

IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 912 of 2021

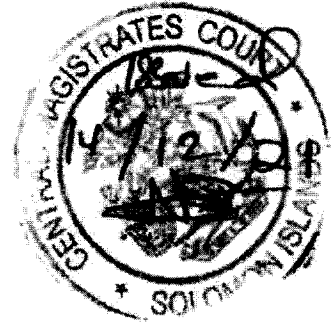
REGINA

-V-

RIO IRO

JACKSON NORI

JEFFERY KENETH TAKI MAMUA



PRESIDING MAGISTRATE: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Ms Patricia Tabepuda, Principal Legal Officer, Office of the Director of Public Prosecutions for the Crown

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

Date of Sentence: 14th December 2021

Notice: This copy of the Court's Reasons for Judgment/Sentence is subject to formal revision prior to publication.

SENTENCE

INTRODUCTION

1. The three defendants in this matter were initially charged together for the same offence, however, they are now charged separately. Mr Rio Iro, 16, is charged with one count of Simple Larceny contrary to section 261(1) read with section 258 of the *Penal Code* [Cap 26]. Mr Jackson Nori, 28, and Jeffery Kenneth Taki Mamua, 24, are charged with one count of Receiving contrary to section 313 of the *Penal Code* [Cap 26]. They pleaded guilty to the said offences and I now record a conviction against each of them.

SUMMARY OF FACTS

2. On the 25th November 2021 in the morning, large groups of people started forming in east Honiara. Many shops were looted and buildings were set on fire. The level of destruction increased throughout the day. Members of the Royal Solomon Islands Police Force (Police) struggled to control the groups of people involved in the looting and burning of buildings in certain places in Honiara.

3. On Saturday 27th of November 2021, a group of people continued with the looting of shops and destructions of the buildings at China town in Honiara. At around 11am on that day, the three defendants walked from Chinatown towards Point Cruz and were seen carrying certain items and properties.
4. The Police officers stationed at the Honiara City Council area, apprehended the defendants and identified those items which they carried as stolen items from the shops.
5. Mr Rio had in his possession a tool box and a disposal gas bottle. Those items were taken from the looted shops around Solomon Islands Water Authority (SIWA) area, at China Town, Honiara.
6. Mr Nori had in his possession a bag containing cans of tuna (6 Chilli tuna, 4 Mariko and 12 white flakes). He obtained those items from people who looted the shops at China town. He had knowledge that those were looted or stolen items.
7. Mr Mamua had in his possession a bag containing a JBL mixture, torches, shoes, tape and hair products. Those items were looted ones and he bought the bag containing those items for SBD 10 from some unknown looters.

RELEVANT FACTORS FOR CONSIDERATION

Sentencing Principles

8. The sentencing principles such as deterrence, punishment and retribution must always be considered to guide the court to reach a just and appropriate sentence.

Aggravating Factors

9. The Aggravating factors in this case are as follows:

Maximum Penalty.

10. The maximum penalty for the offence of Simple Larceny is 5 years' imprisonment.¹
11. The maximum penalty for the offence of Receiving is 14 years' imprisonment.²

¹ *Penal Code* [Cap 26], s 261.-(1) Stealing for which no special punishment is provided under this Code or any other Act for the time being in force is simple larceny and a felony punishable with imprisonment for five years.

² *Penal Code* [Cap 26], s 313.-(1) Any person who receives any property knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to felony or misdemeanour, is guilty of an offence of the like degree (whether felony or misdemeanour) and shall be liable (a) in the case of felony, to imprisonment for fourteen years; and (b) in the case of misdemeanour, to imprisonment for seven years.

Nature and Seriousness of the offence

12. The defendants are opportunists and took advantage of the situation to loot the items or bought those stolen items. One of them committed theft and the other two received stolen goods with the full knowledge that the properties were stolen properties.
13. The estimated economic loss as a result of the riots at the time of the sentence was more than SBD 200 million at the minimum. This amount is expected to increase as confirmed by the Central Bank of Solomon Islands (CBSI).
14. The actions of the defendants cannot and should not be considered in isolation to other riot-related offences such as theft, looting and burning of the shops by certain members of the public.³ These events all contributed to the destruction and economic losses that the owners of the shops and business houses incurred.
15. The business owners contributed to the economy by employing locals as shop keepers, and paying of taxes to the government, and this is a loss for the government in terms of its revenue collection.

Deprivation of Constitutional rights and business loss

16. By committing the offence of theft, one of the defendants deprived the owners of those properties the right to either use or sell those properties for profit making. Those who received stolen goods also worsen the situation. The victims of the riots incurred huge business losses as alluded to above. The right to protection of property and the right to privacy are fundamental constitutional rights embedded in the *Constitution*.⁴ I note that some owners used the same building for accommodation and also to run their business, and now they are rendered homeless.⁵
17. The properties in this case may have been recovered but they were not voluntarily given to the victims or the police. They were recovered only because the police intercepted and arrested them. Now, there is another hurdle and that is to identify the owners of the said properties.

Trauma and fear

18. These events have caused trauma, fear and anxiety to the business owners, potential investors and the general public.

Loss of lives

19. The fact that someone looted from the shops does not mean that he is way better than a person who stoned or broke into a building and set fire to it. The same sentiments can be said for a

³ *Igi v Regina* [1997] SBHC 39; HC-CRAC 047 of 1996 (23 July 1997)

⁴ Solomon Islands Constitution 1978, s 8 and 9

⁵ By way of the judicial notice.

person who knowingly received stolen goods. The defendants directly or indirectly contributed to the misery and sufferings that the victims had to endure. The recent riots can arguably be regarded as worse than the 2006 riots in Honiara because three lives were lost with massive economic losses.

Mitigating factors

20. The mitigating factors include the following: early guilty plea and remorse, first offender, cooperation with the Police and the defendants' personal circumstances. These are discussed in detail later in the ruling.

COMPARATIVE SENTENCES

Simple Larceny

21. In *Eapa-v-Reginam* [2001] CC No. 248 of 2001⁶, the offender was sentenced to a term of 9 months imprisonment in the Magistrates Court for one count of simple larceny. The matter was then appealed to the High Court, and the learned High Court Judge ordered that the sentence be suspended for two years on the basis that the property stolen was recovered and given back to the owner.
22. In *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)⁷, the defendants pleaded guilty to one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. Mr David Junior Malefo was sentenced to an imprisonment term of 1 ½ years' imprisonment whilst Mr Tome Gagame Junior was sentenced to an imprisonment term of 2 years. The basic facts of that case were that on the 11th of September 2017, the defendants stole the following items which were owned by an expatriate business man Mr Jonathan Pestana: SBD10, 000 and USD 5,000 that the victim left in his car parked behind his shop at the Kukum Highway in Honiara.
23. In *Regina v Ilala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017)⁸; the defendant was sentenced to 12 months of imprisonment for one count of Simple Larceny contrary to section 261(1) of the *Penal Code* [Cap 26]. The defendant was also sentenced for other offences.

⁶ *Eapa v Reginam* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

⁷ *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)

⁸ *Regina v Ilala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017);

24. In *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)⁹, the defendant was sentenced to 18 months imprisonment term for one count of Simple Larceny contrary to section 261(1) of the *Penal Code*[Cap 26]. Mr Kemakeza was also sentenced for other offences which were ordered to be served concurrently with the simple larceny charge.
25. The sentencing options for the offence of simple larceny are as follows: custodial sentences, non-custodial sentences, penalty fines, good behavior bond and so forth.

Receiving

26. In *Boinago v Reginam* [2008] SBHC 31; HCSI-CRC 80 of 2008 (23 May 2008)¹⁰, the defendant was convicted of the offence of receiving and sentenced to imprisonment for 18 months. He appealed against his sentence on the ground that the sentence of 18 months was manifestly excessive. The appeal was dismissed and the High Court affirmed the sentence of 18 months' imprisonment.

Rio Iro

Starting Point

27. I will now proceed to deal with the juvenile Mr Iro first as he is the only one who is charged for the Simple Larceny charge. The starting point for the juvenile is section 16 of the *Juvenile Offenders Act* [Cap 14] (JOA).
28. Section 16 of the JOA [CAP 14]¹¹ provides as follows:

Methods of dealing with children or young persons charged with offences

16. Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his guilt the court shall take into consideration the manner in which, under the provisions of this or any other Act or law enabling the court to deal with the case, the case should be dealt with, and, subject to such provisions, may deal with the case in any of the following manners or combination thereof, namely—

(a) by dismissing the case; or

⁹ *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

¹⁰ *Boinago v Reginam* [2008] SBHC 31; HCSI-CRC 80 of 2008 (23 May 2008)

¹¹ *Juvenile Offenders Act* [Cap 14], s 16

(h) by discharging the offender on his entering into a recognisance, with or without sureties; or

(c) by dealing with the offender under the provisions of the Probation of Offenders Act; or

17. Cap.

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(d) by committing the offender to the care of a relative or other fit person; or

(e) by ordering the offender to pay a fine, damages or costs; or

(f) by ordering the parent or guardian of the offender to pay a fine, damages or costs; or

(g) by ordering the parent or guardian of the offender to give security for his good behaviour; or

(h) by directing that he be released on his entering into a bond to appear and receive sentence when called upon; or

(i) by committing the offender to custody in a place of detention; or

(j) where the offender is a young person, by sentencing him to imprisonment; or

(k) by dealing with the case in any other manner in which it may be legally dealt with:

Provided that nothing in this section shall be construed as authorising the court to deal with any case in any manner in which it could not deal with the case apart from this section.

29. Section 16 of the JOA [CAP 14]¹² suggests that imprisonment should be the last resort when handing out any sentence with respect to young offenders but it should not inhibit the courts to impose a custodial sentence if it is necessary and right to do so.

30. Firstly, I note that this offence of simple larceny was committed during the recent riots in Honiara and as I have said this aggravated this offence.

31. In *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)¹³, although the defendant was a juvenile he was imprisoned because of the seriousness of the offending. I understand that imprisonment is an option available under section 16 (j) and (k) of the JOA, and that the defendant can be either imprisoned or imposed with a penalty fine under section 16(e) of the JOA.

¹² *Juvenile Offenders Act* [Cap 14], s 16

¹³ *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)

32. If it's an imprisonment, I am of the view that he should receive at least 2 months' imprisonment.¹⁴

33. Section 24(3) of the *Penal Code* [Cap 26] states as follows:

(3) A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or instead of imprisonment.

34. Therefore, since the defendant Mr Iro is a juvenile, I invoke section 24(3) of the *Penal Code* [Cap 26] and order him to pay a fine instead of imprisonment which is also consistent with section 16(e) of the JOA. Having said that and after balancing the sentencing principles such as punishment, deterrence, and rehabilitation, I now sentence Mr Iro to pay a fine of SBD 1200 for one count of simple larceny contrary to section 261(1) of the *Penal Code* [Cap 26] which must be paid to the court by this Friday at 4:30pm. If he fails to comply the order, he will be imprisoned for 2 months.

Jackson Nori and Jeffery Taki Mamua

35. I will now deal with the two other remaining defendants, Mr Nori and Mr Mamua.

Starting Point

36. After having considered the circumstances of this case, and noting that the maximum sentence is 14 years' imprisonment, and the fact that the defendants committed the offence at the height of the riot, I am of the view that an immediate custodial sentence is the most appropriate sentence in this case.

37. In this case, I am of the view that a starting point of 24 months' imprisonment is appropriate for the two defendants.

38. I will now consider their respective mitigating factors and give due allowances.

39. I note all the defendants' mitigating factors such as early guilty plea, remorse, first time offender and previous good character, and their personal circumstances. In terms of their personal circumstances, Mr Nori is 28 years old and lives at Vara creek in Honiara. Mr Mamua is 24 years old. He works as a shop keeper at his uncle's shop at the Central Market in Honiara, and lives at Mbokona in Honiara. The defendant Mamua enrolled at the Solomon Islands National University (SINU) last semester but he is currently not doing his studies reportedly because of financial constraints.

¹⁴ If it is an imprisonment, a starting point of 8 months' imprisonment would have been appropriate. I note the mitigating factors of the defendant such as early guilty plea, remorse, first-time offender, and their respective personal circumstances especially the fact that he is a juvenile and I deduct 6 months from the starting point to reflect all the mitigating factors. Thus, 2 months imprisonment would have been appropriate.

40. I take into account all the mitigating factors of both the adult defendants including their respective personal circumstances and I deduct 14 months for both defendants which means the resulting sentence is 10 months' imprisonment for each of them.
41. I now sentence Mr Nori and Mr Mamua to 10 months imprisonment each for one count Receiving contrary to section 313 of the *Penal Code* [Cap 26]. Their sentences must be retrospectively commenced on the date of first arrest.

CONCLUSION

42. The defendants committed the offences of theft and receiving respectively during the riots in November 2021 which resulted in the burning and looting of many business houses and shops in Honiara. It is my opinion that offences such as thefts or receiving of stolen goods and or properties that have a nexus with the recent riots should and must be considered as very serious.
43. I take judicial notice of the fact that many people including mothers, fathers, men and women, boys and girls, youths, and children at the time who shamelessly or audaciously looted other people's properties and goods from many shops at Chinatown, Kukum and east Honiara in the nation's capital. These people concerned saw the opportunity to get free goods through stealing without considering the fact that they have permanently deprived the owners of those properties the right to use them or make profits. These three defendants are perfect examples of the many people who have looted or received stolen goods at the material time. Theft is not only punishable by the *Penal Code* [Cap 26] but also it is forbidden in custom and a grave sin in many religions including Christianity which Solomon Islands professed to be.
44. It is my considered view that a strong deterrent message must be imparted to the country that these offences have severe consequences, and I hope that message is reflected in these sentences.

ORDERS

45. The defendants are sentenced as follows:

- [1] The defendant Mr Rio Iro is sentenced and ordered to pay a fine of SBD 1200 for one count of simple larceny contrary to section 261(1) of the *Penal Code* [Cap 26] which must be paid to the court by this Friday at 4:30pm. If he fails to comply, he will be imprisoned for 2 months.
- [2] The defendant Mr Jackson Nori is sentenced to 10 months imprisonment for one count of Receiving contrary to section 313 of the *Penal Code* [Cap 26].

- [3] The defendant Mr Jeffery Keneth Mamua is sentenced to 10 months' imprisonment for one count of Receiving contrary to section 313 of the *Penal Code* [Cap 26].
- [4] ~~Pre-Sentence-Custody~~. The sentences for Nori and Mamua must be backdated or retrospectively commenced on the date of first arrest that is the 27th of November 2021.
- [5] The Police may return the said properties that are under Police Custody to the owners if they can be identified or to an association such as the Solomon Islands Chinese Association if the said properties are products stolen from one of their shops.
- [6] Right of Appeal within 14 days.
- [7] The court so orders.



PRINCIPAL MAGISTRATE ALEX HOLLISON
THE COURT