

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

Criminal Case No: 289 of 2021

REGINA

-v-

CHARLES DORA



PRESIDING MAGISTRATE: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Vernon Taupongi, Senior Legal Officer, Office of the Director of Public Prosecutions for the Crown

Mrs Martha Manaka, Deputy Public Solicitor, Public Solicitors Office for the defendant

Date of Sentence: 11th October 2021 at 10am

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 Charles Dora pleaded guilty to one count of Unlicensed Financial Institution contrary to section 3(2) (a) of the *Financial Institution Act 1998* ("FLA 1998"). I now record a conviction against him.

SUMMARY OF FACTS

2. The defendant is Charles Dora of Aulupeine Village, Small Malaita, Malaita Province.
3. The complainant is the Central Bank of Solomon Islands (CBSI).
4. On the 4th of July 2019, the defendant registered a business name known as One Link Pacifica (OLP) at the Company Haus. OLP was not a company incorporated under the *Companies Act 2009* (No. 1 of 2009) or established abroad or a body corporate. The defendant was the director, proprietor and sole trader of OLP.
5. The said business commenced operations on the 4th July 2019 until 30th March 2020. It operated as a banking business without any licence to conduct such activities.

6. In the course of OLP's operation, the defendant had three bank accounts with Pan Oceanic Bank (POB), Australia and New Zealand Banking Group (ANZ) and Bank South Pacific (BSP). Despite not having a licence or an approval from the CBSI, the accused carried on with activities that are consistent with the characteristics of a banking business. He took deposits and received monies from members of the public, referred to as investors.
7. The monies obtained from individual investors on separate and various occasions ranged from SBD 250 to SBD 95,750. The monies were paid into the business by the investors in and around Honiara, with a promise of profits after 30 days.
8. Between the period of December 2019 to March 2020, customers or investors did not receive any form of profits after 30 days.
9. Between the period of December 2019 to March 2020, customers or investors did not receive any form of payments as promised by the defendant and his associates.
10. The total amount of money received by the business for the period it started its operations to the time that it collapsed totaled to about SBD 56, 440, 475. More than 90 percent of the total amount has not been recovered to date except for the SBD 121, 791.20 which was recovered from the defendant.
11. In or around December 2019, the CBSI was alerted about the illegal banking operations. There were complaints received that the form of investment he was promoting was a scheme similar to a pyramid or ponzi money scheme with promises of higher returns.
12. An investigation was carried out and confirmed that the defendant Mr Dora was operating a banking business as sole trader under the name of OLP without a licence issued under the *FIA 1998*.
13. In or around March 2020, the defendant went to the Russel Islands, Central Islands Province and resided there until he was subsequently arrested on the 1st June 2021.

RELEVANT FACTORS FOR CONSIDERATION

Aggravating Factors

14. The aggravating factors in this case are as follows:

Pre-meditation

15. It is obviously clear that the defendant carefully planned to operate this scheme to defraud people by collecting monies and promising them with higher returns or profits within a certain period. He registered a business name to make it look reputable and authentic to the members

of the general public. I take judicial notice of the press releases and public statements that OLP issued against the CBSI which are completely misleading and have no legal basis.¹ The *modus operandi* used by the defendant ensured that the people who invested their monies believed that OLP is a commercial and profitable financial institution. There is a world of difference between a body corporate/company and a business name in which the first one can sue or be sued and the latter cannot sue or be sued.²

Breach of Trust

16. The defendant created some kind of fiduciary relationships with the members of the scheme by the collection of various sums of money with the expectation of a higher returns. Now that OLP is defunct and no longer operational, it is a testament that the promises of higher returns are indeed bogus in nature.

Perpetrated repeatedly Over a Period of 9 Months

17. The accused committed the offence on multiple occasions over a period of approximately 9 months. He unceasingly advertised, took deposits and promised members from the 4th July 2019 to the 30th March 2020, and tricked them into believing that the business trade was legitimate and genuine.

Substantial Amount

18. The moneys obtained from individual investors on separate occasions within a 9-month period ranges from SBD 250 to SBD 95, 750. Furthermore, the total sum of monies which were deceitfully obtained by the accused from the people who invested in the scheme within the said period totaled up to SBD 56,440,475 which is a very significant amount to get from the ordinary and struggling people who invested their monies.

Lack of Restitution

19. The people who invested their monies had been completely deprived of their monies being the victims of this bogus scheme. The total amount of more than SBD 56 million is staggeringly

¹ Ian M Kaukui, "One Link hits back" in *Solomon Star* <https://www.solomonstarnews.com/one-link-hits-back/> (Accessed 11 October 2021)

² See *Companies Act 2009*, s8 (2) states as follows: (2) A company incorporated under this Act is a legal entity in its own right separate from its shareholders, and continues in existence until it is dissolved.

Business Names Act 2014, s 18 states: 8. (1) To avoid doubt, registration of a business name does not—(a) create a separate legal entity; or (b) relieve an entity of any requirement of another law; or (c) create property rights in the business name, or in a word or an expression that constitutes all or part of the business name.

large. The SBD 121, 791.20 recovered from the defendant is very small compared to the SBD 56 million which is unaccounted for and its trail is now a mystery. The victims of OLP are at liberty to seek independent legal advice as to whether or not they can recover their lost properties through a civil suit against the defendant in the High Court.

Mitigating Factors

20. The mitigating factors include the following: early guilty and remorse, first offender, cooperation with the Police and the defendant's personal circumstances and other factors. These are addressed in detail later herein.

COMPARATIVE SENTENCES

Unlicensed Financial Institution

21. There is limited case precedent in this jurisdiction. However, this should be an opportunity for the development of the jurisprudence in the country when it comes to criminal cases of unlicensed financial institution.
22. In *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)³, 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 *FIA 1998*. For the offence of unlicensed banking business, the defendant, received a sentence of 2 years imprisonment. 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.
23. In *Kavei*⁴, 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.
24. Section 3(6) of the *FIA 1998*⁵ as amended by the *Financial Institution (Amendment) Act 1999* provides as follows:

3. (1) (1) No person shall carry on banking business in Solomon Islands unless such person is a financial institution licensed under this Act;

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

⁴ *R v Kavei* [2019] SBHC 69; HCSI-CRC 143 of 2017 (22 July 2019)

⁵ *Financial Institution Act 1998*

Cap. 66.

(2) A person commits an offence under this Act, who not being licensed as a financial institution-

(a) carries on banking business, whether on his own account, in partnership or otherwise; or

(b) purports to be licensed or otherwise entitled to carry on banking business; or

(c) takes or uses any name, title or description implying or likely to lead the public to believe that he is licensed or otherwise entitled to carry on banking business; or

(d) makes any representation to be a financial institution on any letter-head, notice, or advertisement or in any other manner.

(3) Where the Central Bank has reason to believe that any person is contravening the provisions of subsection (1) it may cause an examination of the books, accounts and records of such person to find out if that is the case.

(4) Any person who refuses to make available for examination such books, accounts and records requested by the Central Bank for purposes of subsection (3) shall be guilty of an offence.

(5) A person holding funds which he has obtained in contravention of subsection (1) shall repay such funds as directed by the Central Bank.

(6) Any person who is convicted of an offence under this section shall be liable to a fine not exceeding three thousand dollars for each day during which the offence continues or to imprisonment not exceeding three years or to both such fine and imprisonment.

25. The operation of an illegal banking business for a period of almost 9 months which involved the amount of around SBD 56 million is very serious in nature and I am of the view that this case must attract an immediate custodial sentence, and a starting point of 3 years or 36 months imprisonment is warranted.

26. I will now take into account the mitigating factors and give due allowances:

Starting Point

27. **Early Guilty plea and remorse.** The defendant entered an early guilty plea which saves the court's resources and time. It is also a sign of remorse. I deduct 8 months to reflect the early guilty plea as it is still within the range of 10 to 30 percent discount available for an early plea.

28. **First Offender and previous good character.** The defendant is a first-time offender and I deduct 1 month to reflect that factor.
29. **Cooperation with Police.** The defendant cooperated with the Police and I deduct 1 month to reflect that.
30. **Personal Circumstances & other factors.** The defendant is a father and husband. He has three children which are attending schools currently both in the primary and secondary levels. The defence also submitted that the defendant's wife is medically ill, and that the defendant's parents also relied on him for survival. He is also an elder in his community in the Russell Islands. I deduct 2 months to reflect the defendant's personal circumstances.
31. **Pre-Sentence-Custody.** I am aware that the defendant has been remanded in custody since the 2nd June 2021. The pre-sentence-custody period shall be taken into account either by deduction or backdating of the sentence both of which will achieve the same result.
32. Hence, I am satisfied that 24 months (2 years) imprisonment is appropriate for this present offence contrary to section 3 of the *FIA 1998*.

CONCLUSION

33. The circumstances of this case confirmed that the defendant fraudulently and unfairly obtained monies from the participants or members of the scheme under the guise of investment for the purposes of earning a higher financial reward. This turned out to be an outright deception.
34. Section 2 of the *FIA 1998* as amended by the *Financial Institutions (Amendment) Act 1999* defines "Pyramid selling scheme"⁶ as follows:

"pyramid selling scheme" means a scheme which constitutes primarily an opportunity for participants to sell an investment opportunity to other participants in the scheme; and which is or is likely to be unfair to many of the participants in the scheme in that -

(a) the financial rewards of many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and

(b) the number of additional participants that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable, by many of the participants in the scheme;'

⁶ *Financial Institution Act 1998 (as amended)*

35. The defendant had taken advantage of the financial situation in the country to deceive and fraudulently fool people to part with their monies, exacerbated by the cargo-cult mentality normally promoted and perpetuated by the "quick get rich money schemes".
36. If a person wishes to run a banking business, the *FLA 1998* requires that it must be a body corporate, and compliance with the processes and requirements under section 5 of the Act and other relevant laws such as the *Companies Act 2009* and so forth are mandatory.⁷ The *FLA 1998* defines "banking business"⁸ as follows:

"banking business" means-

(a) the business of accepting deposits of money from the public or members thereof, withdrawable or payable upon demand or after a fixed period or after notice, or any similar operation through the frequent sales or placement of bonds, certificates, notes or other securities, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business; and

(b) any other activity recognised by the Central Bank as customary banking practice which a licensed financial institution engaging in the activities described in paragraph (a), or any related activity which the Central Bank may consider appropriate;

37. The *FLA 1998* defines "Financial institution"⁹ as:

"financial institution" means any body corporate doing banking business:

Provided, that for the purposes of this Act, unless the context otherwise requires, all offices and branches of a financial institution in Solomon Islands shall be deemed to be one financial institution;

38. Further to that, "body corporate"¹⁰ is defined as:

"body corporate" means a company incorporated in Solomon Islands or elsewhere under any law of the time being in force relating to the formation and registration of companies, or a corporation established in the Solomon Islands or elsewhere under any Act.

39. This present case is a regulatory offence where a legal entity (financial institution) can only operate a banking business if it has met all the legal prerequisites and has been issued with the relevant licence in accordance with section 5 of the *FLA 1998* by the rightful authority which in this case, the CBSI.¹¹ The *FLA 1998* is the statutory regime in this jurisdiction that governs

⁷ *Financial Institution Act 1998*

⁸ *Financial Institution Act 1998*

⁹ *Financial Institutions Act 1998*

¹⁰ *Financial Institutions Act 1998*

¹¹ *Financial Institutions Act 1998, s states: 5. (1) Any company desirous of commencing banking business in Solomon Islands after the commencement of this Act shall, before commencing such business, apply for and obtain a licence to do so.*

the operations of financial institutions and the banking business. The long title of the Act clearly states that "it provides for the regulation of the business of banking; and for the licensing, regulation and supervision of financial institutions carrying on banking businesses in Solomon Islands and for purposes connected therewith and to repeal the banking Act 1976."¹²

40. The cumulative total amount of more than SBD 56 million amassed by OLP is by any standard very large and for someone to have operated such a banking business illegally for 9 months is shocking and unacceptable. The proactive awareness and warnings issued by the CBSI as the regulatory body are commendable, and apart from obviously complying with section 3 (3) of the *FIA 1998*, it could have taken swift legal action and commenced civil proceedings in the High Court for injunctive orders against the defendant in his capacity as the sole proprietor and trader of OLP and his associates to halt the illegal operations. This would have militated against the financial losses that the members of the scheme now suffered. However, this is only a subsidiary issue that can be reserved for another day.
41. Further to that, the OLP had stopped its operations in March 2020, and the CBSI had referred the matter to the Police on the 27th of March 2020, and it took the Police until June 2021 to arrest the defendant.¹³ It should take less than a day to conduct a search at the Company Haus within the Ministry of Commerce, Industries, Labour and Immigration to retrieve the registration of the OLP as a business name. The publicity of the OLP, apart from Covid-19 had gone viral nationally in 2020 and it became a common knowledge around the country. There is no reasonable explanation given as to why it took so long for the defendant to be arrested. Nevertheless, the CBSI and the Police should be commended for their efforts rendered in this case.
42. I take judicial notice of the pyramid selling schemes apart from OLP which are reportedly increasing in the country and I warn the people who are promoting such schemes to stop misleading and victimizing the ordinary people.¹⁴ This case perfectly exemplifies the punishment that one can receive if he or she commits this offence and, in that regard, the supplementary submissions by the defence counsel this morning is acknowledged.
43. The legislature may wish to consider whether or not the maximum penalty prescribed under section 3(6) of the *FIA 1998* should be reviewed as it currently attracts only three years imprisonment as a maximum penalty.¹⁵ Some of the pertinent factors, amongst others, that can be considered for the purposes of law reform are deterrence, the amount of money involved in such crimes as manifested in this case and to keep abreast with the country's ever-changing

¹² *Financial Institutions Act 1998*

¹³ See the Remand Application submitted to the court on the 2nd June 2021, and the Agreed Facts

¹⁴ CBSI "The dangers of investing in a pyramid scheme" <https://www.cbsi.com.sb/the-dangers-of-investing-in-pyramid-scheme/> (Accessed 11 October 2021).

¹⁵ *Financial Institutions Act 1998*

economic situation influenced by the rapid advances in technology coupled with the globalization of the financial services industry.¹⁶

44. Having said that, and taking into account the sentencing principles such as punishment, deterrence and rehabilitation, I now sentence the defendant Mr Charles Dora to 24 months (2 years) imprisonment for one count of engaging in the running of an unlicensed financial institution contrary to section 3(2)(a) of the *FIA 1998* read with section 3(6) of the same Act.
45. **Pre-Sentence-Custody.** The sentence shall be retrospectively commenced on the 2nd June 2021, being the date that the defendant was first remanded until the present.

ORDERS

46. The defendant Mr Charles Dora is sentenced as follows:

- [1] The defendant is sentenced to 24 months (2 years) imprisonment for one count of running an Unlicensed Financial Institution contrary to section 3(2)(a) read with section 3(6) of the *FIA 1998*.
- [2] **Pre-Sentence-Custody (to be backdated).** The sentence shall be retrospectively commenced on the 2nd June 2021, being the date of first remand.
- [3] Right of Appeal within 14 days.
- [4] I order accordingly.



¹⁶ The last amendment to the *Financial Institution Act 1998* was in 1999, some 22 years ago. See also article by John McDowell, Senior Policy Adviser, and Gary Novis, Program Analyst, titled "The Consequences of Money Laundering and Financial Crime", Bureau of International Narcotics and Law Enforcement Affairs, U.S Department of State. <https://www.hsdl.org/?view&did=3549> (Accessed 7 October 2021).