



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

Criminal Case: 670 of 2021

REGINA

-v-

PHILIP TUPLO

Date of Hearing: November 18, 2022
Date of Ruling: November 25, 2022

Mr. Vernon E. Taupongi and Samuel Tovosia for the Crown
Mr. Charles T. Gabily for the Defendant

SENTENCE

- [1] The defendant, Mr. Philip Tuplo, was convicted of Official Corruption after trial. Submissions on sentencing and mitigation were heard on November 18, 2022 and the matter return today for sentence. I shall now proceed to deliver my reasoning and orders.

Brief facts

- [2] I need not go in detail on the facts, but what is apparent on the face of the evidence that were adduced during trial and as opened by the crown is that, the Defendant, Philip Tuplo, of Mebialo village, Santa Cruz, Temotu Province, between 16th February 2013 and 19 September 2013, being employed in a public service, namely the Constituency Development Officer for Temotu Nende Constituency and charged with the performance of duty by virtue of the said employment, did corruptly obtained Constituency Development Funds, in the sum of S\$8,500.00 for himself on account for the payment of project materials for Mebialo Housing Project in the discharge of the duties of his office.

Aggravating factors

- [3] The Crown have submitted the following as aggravating features in this matter.
- (A) The quality and degree of trust reposed in the Defendant as a Constituency Development Officer (CDO) of Temotu Nende Constituency by the Constituents. As a public officer within the Ministry of Rural Development, he was embedded with duties and responsibilities to represent the majority of rural populace, by overseeing and administering the apportioning

of Constituency Development Funds, of which he dipped his hands into, negatively impacting the lives of those he was serving.

- (B) The level of planning involved is concerning, and to have done that from the start of the making of application to the encashment stage, is in my view unbelievable.
- (C) The defendant derived a substantial amount of S\$8,500 to his benefit from the livelihood funds facilitated by the MRD, and nothing was retrieved or returned to the Government.

Mitigating factors

[4] I verified the following to go in his favour for his mitigation:

- (A) The defendant is a first offender, having been a law-abiding citizen for the past 30 or so years, and having faithfully performed his duties for the past ten or so years as a CDO for Temotu Nende Constituency, under the Ministry of Rural Development, until this case.
- (B) The defendant is a married person with three (3) children and is the sole-breadwinner for his immediate family. He has a 4 months old daughter, and two sons, one is five and the other 6 years of age.
- (C) The defendant's extended family, and community relied heavily on him for support, and they have vouched for him as a person of good character, as submitted by the character references tendered before the court by counsel for the defendant.

Sentencing authorities and principles

[5] There are numerous case authorities regarding the sentencing approach, range and methodology that courts in this jurisdiction and the pacific neighbours applies, as submitted by Counsels' for the Crown and defence. These are few of those cases:

- (A) *R v Oto* [2022] SBHC 26, the defendant was charged for 11 counts of official corruption. The Defendant was a financial controller of the Ministry of Police, National Security and Correctional Service. Between 1 December 2015 and 8 December 2016, being the owner and operator of Jahnan Enterprises used his business entity to as a mechanism to hide his identity. He used his position within the Ministry to manipulate the tendering process for his own pecuniary advantage totalling at around S\$756,087.24. The defendant pleaded guilty, and the court found the aggravating factors to be - breach of trust, serious offence, sustained period of offending. For his sentence, count 1 - 5 were served concurrently a total of 3 years imprisonment. Count 6 to 11 were served concurrently but consecutively to count 1-5, which totalled to a sentence of 6 years imprisonment. The appealed the sentence for being manifestly inadequate, but the appeal was quashed by the High Court.

(B) R v Raoga [2021] SBHC 93, the defendant was charged with a count of official corruption with other charges of fraudulent falsification, and was found guilty after trial. The defendant was employed by the Solomon Islands' Government in the Inland Revenue Division. The 6 charges which he had been convicted on were done by him on his capacity as Compliance Officer and financial benefit of \$30,000 payment for himself. The court imposed 5 years imprisonment. On appeal, the High Court upheld the sentence of the lower court.

(C) R v Wale [Unreported decision of CMC in Criminal Case 832 of 2008, 26 November 2008, Scott PM], the defendant was charged convicted of a count of official corruption following a trial. The defendant who was a second class Magistrate, approached a shop owner and asked for and received \$200 and 2 bags of rice in exchange for promised favourable treatment with respect to seized beers, in connection with a criminal matter that was before him in Court the next day. The Court imposed 18 months imprisonment.

(D) Yee v R [2007] SBHC 28, the defendant was convicted after trial on a count of Official Corruption. He was a businessman who at that time, went and offered a bribe of \$500 to a tax investigator in return for the officer omitting to further investigate the business. The court after considering that he was a 67 year old failed person with no prior convictions, imposed a 6 months' imprisonment sentence, which was later quashed on appeal on a substituted sentence of \$5,000 fine.

(E) R v David Dausabea (unreported decision of Central Magistrates Court, 4 December 2007). The defendant was convicted following a trial. He was the Mayor of Honiara at that time, and involved in fraudulent dealings over council's lands. Corruption offence was soliciting and receiving bribe of \$1000 in exchange for signing a land transfer for council land. The court considered that he was in a position of trust, a leader, and sustained period of offending. He was sentenced to 7 months imprisonment along with other charges, totalling 21 months, partially suspended with 7 months to serve -- on condition that monies to be repaid.

(F) The State v Naime [2005] PGNC 76. This is a Papua New Guinea case, where the defendant who was a police officer, received K200 from an Asian man in return for him, including his accomplices, seizing and delivering horse race machines. The Defendant pleaded guilty, and without prior convictions. The court imposed a 2 years' imprisonment sentence.

Sentence remarks

- [6] The offence committed is very serious, in that the defendant was vested with the responsibility to look after and administer Constituency Development Funds for the constituency. Clearly, the role encompassed, although indirectly, looking after the welfare and financial limitations, as well as the greater need of the less fortunate, including other community based development plans.

Therefore, to acquire that money in the guise or pretext of financing a Housing Scheme Project for his own family is an outright disrespect, breach of trust, and lack of empathy to those he promised to serve.

- [7] The amount of \$58,500.00 is a substantial amount that could be used to support several projects to help those genuinely in need, and it is not an amount that could easily be derived by any ordinary individual; even a financially healthy person would have to dig deep into his or her coffers to acquire such an amount. So, to have used that to his own benefit and to the detriment of the constituency as well as, negatively impacting the Government budget, is serious.
- [8] I am confident that the defendant has learned his lesson the tough way. There is no gain in using ones' position to illegally acquire Constituency funds for personal gain, and to have boldly stated that it was his "right" as a member of that constituency to do it is, in my view, foolish, because - whenever one assumes a role of looking after or administering the funds of any community for which he or she is a part of, he or she must be mindful of several matters, which are: the need to keep confidential matters a secret, the obligation to disclose conflict of interest issues, the need to avoid putting ones hands in the till and so forth. In those instances, a prudent choice would be to reassign the task to an independent person to proceed with it. It is always a safe approach to never facilitate or expedite any application for his own family while holding the position responsible for disbursement of the funds, or position responsible for vetting, approving and signing of project applications.
- [9] I take due consideration of the fact that the defendant is a married person with three children and if he is to be sent to prison or incarcerated, his family will suffer the repercussions; but like all offences - that is what the result of deceit, greed, illegal activity and so forth does to people. The defendant must accept the consequence for his actions and take steps to rectify his behaviour, to be a better person once released from custody.
- [10] Everyone make mistakes, but it takes the wise to learn and take constructive steps and measures to become a better person. I acknowledge that the defendant is a person of good character before the case, and he has not commit any offence after 2013, thus, demonstrates good progress of rehabilitation. But it does not exculpate him from the criminality involved, and must receive the appropriate sentence accordingly.
- [11] If anything that I must strongly emphasize on is - learn to appreciate what is genuinely acquired than what is pleasing but, unlawful - for every work of the hands will soon be revealed, and when they do - bad works normally attracts sever punishments.

- [12] I hereby make bold to state that those who find passion in stealing from the Government, or acquiring monies from abuse of positions are journey bound to prison. There is more to life than indulging oneself in act of official corruption.

Starting Point

- [13] Having considered the intrinsic facts of the matter, that is to say, the manner in which the defendant committed the matter, his criminal culpability, and weighing with the case authorities of this jurisdiction with some assistance from those abroad, I am satisfied that a starting point of 24 months imprisonment is proper.

Sentence consideration

- [14] In taking into account the aggravating factors, I add a further 8 months accordingly, which should increase it to a total of 32 months imprisonment or 2 years 8 months.

- [15] I deduct 5 months accordingly, to reflect his mitigating factors, that is to say, him being a first offender with a high prospect of rehabilitation, and that he is a married person with three (3) children of tender years, including his cooperation with the police. I will further deduct a 8 months to reflect the delay occasioned in this matter since the offending, although I understand that he was just recently charged in 2021 and, the offence occurred in 2013. It would be significant if the charge was hanging on him since 2013, then I would agree, that it is an excessive and inordinate delay. But I accept that it should be considered with attention because it demonstrates his rehabilitation process.

Whether to invoke section 43 of the Penal Code:

- [16] The Crown submits that the Court in addition or in lieu of imposing any sentence, invoke s. 43 of the Penal Code, to forfeit any property owned by the Defendant to recover the sum of \$58,500.00, and the defence on the other hand, is asking the Court to give the defendant time to repay the said amount of money.

- [17] Section 43 of the Penal Code, reads:

"When any person is convicted of an offence under any of the following sections, namely sections 91, 92, 93, 117, 118 and 374, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture to Her Majesty of any property which has passed in connection with the commission of the offence or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the court may direct. Payment of any sum so ordered to be forfeited

may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.” (Underlining mine).

- [18] To reflect the need for general deterrence and, submissions on forfeiture, I hereby impose in addition to the above, an order forfeiting the amount of \$58,500.00 from the defendant personally, and it is payable within a month from this day, or on 29 December 2022 at 4:30pm. The payment of the sum is levied against the Defendant’s personal properties, including the three bedroom home at Mebialo village, Temotu province. In default of the payment, the Defendant will serve 22 months imprisonment or 1 year 10 months imprisonment.

SENTENCE ORDERS

- (1) The defendant, Mr. Philip Tuplo, is sentenced to 1 year and 7 months imprisonment, or 19 months imprisonment.
- (2) Time spent in pre-trial detention or custody shall be deducted.
- (3) In addition to the above, an order under s. 43 of the Penal Code is invoked, forfeiting the amount of \$58,500.00 from the defendant personally, and is payable within a month from this day, on 29 December 2022 at 4:30pm. The payment of the sum is levied against the Defendant’s personal properties, including the three bedroom home at Mebialo village, Temotu province (subject to confirmation of ownership).
- (4) In default of the payment, the Defendant will serve 22 months imprisonment or 1 year 10 months imprisonment.
- (5) 14 days’ right of appeal applies.
- (6) Order accordingly.

