

CENTRAL MAGISTRATES COURT OF)
SOLOMON ISLANDS, HONIARA)

Criminal Jurisdiction



Case No: 254/ 2022

REGINA
-VS-
BENJAMIN KEMAILI

COURTS SENTENCING RULING

Prosecution: Mrs Oligari, D for the ODPP
Defence: Mr. Kwalai, D of the PSO for the Defendant
Verbal Ruling: 14th Oct 2022
Written Ruling: 20th Oct 2022

INTRODUCTION:

1. This case relates to a breach of the Electoral Act 2018. It requires those who are involved in contesting for Elections to provide their financial report/statement/disclosure on how they funded their campaign, particularly their source of funds and their expenses.
2. The defendant in this case is Mr. Benjamin KEMAILI who is from Luaniua Village, Lord Howe Islands, Malaita Outer Islands (MOI), Malaita Province. He contested during the last general elections in 2019 and did not make it to be the Honorable Member for his constituency. After the elections, he remained at the MOI. It was only after around 4 months that he returned to Honiara. Furthermore, it was after 3 years on or about 21 June 2022 that police arrived at his house, arrested him and conducted a record of interview for this matter.

CHARGE:

3. The charge he faced is technically a misdemeanor and not a felony. This I say due to the maximum penalty imposed by the law under the section 125 (2) read with section 69 (1) (a) and (b) of the Electoral Act 2018. This is the maximum of \$20,000 and or 2 years and \$100 penalty units for each day the offence continues. The defendant pleaded guilty to the charge on 4 October 2022.

FACTS:

4. The facts as clearly agreed to by both parties filed on 4th Oct 2022 displays the following events:
 - a. The Defendant registered in the Luaniua ward of MOI constituency. He registered under the Independent Party.
 - b. On third of April 2019, the National General Elections occurred. He was a candidate contesting under that relevant constituency.

- c. On 19 April 2019, the Solomon Islands Electoral Commission ("the Commission" or SIEC) published the National General Elections results. The Defendant got 2 votes so could not make it to win the election.
- d. A requirement under section 69 of the Electoral Act 2018 is for candidates to submit a statement of account specifying all expenses incurred during the election campaign. The statement must be submitted within 90 day after the declaration of the National General Elections results. The 90 days period therefore started after 19 April 2019 and ends on 20 July 2019.
- e. During the period of the 90 days, the commission broadcasted service messages on the local radio station Solomon Islands Broadcasting Corporation (SIBC), published articles on the local newspapers (Solomon Star and Island Sun), posted on its social media page to inform and remind all candidates to collect the appropriate forms at the SIEC Office or via email and fill them out to submit their statements.
- f. The defendant failed to submit his statement within that period given by law.
- g. After the 90 days lapse he did not file and submit his statement of account pertaining to the expenses he incurred during the election campaign period to the CEO of the Commission up until the time he was arrested and formally charged.
- h. The former CEO of the Commission Mr. Moses SAITALA wrote to the former Commissioner and provided a list of candidates who failed to comply with this requirement. The list of candidates was recorded by the commission and referred to police for further dealings. Among the candidates was the defendant.
- i. The defendant was ultimately charged with 1 count of this offence and is now awaiting courts final determination for his penalty.

AGGRAVATING FEATURES:

- 5. I now move to the aggravating features of the case. I note from Prosecutions submissions filed on 6th Oct 2022 that she highlighted 2 of this. I disagree with the 1st point as the maximum penalty of offences cannot be aggravating features of the offending. They are the maximum penalty imposed by law and are therefore provisions themselves breached by defendants. They have been charged for that offence and this only provides the maximum the courts can impose their penalties.
- 6. Aggravating features are technically, what makes an offence serious when committed by the defendants. The usual ones would be drunkenness in committing offences, deliberate acts to harm others; using weapons to impose harm and afflictions on persons etc. Therefore, the first point is disregarded.
- 7. The second point the prosecution advanced is in my view an aggravating feature. I say this as the messages in my view confirms that the Government has taken on its responsibility appropriately to send this message to help candidates to file their statements on time. I therefore only agree that there is this one aggravating factor present in this case.

MITIGATING FEATURES:

8. There are numerous of this present in this case as follows:
- a. Early guilty plea.
 - b. Saved resources such as financial resources, time that could have been expended and the energy of counsels, Magistrate and other officers who could have run around to prepare for trial with logistics etc of the court, including the Public Solicitors Office and the Office of the DPP. All these expenditures have been saved through the defendant's early guilty plea.
 - c. He is also remorseful for what he has done in breaching this provision. This relates strongly with his guilty plea as is usually considered by the courts.
 - d. He also advanced through his counsel that after the elections, he remained in MOI and did beach de mer fishing to survive with his family until around August 2019. He was unsure of this requirement. I would add in this aspect of his mitigation that this requirement is in some ways Unconstitutional. Under the Constitution, section 48 sets out the requirement or what qualifies someone to contest for general elections. There are 2 requirements which are:
 - i. he is a citizen of Solomon Islands; and
 - ii. he has attained the age of twenty-one years.

Clearly the above requirement of the Constitution does not in any way states that there must be certain education or qualification attained by those who can qualify for election. This is why some of our Members of Parliament are illiterate. This is not to discriminate them in any way but to confirm that educational qualifications is not recognised by our Constitution to qualify to join campaigns and elections. Therefore, the offence that the defendant has been charged with in having to must provide detailed money expenditures for his election is in my respectful view unconstitutional to a certain extent. Especially for those who never attend any formal education and are not even aware of how to write and read. If they can still qualify for elections as legally allowed by the Constitutional but then need to provide financial statements under the Electoral Act 2018, then this is not saying the same thing. This requirement requires a properly educated person to produce to the commission accordingly.

I understand I have no jurisdiction to deliberate over constitutional matters but I only provide this as part of my analysis to display how this provision is in some ways not in line with the Constitution and may be a good area of law to explore and have the High Court determine its validity.

- e. He cooperated well with police and even in court when he started appearing for his matter.
- f. There was clearly 3 years delay showing no fault on the part of the defendant to cause it.

PERSONAL CIRCUMSTANCES:

10. The defendant is 45 years old.

11. He is married with 5 children. Four of them are still dependent on him for sustenance and maintenance along with his wife.

12. He reached grade 6 with his formal education.

He has always been self-employed to survive and maintain his family.

9. He survives through living from fishing and beach de mer and has recently gone into poultry with the help of his first born child.

10. Finally, he wishes to highlight to the court that he was shocked to be dealt with by police for this offence after 3 years have gone past. Despite this, he cooperated and allowed the law to take its course.

COURTS ANALYSIS:

11. As stated earlier on the charge, this is a minor or misdemeanour offence with the maximum of 2 years imprisonment and or \$20,000 penalty units. In my view after having deliberated over the facts and what occurred, I scale this as a very minor or the least minor type of this offending.

12. I note that with the case authorities provided by counsels which I greatly appreciate and encourage them to continue doing so to assist the courts, the penalty imposed by this court for these offences has been fines.

13. For this particular case, I would also agree that a fine be imposed.

14. However, my calculation and analysis is being particularised based on the facts and especially the aggravating, mitigating features and the personal circumstances of the defendant.

15. I would begin with the gross delay of 3 years that took police and prosecutions to bring this case up against him. It is clear on the agreed facts paragraph 10 that the list of candidates failing to provide their financial statement with the defendant being on the list, was sent to the former Commissioner, which is back in the years. Prosecutions in its submissions never provided any clarifications as to how and why the delay this long occurred. This is a 3 years ago event and the defendant was shocked as stated by his counsel to be dealt with after this length of period. In such manner, I must discount his penalty significantly for this delay with no reasonable excuse or justifications from police or prosecutions side. Further to this, I find much in the favour of the defendant, his cooperation with police and the court in allowing the law to take its course. Though the delay occurred, he did not choose to be upset and go against police and the courts. He cooperated well to the very end of his case. I also repeat what I have said about the Constitutional effects

of this offence. I would also add that his personal circumstances being a grade 6 leaver yet he has been very productive to maintain his family of 5 children and his wife, being stable with his family and continuous hard work in beach de mer fishing. Now he is venturing into poultry not limiting himself to only fishing. This is highly commended. Instead of being negatively impacted with his limited academic achievements, he pressed on in life by using his hands to work hard for his family. He did not venture into illegal activities to make ends meet; instead, he legally worked hard to survive. I take time to elaborate on this to show appreciation for these kinds of members in our society. He is now 45 years old and a first time offender meaning he has done well to help in our society. I also think it is vital to elaborate strongly that with this kind of offence, there is clearly no victim that suffered from his action, there was also no loss of any finance to any one at all including the Government and finally no one was harmed or hurt in any manner. The offence shows ignorance and disrespect by the defendant to only a certain extent. To finish off my analysis, this defendant's circumstance of being a grade 6 leaver who has always been a good a productive member of society is a factor I strongly consider as well. This is because given his limited exposure to education this provision expecting him to provide financial statements is in my view an unfair approach for those joining elections to provide.

16. I therefore would impose s. 35 of the Penal Code to have no conviction record against the defendant. This is because this is a peculiar case in my view given the 3 years delay encountered, while defendant continued cooperating well with authorities showing favourable factors. I also note the fact that there is only one aggravating feature present being outweighed by the numerous mitigating factors.
17. I apply deterrence both general and specific to discourage others from doing this and help the defendant to avoid breaching this law again. I do this by the fine imposed.
18. I also apply rehabilitation principle to allow the defendant to keep growing and learn from this to avoid further breaches of any kinds of laws again. I apply s. 35 of the Penal Code to assist him to change and continue be productive in our societies as he has been despite his limited exposure to academic studies.
19. I also must remind police and prosecutions to do timely investigations and prosecutions of cases and avoid these kinds of unjustified delays that just makes no sense when courts are deliberating over the penalty to impose.

COURT ORDERS:

20. S. 35 of the Penal Code imposed and therefore, no conviction is entered against the defendant.

21. Fine for breaching the law. Though maximum is \$20,000 and other cases that have come to court amount to \$5000 being imposed, I have found peculiar circumstances for the defendant and therefore I would only impose \$500.00 on him.
22. I impose a fine of \$500.00 on the defendant to pay to the State and in default is 9 days imprisonment. This is due on 28th Oct 2022 before 330pm when registry closes.
23. I must also add that at the stage I completed this sentencing ruling I found on the file the Government receipt confirming that he has paid off his fine of \$500.00 and therefore there is no need for the court to review and check on his fine on 28th Oct 2022.
24. Right of appeal applies.



Beneteti
Miss Tearo R Beneteti
Principal Magistrate