

IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS

CRIMINAL JURISDICTION

Criminal Case No. 647 & 648 of 2021



REGINA

v

ELVIS BOSA, ELLISON JUNIOR MANE AND BARRY KAIBATA

Date of Hearing: 2nd September 2021

Date of Sentence: 2nd September 2021

Ms. G. Waletofea for the prosecution

Mr. D. Haua for the defendants

SENTENCE

- [1]. The defendants Elvis Bosa, Ellison Junior Mane and Barry Kaibata were charged and pleaded guilty to one count of restriction of movement of persons in Honiara contrary to clause 4 (1) and (2) (a) and (b) of the Emergency Powers (COVID-19) (Honiara Emergency Zone) (Restriction of Movement) Order 2021 and Regulation 15(1) (a), (2) and (4) of the Emergency Powers (COVID19) (No.2) Regulations 2021. The maximum penalty for this offence is \$15,000 fine and/or 5 years imprisonment.
- [2]. The defendants are one of those who flouted the 36 hours lockdown Order that commenced from 6pm on 29th August to 6:00am on 31st August 2021. They were making noise and causing disturbance with loud music at the main road at Vavaya Ridge in the early hours of 30th August 2021. They were drinking alcohol. Police were called and attended to the scene. Police sighted them on the main at 2:45am on that date. That

area is restricted for public movement during the lockdown period. At the material time, they should be at their home residence. They were apprehended by police at that scene and placed in cell. They were brought to the Court on 31st of August 2021 and arraigned. They pleaded guilty to the charge.

- [3]. In light of the widespread of the Covid-19 Delta variant in close neighboring countries to Solomon Islands, the cabinet decided to do a lockdown exercise to test the preparedness efforts of individuals, communities, organizations and state institutions against this deadly virus. In his nationwide remarks before commencement of the 36 hours lockdown exercise, the Prime Minister of Solomon Islands echoed that the speed of the Covid-19 Delta variant transmission in Fiji, Australia and New Zealand has posed threat that can be of devastating consequences to Solomon Islands if the virus gets into the community. The current preparedness and response plans are no longer appropriate to this Delta variant. This variant is aggressive, contagious and deadly. Hence, the need to review and test the country's preparedness and current response plans through a lockdown exercise is considered imperative, if not, vital.
- [4]. The Prime Minister then made the Order known as Emergency Powers (COVID-19) (Honiara Emergency Zone) (Restriction of Movement) Order 2021. That Order sanctions the 36 hours lockdown exercise that commenced from 6pm on the 29th August to 6:00am on the 31st August 2021. The Order has legal effect. It creates an offence of a maximum fine of \$15,000 and/or 5 years imprisonment in the event of a breach of the Order. It is a felony, meaning a serious offence. This maximum penalty is self-evident that the Government is taking this lockdown exercise very seriously and any person found to be in breach of this will face severe consequences. It also indicates not only to the public but to the judiciary as well the seriousness of this offence compared to other statutory offences.
- [5]. Although this lockdown restriction is controversial, it is lawful because it is a law put down by the State during an Emergency period to prepare, guard and assess the state of preparedness of its inhabitants against the intrusion of the deadly Delta variant. The Prime Minister then advised all residents living inside the designated Emergency zone to "stay home between 6pm on Sunday 29th August and 6am Tuesday 31st August 2021." This lockdown period was widely published or disseminated to the public in all

media platforms in the country. It is therefore no excuse for any residents in the Emergency zone to say that he/she was not aware of the 36 hours lockdown period. If there is any, it will be a horrific or lame excuse.

- [6]. The lockdown exercise is important. It shows the Government has a positive obligation under the Constitution to safeguard life and health by advance preparation of its inhabitants on how to guard against this imminent Delta variant. Ensuring all persons in the country getting prepared and informed on how to protect lives and reduce risks during a pandemic is one of the basic values of a democratic society. A Government that fails to do this is an irresponsible government. This is the time for preparation and cooperation through the rolling out of the lockdown exercise since there will be no more time for planning if the Delta variant enters and spread in the community.
- [7]. This virus does not know or recognize our constitutional rights and freedom. It does not recognize the law or any discipline for that matter. No matter how hard you battle it with your constitutional rights, it will win. This virus is a common enemy fought hard against by all countries in the world. Millions of people were gripped and defeated by this virus through death. The number of positive cases of this virus is still increasing daily globally. This virus is a devil. It kills and destroys lives. Other consequential impacts of this virus are many and devastating, especially on the economy, national security, diplomacy, trade, law and order, culture, community cohesion, leisure, politics, education, personal wellbeing and the list goes on.
- [8]. Solomon Islands is known to have attitude problem when it comes to obeying the laws put down by the State and adherence to the rule of law. That attitude is entrenched and deeply embedded in our behavior. A simple check on this is the ongoing littering, vandalism of State properties and all sorts of criminal activities in the country that reflected badly on our responsiveness, attitudes to the laws and regulations put down by the State. This case is a good example too. The lockdown exercise with punitive consequences is therefore necessary for the people's compliance and adherence. It shows Solomon Islands has moved one step ahead from other countries in seriously preparing its inhabitants to guard against the intrusion and subsequent transmission of this highly contagious Delta variant or even any new Covid-19 variant for that matter. The ability to contain other species of Covid-19 at our quarantine and isolation centers

to date resulting in zero community transmission is the result of that continued efforts of our country's preparedness of which the lockdown simulation is one of them. We should appreciate and thank the Government for the efforts rendered so far. I know those efforts will continue to propel us forward against this common enemy.

- [9]. Emergency planning against this Covid-19 Delta variant is not a game or a prank. There is no time for complacency in our planning efforts against this deadly virus. Covid-19 is real and deadly. Our freedom of movement is conditional on the life which the lockdown exercise tries to aid in the event of community transmission. Lest we forget that life is a prerequisite for enjoyment of other rights, but death is permanent. The need to educate people through the lockdown exercise on how to save lives and reduce risks during the community transmission remains vital to the Government.
- [10]. The Government retains the wide discretion above its citizens to balance these competing interest - the freedom of movement and the need to protect and save lives. Viewed in that lens, if the Lockdown Order does not have penalties, I do not think the people living in the Emergency zone will obey the lockdown exercise. There is no legal enforcement mechanism to compel people to obey the simulation. It will be a waste of everybody's time and effort. The Government will expend finance for an exercise that nobody obeys. It will be a futile and meaningless exercise altogether. Therefore, having the penalties for this lockdown exercise supports the Government positive obligation under human rights law and the Constitution for the protection of life and public safety in light of the implication of the Delta variant itself. It is analogous to situations experienced by a country that has a threat of a terrorist attack by foreigners that the Government has to put down lockdown measures with punitive consequences to protect the lives of its citizens from terrorism. The authority similar to this is the case of *McCann v UK* [1995] CHR 31. Although the recent lockdown is a simulation without any risks of community transmission of the Covid-19 Delta variant, the need for enforcement of the lockdown orders taking into account the people's attitude in complying with the Order and the need for advance preparation for management of risks and public safety in the light of impending Delta variant itself, are amongst the highest priorities of a modern democratic state like Solomon Islands governed by the rule of law.

- [11]. The defendants were not permitted by the authority to move along the Vavaya Ridge main road being a restricted area during that lockdown period. They already knew of the lockdown, yet they deliberately made a decision to flout the lockdown Order.
- [12]. Said many times by the Court that Solomon Islanders must learn to obey the law put down by the State. The defendants, as the residents in the Emergency zone, should learn to obey the lockdown Order by staying at their place of residence. They made a conscious decision and caused disturbance that morning with loud music. They drank alcohol and move about the main road, thinking they were above the law. I noted one of them is a student and all three are young persons. This is no care attitude at its peak.
- [13]. The need of the country, as stated earlier, to test the preparedness efforts of individuals, communities, organizations and state institutions against this deadly Delta variant virus overrides their right to freedom of movement during a prohibited period. For this student, I would consider leniency for his case if he was arrested while on his way to house as a result of late night study or reasons related to his education. He however drank alcohol and acted as he is no longer a Form 5 student. I would not accept that being a student his sentence should be considered specially or exceptionally.
- [14]. I have considered their guilty pleas, their youthfulness and for being first time offenders. I am not assisted in submission from their lawyer whether they had the financial capacity to pay a fine. After considering all these factors, I therefore consider a custodial sentence the appropriate sentence for this case. I impose a term of 12 months imprisonment for the defendants. This 12 months is a resultant term after considering and accommodating all the mitigating factors and the discount applicable to their guilty pleas as required in R v Qoloni [2005] SBHC 73.
- [15]. Time spent in custody is to be deducted.
- [16]. 14 days right of appeal applies.



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(Augustine Sylva - Principal Magistrate)