



**IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS AT HONIARA)**
(Criminal Jurisdiction)

Criminal Case No. 680 of 2021

REGINA

-v-

JUNIOR RODRICK

ANDREW BUARAFI

JIMMY BUARAFI MAUALA

FRANK MATAKISOA

Date of plea: September 10, 2021
Date of hearing: September 10, 2021
Date of sentence: September 17, 2021

John Saugaro for the Police Prosecution
Defendants in person

SENTENCE

1. The four defendants, Junior Rodrick, Andrew Buarafi, Jimmy Buarafi Mauala, and Frank Matakisoa are charged together with an offence of *Common Nuisance* contrary to section 172 of the Penal Code (Cap. 26), as read with section 21 (a) of the said *Act*. They appeared on the initial date of mention and pleaded guilty to the offence. Accordingly, criminal conviction was thereby recorded based on their pleas.
2. The agreed facts show that, on June 4, 2021, between 10:00pm and midnight, the defendants were found drinking kwaso near the duty post of the Kaibia Community Policing Committee near the Kaibia Yellow Bamboo.
3. While drinking, the complainant and his Community Policing Committee members heard the defendants shouting and uttering swearing words to the effect: "*Fuckem Community Police, bae bae mifala pusum knife lo ufala. Ufala every security lo village ia ufala Fuckem ufala nomoa, eniwan lo ufala hem cross talem hem kam lo hia for mefala haedim knife lo bele blo hem. Shit lo community bylaw.*"
4. The complainant and his team members approached the defendants and advised them to calm down. They tried to sort out the issue, but the defendants challenged the complainant for a fight, and did not want to listen to the Community Policing members. The complainant and his team members contacted police and reported the defendants' actions. Police came and arrested the defendants and charged them for the offence of Common Nuisance.

5. The facts were read to the defendants and they wholly accepted it. Mr. Andrew Buarafi on behalf of the others, submitted that they did the offence because the complainant and his team throw stones at them. I am dissatisfied with this argument not only does it give no right for them to retaliate, but that the argument was purely tenuous.
6. The offence of Common Nuisance under s. 172 of the Penal Code bears a maximum penalty of 1 year imprisonment. The seriousness of this offence is reflected in the maximum term. However, it is also trite law that cases are considered based on their own pertinent facts and circumstances, and no two cases are the same. Also, the maximum prescribed penalty would normally be invoked in the extreme or worst type of Common Nuisance offending.
7. The defendants are young offenders, who all have on the date of offence consumed Kwaso, playing loud music, shouting swearing words, and disrespecting and humiliating the Community Policing Officers ("CPO") before the ears and eyes of some, if not, most of the Kaibia residents. Not only they have disrespected the CPO's, but they had disturbed the peaceful resting of the Kaibia residents who are residing close to where they were drinking. Fortunately, they had been caught in the act. They were blinded under the deceit and illusory thoughts of Kwaso, but as the wrath of the law came upon them, the consequences for their foolishness had become known to them.
8. Regarding their aggravating factors, I find the following as positive. First, the offence occurred in the night when the residents were resting, which demonstrated an utter disregard towards their fellow neighbors, more importantly, children, women, and the elderly who are vulnerable to immediate fear and trepidation. Second, the disrespect, and abusive words used against the CPO's and the bylaw. the defendants had showed a blatant no care attitude towards the CPO's who are vested with powers to administer law and order in our community level, such as, Kaibia. They were merely carrying out their duties when the defendants swore at them, and challenged the complainant, who is part of them, for a fight. It portrays the ingratitude and ungratefulness to what these CPO's are doing. In fact, they are carrying out duties for free or without any payment, simply to make sure our communities are safe and secure from people like the defendants. Third, the consumption of Kwaso. The defendants had consumed an illegal liquor to aid the execution of the offence. Kwaso is an illegal liquor and contained harmful substance, which can be damaging to the human body, especially if taken at an early age, like the defendants in this case. It has no alcohol percentage nor does it an approved liquor by health authorities, hence, its result from the defendants' actions on the date of offence. Finally, the offence occurred in a group. The defendants were together in a group of four. Any offence in group is serious, which would place the fear on those CPO's and others who may wish to contain such nuisance, in a much difficult approach. It increases the fear of those vulnerable ones in the community.
9. They appeared in person before the court, thus, the initiative by the court to provide similar case authorities, which would help, as persuasive, in arriving at a just sentence for them. In *Regina v Balou* ("**Balou**"), the facts were that, the defendant pleaded guilty

to a count each of common nuisance, and assault on police officer. The defendant, including his friends were playing loud music and shouting, while drinking. When police arrived, the defendant approached the police vehicle and ordered police to leave the vicinity otherwise they would be stoned. While a police officer was trying to calm the defendant, he retreated, took a stone and hurled it on the officer, which she sustained abrasions to her left eye. He was sentenced to 3 months imprisonment for the offence of common nuisance.

10. This present case is similar to that of *Balou*, although the acts were done against CPO's, as oppose to sworn police officers. Nonetheless, I accept that these individuals are overseers of the law and order within our communities, and the same respect and recognition owed to our RSIPF were expected to be rendered to them.
11. Having taken into account the circumstance of offending, noting the seriousness, and defendants' criminal culpability, I see it fit to set a starting point at 3 months' imprisonment. I therefore, increase a further 3 months to consider the aggravating factors. As such, the head sentence is placed at 6 months' imprisonment.
12. For their mitigation, I deduct the following: First, two months is deducted to reflect their early guilty plea, which has showed remorse, and owning up to their wrong. Second, a further 2 months is deducted to consider their clean criminal history, and cooperation with the police during arrest. Finally, I deduct a month to consider their youthfulness, and to avoid any crushing effect on their future. Therefore, the resulting sentence is 1 month imprisonment.
13. The defendants must now acknowledge the rule of law, and the importance of showing respect and recognition to those who are part of the Community Policing Committee ("CPC"), and the administration of law and order in our country. Drinking kwaso, playing of loud music, and uttering swearing words will only put their future out to be hijacked, and wasted. They must understand that, they are the writer of their own future, and that their parents would one day leave this earth. Hence, should take life serious and start doing productive, beneficial and lawful things which would benefit them, their families, and the country.
14. For the sentencing methodology today, I believe that they are all young people, thus passing through the journey from youth onto maturity. They are susceptible to making mistakes in life, like most, if not, all other young people does. Research have revealed that the minds of young people are full of innovation and exploration, hence, vulnerable to making foolish decisions in life, and they learn from such experiences and consequences.
15. Therefore, for their penalty, I am of the view that, it would be best to impart in them a strong warning, to teach them to understand the rule of law, their mistakes, and where they need to build on from, in creating their individual futures. In addition, I believe the one week spent in remand had served them enough lesson. For what I have said, I invoke s. 32 (1) of the Penal Code (Cap. 26) to instead of sending them to spend 1 month

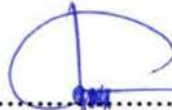
imprisonment, order that they shall enter into their own recognizance without surety for 6 months in the sum of \$500.00, conditioned that they shall keep peace and of good behaviour during this aforesaid period.

16. This sentence would serve them a strong message to never repeat what they did, and to respect and recognize the work of those administering law and order in our communities. Also, for the youths in our country to understand that the court will not take such offence casually, if they intend to travel down the same route. If there is anything that the court should emphasize strongly on, is the need for all youths to rally behind and help the CPC's in their work to keep our communities safe and secured.

Sentence orders

1. I hereby sentenced the defendants; Junior Rodrick, Andrew Buarafi, Jimmy Buarafi Mauala, and Frank Matakisoa to 1 month imprisonment.
2. I invoke section 32 (1) of the Penal Code (Cap. 26) to instead of sending them to spend 1 month imprisonment, order that they shall enter into their own recognizance without surety for 6 months in the sum of \$500.00, conditioned that they shall keep peace and of good behaviour during this aforesaid period.
3. I order that they shall be released at the rising of the court.
4. Right of appeal applies within 14 days.
5. Order accordingly.

THE COURT



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MR. LEONARD B. CHITE
Principal Magistrate
Central Magistrates' Court

