

IN THE CENTRAL MAGISTRATES COURT)
OF SOLOMON ISLANDS)
AT HONIARA)



Criminal Case No. 589/2021

REGINA

V

BENJAMIN KEMAILI

COURTS SENTENCING RULING

Prosecution: Mr. Saugaro from the Police Prosecutions Department

Defence counsel: Ms Rusi of the Public Solicitors Office (PSO)

Defendant: Appeared on bail

Date of verbal Ruling: 27th August 2021

Date of Written Ruling: 27th Oct 2021

Charge:

This is a simple larceny matter between two relatives. The Defendant namely Mr. Benjamin KEMAILI was charged for this offence against his cousin Richard MOKA. It was alleged that he stole his cousins 1 x 12 feet fiber glass canoe on an unknown date in the month of March 2021 (see filed charge dated 16th July 2021).

Facts:

The Defendant pleaded guilty to the charge. Thereafter the facts was filed and agreed to by both parties reflecting the following events:

1. Both the Defendant and the Victim are from the same village of Luanua Village, Malaita Outer Islands, Malaita Province.
2. They are blood relatives and relate to each other as close brothers.
3. The incident was alleged to have occurred on an unknown date in March 2021. The Defendant instructed a young man to paddle to the central market and meet him there.
4. The young man did as instructed. When he got to the market the Defendant came along and carried the canoe onto a taxi and they travelled out westerly direction.
5. The Defendant instructed the young man to wait on him while he went into a warehouse. Then he returned to the young man and the driver of the taxi and directed them to go and wait for him at Honiara Casino.
6. He came to them later and they returned to Lord Howe settlement.
7. It was after some weeks that the Victim noted that his canoe had gone missing. The canoe cost him about \$4500.00 and it was not recovered to this date.

8. He reported the matter and that is why and how the matter came to court.
9. The Defendant when interviewed by police admitted to the commission of the offence.

Aggravating features:

From the above events it is clear that there are aggravating features. These are:

1. The loss suffered by the Victim in terms of property and finances attached to the canoe is a loss permanently as the canoe was never recovered in any way to this date.
2. Negotiation was clearly done between the two parties before coming to court. However the Defendant had not been owning up to his part of the negotiation. The Defendant agreed to repay the Victim \$7000.00 but he never complied so the Victim proceeded to reporting him with police.
3. The Defendant tried to advance that the Victim owed him \$20,000.00. However the Victim denied this and stated that the money owed as the Defendant claimed was not by him. It was money owed by another relative of his.
4. It is also clear that the trust between them as cousin brothers has been breached and affected because of this situation.

Mitigating matters:

As for mitigating factors the following are identified:

1. He is a first time offender;
2. He made an early guilty plea saving court, PSO and PPD resources time and energy to have to dispose the matter by way of trial;
3. He cooperated well with the court for his matter as well as the police where he made admissions to the offending;
4. He also assured court through his counsel's mitigation that he has learnt his lesson and will not repeat it again;
5. He explained as well that he had arranged with the Victim at the Central Police Station to repay the Victim. However he is in a very difficult financial situation and hopes for bech de mer to open soon so he can find money through that and repay the Victim;
6. The Defendant tried explaining the circumstances and background of the matter and stated that the Victim owed him money from year 2019. This was about \$20,000 and \$7000 worth for petrol and oil. The Victim did not repay him and he therefore in his urgent financial dilemma went about to take the law into his own hands to sell the Victims property to recover the monies owed to him as transpired in the facts of this matter. Now that he has gone through court proceedings and realizes, he assured the court that he will not repeat this again and will maintain a law abiding behavior;

Personal circumstances:

1. The Defendant is a matured man who is from Lord Howe and resides at the settlement;
2. He has 5 children and is self-employed;
3. He is a first time offender;
4. There was never any reconciliation except some arrangements;
5. He has disability as well and seeks courts mercy;
6. He ask if he can be given 1 month to repay the Victim or in default 1 month imprisonment;

The defence mitigation and suggested penalty was agreed to by Prosecution as well.

Courts analysis:

I have read the case authorities relied upon by defence in her mitigation. I appreciate her research work and analysis provided and encourage her to continue doing so. I also appreciate prosecutions work on this matter. Having read those as guiding cases for such matters I now

I understand that for such cases, the penalty imposed by the courts vary and can be a fine, bound over, imprisonment or suspended sentence whichever the court finds most appropriate given the circumstances of the matter.

I therefore assessed the matter and scale it as a minor to medium ranged type of simple larceny.

When balancing off all the crucial aspects of this matter which are the personal circumstances of the Defendant, aggravating and mitigating factors, I would impose a penalty that reflects deterrence, rehabilitation and retribution for the Victim. This is because this act of taking laws in our own hands must stop. We have community leaders, pastors and police stations around and need to use them for disputes like this. We cannot just take the law in our hands and expect nothing to happen. Others must learn from these kinds of cases and avoid repeating them. The same for the Defendant himself (specific deterrence). He must come out from such attitude and properly address problems in life according to lawful means. The court is responsible to send the proper message to Defendants and the community. Taking the law into one's own hands can never resolve any matter but escalate them.

As for the rehabilitation aspect of his penalty I am strongly persuaded that the Defendant needs to be given the chance to change and learn from this as he has been a good man throughout his life with no criminal record against him. The background also displays to a certain extent why and how he did what he did. To a certain extent he felt provoked to react thus his irrational behavior kicked in landing him in this situation before the court. As submitted by his counsel he thought what he did was fine as the Victim owed him and never repaid the money. Prosecution on the other hand says the money owed was not by the Victim but another relative of theirs.

In conclusion, I would impose a non-custodial sentence as per section 35 of the Penal Code due to the peculiar background and situation arousing the Defendant to behave the way he did. However I will impose section 27 of the Penal Code to ensure the Victim is repaid for the wrongs done to him because he was never compensated or given back the lost property that has value for money. By this as seen from the mitigation and agreed terms from both prosecutions and defense, I would impose them as the finalized orders appropriate for this matter. Parties agreed to a bound over of 1 year and additional compensation for the Victim in the amount of \$5000.

Court orders:

1. Invoke section 35 of the Penal Code not to convict the Defendant.
2. However will dismiss the matter under section 35 with conditional penalty for the Defendant;
3. The conditional penalty is to have him on a bound over for 1 year on his own recognizance in the amount of \$300.00 to keep the peace and be of good behavior in the community;
4. I would also order compensation under section 27 of the Penal Code which to ensure the Victim is compensated and this will be in the amount of \$5000.00 in default 1 month imprisonment;
5. The above order is due on the 27th Sept 2021 by which time the Defendant must pay \$5000.00 to the Victim and confirm by filing evidence of it in court. Any failure will have to automatically put him under the in default penalty of 1 month imprisonment.
6. Right of appeal within 14 days from today.

