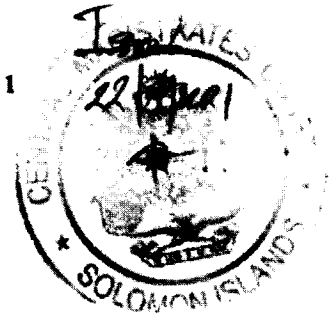


**IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)**

Criminal Case No. 666 of 2021



REGINA

-v-

JUNIOR AUGA

Date of plea: September 15, 2021
Date of hearing: September 15, 2021
Date of sentence: September 22, 2021

*Monica Rehomora for the Crown
Bobby Harunari for the Defendant*

SENTENCE

1. The defendant, Mr. Junior Auga is charged with an offence 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 (COVID-19) (No-2) Regulations 2021. He pleaded guilty on arraignment, and a criminal conviction was thereby entered against him.
2. The facts reveal that, on August 30, 2021 at about 7:30am, Police mounted an operation for the lockdown within the Emergency Zone of Poha Bridge at the Western end of Honiara, and Alligator Bridge at the Eastern end.
3. While on Patrol, they found the defendant walking along the Savo heights road, White river area in West Honiara. The defendant was then arrested, brought to the Central Police Station for further dealings, and was later charged.
4. The significance of this lockdown orders and the court's approach was made clear in the case of *R v Tela & Others ("Tela")*, in which this court said [At para. 3 - 4]

"The offence of Restriction of Movement of Persons in Honiara, as per regulation 15 (1) (a), (2), and (4) carries a maximum penalty of 15,000 penalty units or imprisonment for 5 years, or both. This maximum penalty exemplifies the seriousness of the offence, and the legislature's stern standing against the spread or public transmission of the virus, COVID-19, in our communities. However, cases are to be decided on their own circumstances and unique bundle of facts, and no two cases are the same, albeit

understanding the regulatory nature of this offence, and its strict liability aspect in law."

"Before delving into the substantive submissions of both the Crown, and defence I wish to make mention, at the outset, that the enforcement of this particular regulation must be applied distinct in considering the fact that it was an 'exercise' or 'mock' lockdown, as oppose to curbing the spread of an actual outbreak. As such, the sentencing methodology to deter offenders, must coincide with the pragmatic nature and circumstance of this case."

5. Ms. Rehomora of counsel appearing for the Crown submitted that, the Crown acknowledges no record of positive patient at the time of the restriction and even to date. However, submitted that Covid-19 is a world-wide pandemic and the Prime Minister was authorized to make certain decisions and actions in addressing issues in relation to COVID-19 under the Emergency Powers (COVID-19) (No. 2) Regulations 2020, including the authority to make order declaring emergency zones and to make orders restricting the movement of persons. Hence, submitted that the purpose of the restriction was to test the nation's preparedness, in the event it records its positive case, and conceivable lockdown.
6. In addition, counsel also referred to some case authorities² from previous lockdown cases of which the court had imposed fine penalties ranging from \$500 to \$1,000, without entering conviction.
7. Mr. Harunari of counsel for the defendant conceded that, the lock down, although a practice was made to prepare the nation in the event of an outbreak. However, submitted that at the time of lockdown, there were no record of covid-19 in the country. Hence, submitted that it should fall on the lowest level of the offence.
8. For his mitigation, counsel submitted that the defendant entered a guilty plea at the earliest opportunity, after being allocated a PSO lawyer. His plea demonstrated an honest remorse, and acceptance for consequences of his wrong. He is a first-offender with clean criminal history, and cooperated with the police during arrest and investigation. Additionally, counsel submitted that the defendant is a casual worker working for the Red Devil Company.
9. Counsel informed the court that the defendant's attendance to Savo Height's was unexcused, he had went there looking for cigarettes when he was arrested.
10. This court in *Tela*, has expound on the importance of this lockdown, and the need for citizen to comply accordingly, where it said [At para. 8 – 10]:

¹ 15 (1) (a), (2), and (4)

² *Regina v Elliot*; Criminal Case 534 of 2020, *Regina v Foufaka*; Criminal Case 529 of 2020, and *Regina v Aike & Others*; Criminal Case 525 of 2020

"The lockdown exercise, or mock was made known to the people in a nationwide address by the Prime Minister, and through other media platforms, including social media. As such, on the dates commencing from 6.00pm on Sunday 29 August 2021 until 6.00am on Tuesday 31 August 2021, those living within the designated area of Emergency Zone were advised to remain at their place of residence, and no movement in and out of the said zone."

"It is irrefutable that this was a 'mock' lock down, or an exercise to test our preparedness in the event of an outbreak. Therefore, it would be correct to say that, it is an exercise to teach us, correct us, and identify to us areas of which we have gaps, so we can better sharpen our readiness. Of course, this exercise was made in view of the fact that, Solomon Islands do not have the vital facilities and necessary equipment to confront an outbreak or community transmission of COVID-19, including its improved 'variants'. Our government is doing its best to protect and safeguard our country, to teach us of the risks and dangers that this disease entail, and what it would be like, if in the event it enters Solomon Islands. A clear example is India, and Fiji being our nearest neighbor, which as we understand have highly sophisticated equipment and facilities but could not stand the outbreak of 'delta' variant."

"We need to be prepared, because sooner or later, our borders may need to open for other services to proceed, and to allow for other incoming travelers into our country. And this may pose risk for the virus to enter our country. I acknowledge that this is an exercise or mock, and there are no positive cases currently recorded in the country. However, as mentioned above, this is the way we can test our preparedness, taking due account to our citizen's lack of adequate understanding of COVID-19 and its deadliness'. I agree, I must treat this matter different to a real lockdown, where there's an actual outbreak with real risk."

11. For this defendant, he knew that the area of which he went to was part of the designated area as an Emergency Zone, but could not hold the desire for a puff of a cigarette. I believe he has realized how his decision to leave his place of residence to go looking for cigarettes during a lockdown period has affected him. He has now identified an area to work on, perhaps, in future lockdowns; he may wish to have at least few packets of cigarettes in stock, or "Savu-savu" on standby, to avoid him going around looking for smokes that would potentially put more danger of transmitting the Covid-19 virus to his family members. He must take this advice seriously. Otherwise, such behaviour would cause this deadly Covid-19 disease to spread like wild fire, if not addressed now, simply because of some desire for smokes.
12. I could not fathom how an urge for smokes would equate to the deadly risks that Covid-19 entails. The defendant must never take covid-19 lightly, or it will cause disastrous results to him and his family. Today, for his blatant disregard to the lockdown orders, because of his desire for cigarettes, I am certain that a fine sentence is appropriate.
13. Having considered the merit of the facts and circumstances, and taking into account the aggravating and mitigating factors, I hereby impose a fine sentence of \$300. I will not

invoke s.35 of the Penal Code, as that section has intention 'not' to punish an offender, and imposing a fine sentence has displaced the application of that particular section.

Sentence orders

1. I hereby sentenced the defendant, Mr. Junior Auga to a fine sentence of \$300.00
2. Fine must be paid by 8th of October 2021 at 4:30pm.
3. In default of payment, 20 days' imprisonment.
4. Conviction is entered.
5. 14 days right of appeal is applied.
6. Order accordingly.

THE COURT

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

