

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

**AT HONIARA**

(Criminal Jurisdiction)

Criminal Case No: 678 of 2019

**REGINA**

-V-

**SAM NGEDEA**



**CORAM:** HOLLISON F (PRINCIPAL MAGISTRATE)

**Appearances:**

Mr Steward Tonowane, Senior Legal Officer, for the Crown (DPP)

Mr Lazarus Waroka, Principal Legal Officer, Public Solicitors Office, for the Defendant

***Date of Sentence: 10<sup>th</sup> August 2021***

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

**SENTENCE**

**INTRODUCTION**

1. The defendant Mr Sam Ngedea pleaded guilty to twenty five (25) counts of False Pretence Contrary to section 308(a) of the *Penal Code* [Cap 26]. His other previous charges particularly counts 26 to 46 apart from the false pretence charges have been withdrawn following a successful plea bargain with the prosecutions.<sup>1</sup>

**FACTS**

2. The facts can be summarized as follows.
3. The complainant in this matter is Pimbo Ogatuti, 78, from Buri Village, Western Province.
4. He is a retired medical doctor, who previously owned a private clinic at the Island Lodge.

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<sup>1</sup> Counts 26-46 are all charges of demanding with menace things capable of being stolen contrary to section 295 of the *Penal Code* [Cap 26]. They had all been withdrawn.

5. The defendant is Sam Ngedea of Lausia village, east Kwaio, Malaita Province.
6. On an unknown date on 1<sup>st</sup> to 3<sup>rd</sup> December 2018, a female who identified herself as Mary Evelyn from Makira and married to a man from South Malaita, went to the Island Lodge and asked for the complainant.
7. She told the complainant that he had helped her family before the ethnic tension period. The complainant asked her what she wanted and she told him if they can have a brief conversation in a private place.
8. The complainant led her to his room and closed it without locking it. She asked if he could help her.
9. The complainant told her that he had no money and that he depended entirely on his grown up children to support him as he was blind.
10. She then moved closer to him and touched his thighs in an attempt to seduce him. The complainant told her that she would be wasting her time as he was very weak. He gave her SBD 150 and she left.
11. On the 3<sup>rd</sup> of December 2018, a man (defendant) who identified himself as George Ben came and demanded a compensation of SBD 50,000. The defendant claimed that Mary was his mother.
12. He told the complainant that he took her mother to his bedroom at Island Lodge and anything could have happened.
13. After discussing between themselves, the complainant agreed to pay SBD 20,000 to the defendant as he was threatened. The defendant also told the complainant that if he did not give him the money, he would send him to prison. He also said that his brother is a Police Inspector.
14. The complainant told the defendant that he would not pay the compensation in full but on installment basis.
15. On the different dates between 3<sup>rd</sup> December 2018 and the 10<sup>th</sup> April 2019, the complainant paid a total of SBD 18,850.
16. On the 22<sup>nd</sup> May 2019, a man (the defendant) who identified himself as John Laka came and demanded another compensation. The defendant claimed that Mary Evelyn is his wife.

17. He told the complainant that he (complainant) he took his (defendant's) wife to his bedroom at Island Lodge which was very wrong in custom. The complainant felt threatened and agreed to pay monetary compensation to the defendant.
18. On different dates between 22<sup>nd</sup> May 2019 and 27 May 2020, the complainant paid the total of SBD 7000.
19. The complainant paid a total of SBD 25,850 to the defendant.
20. The complainant felt that he was unfairly manipulated and that he was affected psychologically as he lived under fear during those times. He decided to share his problem with his grandson, which the matter was then reported to a police officer who apprehended the defendant.
21. He was then charged with 25 counts of false pretence contrary to section 308 of the *Penal Code* [Cap 26].

### **DISCUSSION AND ANALYSIS**

22. Section 308(a) of the *Penal Code* [Cap 26]<sup>2</sup> provides as follows:

#### *False pretences*

*308. Any person who by any false pretence -*

*(a) with intent to defraud, obtains from any other person any chattel, money or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person; or is guilty of a misdemeanour, and shall be liable to imprisonment for five years.*

23. In *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)<sup>3</sup>, his Lordship Palmer CJ stated as follows:

*It is pertinent to note that this matter should not have been committed to the High Court for trial for the reason that the charges of false pretence (a misdemeanour), carrying a maximum sentence of 5 years if convicted, and operating an unlicensed financial institution, carrying a maximum sentence of imprisonment of 3 years, if convicted, fall squarely within the jurisdiction of a Principal Magistrate and therefore could have been dealt with timely in the court below. I remind Magistrates and Counsel taking carriage of such matters to be more vigilant so as to avoid unnecessary delay in the disposal of such matters by having them committed to this Court.*

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<sup>2</sup> *Penal Code* [Cap 26], s 308

<sup>3</sup> *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)

24. In *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017),<sup>4</sup> the Court of Appeal explains that the approach to sentencing should be as follows:

21. *A sentence should be crafted to attain the goals of punishment, deterrence and rehabilitation.*

22. *The starting point should be consideration of the facts of the offence and of the appropriate range of penalty for the offence constituted by those facts. Then any aggravating circumstances should be identified.*

23. *The sentencing judge's attention should then turn to facts relating to the offender – his antecedents (including personal circumstances and criminal history, if any) and mitigating factors such as youth, remorse, or plea of guilty (including the circumstances in which the plea was entered). Intoxication may be an explanation for an offender's conduct, but not an excuse for it: in other words, it should not be treated as a mitigating factor.*

### **Aggravating Factors**

25. **Maximum Sentence.** The maximum sentence of 5 years shows that this is quite a serious offence.

26. **Premeditation.** The defendant impersonated himself as the husband and later as the son of the same woman who visited the complainant's bedroom once. He clearly planned the offending and used the name of custom and infidelity to demand money from the aged victim. The aged victim agreed to pay the compensation to the defendant on installment basis because he was threatened and he also believed that the representation made was true.

27. **The offences were repeatedly committed over a period of time.** The offences were committed over a period between 2018 and 2019 for 25 occasions. What he did was actually extortion and demanding money using threats and lies.

28. **Loss of money and lack of restitution.** The lack of restitution of the monies that the defendant took from the complainant shows that the complainant may never recover his money that he parted with because of the false representation. Counsel for the defendant had asked the court for time so that the defendant can reimburse the money he obtained unlawfully from the complainant. I gave the defendant around 2 months since June earlier this year for him to do that but obviously he did not do that. His lawyer then submitted that his client should be ordered to repay the money to the complainant on installment basis akin to the concept of a bank loan.

29. **Fear and anxiety.** The complainant had lived in fear and anxiety not on his own making but for that woman who sought help from him and then attempted to seduce him shamelessly. I

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<sup>4</sup> *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017),

am not sure whether the defendant colluded with the woman as the facts did not specify that. When the defendant demanded compensation from the complainant, he paid a total of more than SBD 25,000 out of fear because of the threats exerted by the defendant.

### Mitigating factors.

30. The mitigating factors including early plea, remorse, first offender, personal circumstances and delay. I will discuss these in detail later in the ruling.

### Comparative Sentences.

31. The comparative sentences are as follows:

32. In *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)<sup>5</sup>, the defendant, Jeffrey Kavei was charged with twelve counts of False Pretence contrary to section 308(a) of the *Penal Code* (cap. 26), and one count of carrying on banking business while not being licensed as a financial institution, contrary to section 3(2) (a) of the *Financial Institution Act 1998*. Between January 2014 to January 2015, he was engaged in fraudulent activities, and obtained money from numerous persons around the area he lived in at GPPOL, convincing them that an interest of about \$700 would be paid on top of each payments with big profits for those who participated in that form of investment he was promoting; a scheme akin to a pyramid money scheme with promises of high returns but in reality with little or nothing to show for it. There were a total of about nine persons who are the subject of the charges in that case. The total of the money that were borrowed were about \$68,600.00. Those money taken were never given back and no interest was ever paid to the victims. The moneys obtained ranged from \$400 to \$14,200 in some instances. During that time, he operated this scheme under guise of a business name “GPK Investment”. The defendant did not have any license to conduct such activity. In that case, the court imposed the following sentences:

- Counts 1, 2, 6, and 9: 3 years each;
- Counts 3, 5, 8, 10, 11: 2 years each; and
- Counts 4, 7, and 12: 2 ½ years each.

33. In *Kavei*<sup>6</sup>, the Court further ordered that the sentences imposed under counts 1 and 3 were made consecutive to each other giving a total of 5 years. The court ordered that the sentences for the remaining counts were to be made concurrent to those sentences. The total sentence was 5 years. The defendant in that case was released at the rising of the court as he had served a substantial part of his imprisonment term.

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<sup>5</sup> *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)

<sup>6</sup> *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)

34. In *R v Poloso* [2014] SBHC 154; HCSI-CRC 258 of 2014 (21 October 2014)<sup>7</sup>, the learned Magistrate imposed an imprisonment for 2 ½ years on each of two counts of obtaining money by false pretences, contrary to section 308 of the *Penal Code* [Cap. 26]. The sentences were ordered to be served concurrently. The learned Magistrate gave the defendant a discount of 50% on each count from the maximum sentence provided of 5 years imprisonment. When reviewing the sentence, the Chief Justice his Lordship Palmer reasoned that having found that an appropriate starting point was 4 years imprisonment on each count, the 50% reduction should have resulted in the defendant being sentenced to 2 years imprisonment, not 2 ½ years imprisonment on each count as the Magistrate ordered. The CJ also noted that whilst the magnitude of discount in the circumstances of that case was in his view was too generous, it was a result which was open to the learned Magistrate to find. The High Court imposed a sentence of 2 years for each count and ordered them to run consecutively giving a total sentence of 4 years.
35. In *Regina v Davies* [2011] SBCA 8; Criminal Appeal 15 of 2010 (9 May 2011)<sup>8</sup> it involves an issue of the validity of a charge and conviction of money laundering of proceeds of the offence of obtaining by false pretences where there was a broad overlap of the facts relevant to a sentence for each offence. On the 20th July 2010, the Magistrates Court sentenced Mr Roy Davies, on his plea of guilty, to three years' imprisonment on one charge of obtaining money by false pretences, contrary to section 308(a) of the *Penal Code*. In fixing on that sentence, the Magistrates Court took into account, aspects of Mr Davies' disposal of the dishonestly obtained money. These were also part of the facts relied on by the Crown in the related charge against him of money-laundering the proceeds, contrary to section 17(1)(a)(i) of the *Money Laundering and Proceeds of Crimes Act 2002*. The Magistrate declined to deal with the latter charge on the ground that it could not be tried summarily, and, on 9th August 2010, committed Mr Davies for trial on it to the High Court. The High Court Judge, however, acquitted the defendant on the money laundering charge. The Prosecution then appealed the acquittal of the defendant with respect to the money laundering charge to the Court of Appeal. The Court of Appeal allowed the appeal following the defendant's conviction on his plea of guilty in the court below to the money-laundering offence, and to impose a sentence for the offence of three years, to be served concurrently with the like sentence imposed by the Principal Magistrate for the offence of obtaining by false pretence.
36. In *Regina-v-Mabo* [SBMC]-Criminal Case No. 1306 of 2018 (dated 31<sup>st</sup> August 2020)<sup>9</sup>, the defendant was sentenced to 4 years imprisonment for nine counts of false pretence contrary to section 308 of the *Penal Code* [Cap 26] after he was found guilty following a trial.
37. Hence, the sentence in this jurisdiction for each count of false pretence normally ranges between 1 year and 5 years imprisonment. The most common sentences ranges between 2 years and 3 years.

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<sup>7</sup> *R v Poloso* [2014] SBHC 154; HCSI-CRC 258 of 2014 (21 October 2014)

<sup>8</sup> *Regina v Davies* [2011] SBCA 8; Criminal Appeal 15 of 2010 (9 May 2011)

<sup>9</sup> *Regina-v-Mabo* [SBMC]-Criminal Case No. 1306 of 2018 (dated 31<sup>st</sup> August 2020) (Unreported)

38. In this case, the defendant unlawfully obtained the money on 25 occasions totaling up to SBD 25, 850.

39. There are 25 counts in total in this present case. In *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)<sup>10</sup>, their Lordships stated:

*In imposing sentence, the first step is to arrive at an appropriate starting point for each of the offences the appellant pleaded guilty to. This was a task not undertaken by the learned Judge. The next step, again not undertaken by the sentencing Judge, is to consider the aggravating factors to reach an initial starting point. That must be considered against the well-established totality principle before mitigating factors are factored in.*

40. The features of this present case dictate that it must attract an immediate custodial sentence.

41. With respect to all the counts, although the amounts of money obtained from the complainant varied on each occasion, I am of the view that a starting point of 24 months imprisonment is appropriate as the complainant parted with his property because of deceitful representation by the defendant. In terms of mitigation, I note that the defendant entered an early guilty plea although not at the first available opportunity, remorse, he is a first time offender, cooperated well with the Police, and his personal circumstances, and I deduct 12 months from the starting point to reflect all the mitigating factors.<sup>11</sup> After having considered both the aggravating and the mitigating factors and the circumstances of this case, I am satisfied that 12 months imprisonment is proportionate to the severity of the offence for each respectively (from counts 1 through to 25).

42. In view of the above, I sentence the defendant Mr Ngedea as follows:

43. For counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25: the offender is sentenced to 12 months imprisonment each.

44. The next issue is for me to determine whether or not the sentences should be made concurrent or consecutive to each other.

45. Professor Eric Colvin stated that:

*Proportionality may be a difficult issue when a person is to be sentenced for more than one offence. Imposing a number of separate, cumulative sentences could*

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<sup>10</sup> *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

<sup>11</sup> Early plea-4 months, remorse-2 months, first offender-2 months, cooperation with Police-2 months and personal circumstances-2 months

*create a crushing burden, disproportionate to the criminality involved. The principle of totality has been developed to avoid this outcome.*

*The totality principle holds that a court sentencing an offender for more than one offence should not simply impose a number of separate, cumulative sentences. It should instead consider what would be an appropriate aggregate sentence.*<sup>12</sup>

46. In *Bade v Reginam* [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988), His Lordship Ward CJ stated that:

*When considering sentence for a number of offences, the general rule must be that separate and consecutive sentences should be passed for the separate offences. It is trite to point out that a man who commits, say, five offences should receive a heavier sentence than a man who only commits one of them.*

*However there are two situations where this rule must be modified. The first, that where a number of offences arise out of the same single transaction and cause harm to the same person there may be grounds for concurrent sentences, does not concern this appeal save to say that the learned magistrate correctly applied this principle in ordering a concurrent term for the malicious damage caused to Solo Lae's house during the burglary.*

*The second occasion for modifying the general rule arises where the aggregate of sentences would, if they are consecutive, amount to a total that is inappropriate in the particular case. Thus, once the court has decided what is the appropriate sentence for each offence, it should stand back and look at the total. If that is substantially over the normal level of sentence appropriate to the most serious offence for which the accused is being sentenced, the total should be reduced to a level that is "just and appropriate" to use the test suggested in *Smith v. R.* [1972] *Crim.L.R.* 124. Equally, if the total sentence, although not offending that test, would still in the particular circumstances of the person being sentenced, be a crushing penalty, the court should also consider a reduction of the total.*

47. In *Regina v Hoka* [2012] SBHC 152; HCSI-CRC 159 of 2011 (10 December 2012)<sup>13</sup>, Pallasas J, stated that the sentences for charges of an attempted rape occurred on different days separated by time over two years should be ordered to be served consecutively. However, his Lordship said that:

*22. This approach would result in a head sentence of 22 years (3.5 +4+4.5+5+5). I am conscious that this would be a crushing sentence if fully imposed and that in accordance with the totality principle, I ought to reduce it to avoid such an outcome.*

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<sup>12</sup> Eric Colvin et al "Criminal Law in Queensland and Western Australia: Cases and Commentary"-Sentencing Principles (6<sup>th</sup> Edition, 2012) 948.

<sup>13</sup> *Regina v Hoka* [2012] SBHC 152; HCSI-CRC:159 of 2011 (10 December 2012)

23. The method by which this result can be achieved has been the subject of consideration in the High Court of Australia in the case of *Mill v R* in which the Court said:

*"Where the principle falls to be applied in relation to sentences of imprisonment imposed by a single sentencing court, an appropriate result may be achieved either by making sentences wholly or partially concurrent or by lowering the individual sentences below what would otherwise be appropriate in order to reflect the fact that a number of sentences are being imposed. Where practicable, the former is to be preferred."*[2]

48. In *Hoka*<sup>14</sup>, the presiding Judge further quoted the case of *Director of Public Prosecutions v Grabovac*, in which it discussed the approach to adopt when sentencing for multiple offences so as to avoid the imposition of what would otherwise be a crushing sentence thus:

*"In general, a court should avoid imposing artificially inadequate sentences in order to accommodate the rules relating to cumulation. In other words, ... where practicable where applying accepted rules of sentencing as to totality, proportionality and the like and in order to fashion an appropriate total effective head term in relation to a series of offences, it is preferable to achieve a satisfactory result by passing appropriate individual sentences and to make those sentences wholly or partially concurrent, rather than by an order or orders for the cumulation of unnecessarily reduced individual sentences. Nevertheless, a rule of this kind can only be a precept or guideline to be applied as and when practicable. In particular, though concurrency is to be preferred, a degree of cumulation ought to be ordered where sentences represent separate episodes or transactions which ought to be recognised, though at all times avoiding the imposition of a "crushing" sentence."*[3]

49. I note that the respective sentences for counts 1 through to 25 if they are to be made consecutive, it would result in a total of more than 20 years imprisonment.<sup>15</sup> However, taking into account the totality principle, the cumulative years of imprisonment would be excessively harsh on the defendant. I understand that there could be a jurisdictional issue if I were to impose any sentence of more than 10 years imprisonment.<sup>16</sup> Hence, after balancing the principles of deterrence, retribution, prevention and rehabilitation in the circumstances of this case, I am satisfied that the appropriate sentence for the various incidents combined should be in the region of 3 to 5 years imprisonment.

50. The approach taken by the Chief Justice his Lordship Palmer in *Kavei*<sup>17</sup> and Pallas J in *Hoka*<sup>18</sup> provide helpful guidelines which enunciated that a hybrid of cumulative and concurrent sentences can be adopted to avoid either excessive or extremely lenient sentences.

<sup>14</sup> *Regina v Hoka* [2012] SBHC 152; HCSI-CRC 159 of 2011 (10 December 2012)

<sup>15</sup> The total sentence would be 25 years imprisonment

<sup>16</sup> *Magistrates Court Act*, s27

<sup>17</sup> *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)

<sup>18</sup> *Regina v Hoka* [2012] SBHC 152; HCSI-CRC 159 of 2011 (10 December 2012)

Hence, I order that the sentences for counts 1, 2, 3, 4 are to be served consecutive to each other, while for counts 5 through to 25 are to be served concurrently to each other, which must be served concurrently with the resulting sentence of counts 1, 2, 3, and 4 giving a total sentence of 48 months (4 years) imprisonment.

51. The resulting sentence for all the counts therefore is 4 years imprisonment. In addition to this, I note that the delay in this present case should be considered in favor of the defendant. In *Bolami -v- Regina* [2011] SBCA 26; CA-CRAC 9 of 2011 (25 November 2011)<sup>19</sup>, the Court of Appeal concluded that delay is a factor that need to be taken into account as well when computing a sentence. The Court of Appeal stated that:

*Delay, whether reasonable or unreasonable in its genesis, will have the same deleterious effect on the man awaiting sentence.*

52. In view of that, I deduct another 12 months which should give the defendant the final sentence of 36 months or 3 years imprisonment to serve.

### CONCLUSION

53. The offence of false pretence was repeated for twenty five consecutive times that culminated in the total loss of approximately SBD 25,800. The repetition is an aggravation and I am obliged to impart a strong deterrent message by imposing the appropriate sentence.

54. In this present case, the lack of restitution on the part of the defendant is an aggravation which means that the complainant suffered unwarranted and unnecessary monetary losses that may never be recovered.

55. The Chief Justice his Lordship Palmer CJ commented in the *Kavei* case as follows<sup>20</sup>:

*The Courts can only send out a clear message that those involved in this type of crime will expect an immediate and lengthy custodial sentence to be imposed.*

56. I understand that I can also invoke section 27 of the *Penal Code* [Cap 26] to order the defendant to reimburse the money taken by way of compensation, however, I refuse to do so because I opined that the defendant will be punished appropriately by the custodial sentence that he will serve in this case. There is nothing that stops the defendant to consider reimbursing the complainant's money later upon his release.

57. This case is a classic example of someone who falsely impersonated another person or other persons and exerted threats on the victim under the name of culture or *custom* to extort money from a vulnerable and aged member of the community unlawfully and unfairly for his own

<sup>19</sup> *Bolami v Regina* [2011] SBCA 26; CA-CRAC 9 of 2011 (25 November 2011)

<sup>20</sup> *R v Kavei* [2019] SBIIC 69; HCSI-CRC 143 of 2017 (22 July 2019)

benefit. The most appropriate sentence is none other but a custodial sentence to teach the defendant a lesson. The combined aggregate sentence in this case serves as a warning to the members of the public not to involve in such deceitful and unlawful activities to gain money.

58. Thus, I now sentence him to 3 years (36 months) imprisonment. The pre-sentence-custody period, if any, must be duly deducted as well.

### ORDERS

59. The defendant Mr Sam Ngedea is sentenced as follows:

[1] In relation to counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 which are all false pretence charges contrary to section 308 of the *Penal Code* [Cap 26], the defendant Mr Sam Ngedea is sentenced to 12 months (1 year) imprisonment for each count respectively.

[2] In view of the totality principle, I direct that the sentences for count 1, 2, 3 and 4 are to be served consecutive to each other, while the remaining counts, which are counts 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 are to be made concurrent to those sentences.

[3] Hence, the resulting sentence is 4 years imprisonment. I further deduct another 12 months (1 year) to reflect the delay in this case. **Therefore, the final sentence is 3 years imprisonment.**

[4] **Pre-Sentence-Custody.** Further direct that the period that he was in remand before he was released on bail, which is from the 6<sup>th</sup> August 2019 to 8<sup>th</sup> October 2019, to be deducted as well.

[5] The cash bail shall be paid to the surety for the defendant provided that a receipt is shown at the Magistracy's accounts section.

[6] Right of Appeal within 14 days.

[7] I order accordingly.

  
PRINCIPAL MAGISTRATE FELIX HOLLISON  
THE COURT