that the appropriate starting point for each of the six counts is 4 year imprisonment. For each of the Counts I impose a sentence of 4 years imprisonment.
23. Although the offences were committed on separate dates, they were committed against the same victim so I order that the sentences are to run concurrently to each other. The total sentence for the six counts is 4 years imprisonment.
24. Taking into account the mitigating factors put on behalf of the accused, I will deduct 1 year from the 4 years above.
25. The total effective sentence to be served is 3 years imprisonment which, in my view is sufficient for the purposes of punishment and deterrence.
26. The sentence will commence today.

