



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

(Criminal Jurisdiction)

Criminal Case No: 958 of 2021

REGINA

-v-

**WILLE FOMANI, CONLEY IRO, JOHN SAMO, RUEBEN GELUA, JOSEPH LUKARAE
AND ANETH TISA**

Criminal Case No: 957 of 2021

REGINA

v-

JOHN SAVE AND MOFFAT TAGINI

Criminal Case No: 953 of 2021

REGINA

-v-

ENOCK RAMO AND ALICK WANEFUNU

***CORAM:* HOLLISON F (PRINCIPAL MAGISTRATE)**

Appearances:

Ms Marela Claven, Senior Legal Officer, Office of the Director of Public Prosecutions, for the Crown in Criminal Case No. 903 of 2021

Ms Monica Rehomora, Senior Legal Officer, Office of the Director of Public Prosecutions, for the Crown in Criminal Case No. 957 of 2021

Ms Amanda Mono, Senior Legal Officer, Office of the Director of Public Prosecutions, for the Crown in Criminal Case No. 953 of 2021

Mrs Martha Manaka, Deputy Public Solicitor, Public Solicitors Office, for the all the defendants in the Criminal Case No. 903 of 2021.

Mr Paul None, Senior Legal Officer, Public Solicitors Office, for Moffat Tagini in the Criminal Case No. 957 of 2021

Mr George Taedi, Senior Legal Officer, Public Solicitors Office, for John Save in the Criminal Case No. 957 of 2021

public security in Honiara due to the volatile situation in the capital at the time pursuant to section 3 of the *Preservation of Public Security Act* [Cap.27]

6. During the curfew, only authorized officers were allowed to move within the Emergency Zone inclusive of Honiara City. Apart from that, there are certain exceptions in which people who urgently need medical attention can travel to the National Referral Hospital and people who were granted exemptions were allowed to travel only for the purpose specified in the exemption notice issued by the Commissioner of Police.
7. Those who breached the curfew without any lawful excuse are liable to prosecution.
8. On the 24th November 2021, the Royal Solomon Islands Police Force (the Police) commenced its policing operations to provide police presence in and around the National Parliament Chamber and to ensure there was high police visibility in Honiara city during the Parliament sitting. A group of people protested on that day and demanded the immediate resignation of the Prime Minister Sogavare but that did not eventuate. The situation worsened and resulted in looting and burning of shops in certain parts of Honiara. From the 24th to the 26th November 2021, Police efforts to contain the worrying situation seemed futile as three deaths were recorded.
9. On the 25th November 2021, Australia sent 23 Australian Federal Police (AFP) Officers to the Solomon Islands Capital, Honiara based on the request of the Solomon Islands Government.¹ Australia further deployed more officers from the AFP and Australian Defence Force (ADF) on the following days.
10. On the 26th of November 2021, the AFP had started taking control of the Solomon Islands capital especially the Chinatown District although the situation was still tense.² On the same day, Papua New Guinea joined Australia by sending 50 peace-keeping officers to Honiara, Solomon Islands.³
11. On the 29th of November 2021, Fiji also sent its troops to assist Australia, PNG, and the Solomon's Police in their effort to restore law and order.⁴

¹ The Guardian "Australia sends troops and Police to Solomon Islands as unrest grows" <https://www.theguardian.com/world/2021/nov/25/honiara-chinatown-targeted-as-violent-protests-break-out-for-second-day-in-solomon-islands> (Accessed 13/01/22) by way of Judicial Notice

² CNBC "Australian police take control of Solomon Islands capital after days of unrest, witnesses say" -Asia Pacific News <https://www.cnbc.com/2021/11/26/solomon-islands-unrest.html> (Accessed 13/01/22) by way of Judicial Notice.

³ Nikkei Asia "Papua New Guinea joins Australia effort to calm Solomon Islands" <https://asia.nikkei.com/Politics/International-relations/Papua-New-Guinea-joins-Australia-effort-to-calm-Solomon-islands> (Accessed 13/01/2022) by way of Judicial Notice

⁴ The Straits Times "Fiji sends troops to Solomon Islands as hunger fears grow after deadly riots" <https://www.straitstimes.com/asia/australia/fiji-sends-troops-to-solomon-islands-as-hunger-fears-grow> dated 29/11/2021 (Accessed 13/01/22) by way of judicial notice.

22. They were formally arrested for the offence of Restriction of Movement of Persons in Honiara and were lodged into Police custody at the Central Watch House.

Criminal Case No. 957 of 2021

23. Mr John Save is 23 years. He is a native of Koiava, east Kwarae in the Malaita Province. He is a resident of Mbokona, Central Bank Area in Honiara.

24. Mr Moffat Tagini is 23 years old and hails from Ohafa village, West Fataleka, Malaita Province. He is a resident of Mbokona, Central Bank area in Honiara.

25. On the 9th December 2021 at about 7:30pm, the defendants John Save and Moffat Tagini were seen standing at the bus stop behind the HCC Headquarters Office. They were waiting to board a bus to a place known as Stone Field with the intention to drop off after the Parliament area and walk down to their place of residence at Mbokona area which was their usual route.

26. The HCC officers approached and apprehended them, and they were escorted to the Central Police Station in Honiara.

27. Earlier that day, they were at the Central Market in Honiara selling fish with their aunty. It was getting late and they decided to go back home so they were walked to the HCC's bus stop at the HCC premises and waited for a bus. They were hoping to catch the last bus, however, time caught up with them. They were arrested at about 7:30pm at the HCC bus station.

28. Both defendants acknowledged that they knew about the curfew at the time but they were not sure of the time and whether it was 7:00pm already or not.

29. So they kept on standing at the bus stop hoping to catch the last bus to go home when they were apprehended.

Criminal Case No. 953 of 2021-Regina-v-Enock Ramo and Alick Wanefunu

30. Mr Enock Ramo is 47 years old from Loina Village, North Malaita Province. He is a resident of Ngossi area, West Honiara in Honiara.

31. Mr Alick Wanefunu is 52 years old from Silolo Village, North Malaita, Malaita Province. He is a resident of Mbokonavera I, Central Honiara in Honiara.

32. On the 9th of December 2021 between 11:00pm-12:00 midnight, the police halted a black double cabin Toyota Hilux with the registration number MA0656 at the HCC Roundabout which was travelling in a westerly direction.

- (1) A person who contravenes regulation 5 commits an offence.
Maximum penalty: 10,000 penalty units or 5 years' imprisonment, or both.*

Aggravating Factors

39. **Maximum Sentence.** The maximum sentence of 5 years or SBD 10, 000 or both is an indication that this is quite a serious offence.
40. **Circumstances of the offending.** The regulations were made for the preservation of public safety in Honiara aimed at containing the riots, burning and looting of shops and other private businesses. The riots and looting between the 24th and 26th of November 2021 had resulted in the scorching of more than 50 buildings and destruction of business houses with the total loss of more the 500 million dollars (SBD).
41. I note also that some of the defendants were drunk and some were travelling as groups in certain vehicles at night which are a deliberate breach of the law.

Mitigating factors.

42. The mitigating factors include early plea and remorse, first offender/no previous conviction, cooperation with the Police and the defendants' personal circumstances.

Starting Point

43. There are a number of sentencing options that are available which are penalty fine, custodial and suspended sentences.
44. I also bear in mind that these men, with the exception of Mr Ramo, have been remanded in custody for over a month. Thus, instead of opting for a penalty fine for the majority, it is my opinion that all the defendants who are on remand since the 9th of December 2021 (with the exception of Ramo) must receive a custodial sentence. These present cases must also be differentiated with the Criminal Case No. 903 of 2021 (Magistrates Court)-*Kwaimani and others* (20th December 2021)⁸ because they were all arrested at few places such as the Central Market, HCC roundabout, and the HCC bus station more than a week after the unlawful events that occurred between the 24 to 26 of November 2021 which means these cases are less serious in nature. This suggests they should receive a substantially lesser sentence.

⁸ Criminal Case No. 903 of 2021 (Magistrates Court)-*Kwaimani and others* (20th December 2021). The adult defendants were sentenced to an imprisonment of 12 months, a 19-year-old was sentenced to 8 months' imprisonment, and three juvenile offenders were sentenced to a fine of SBD 500 with a good behavior bond.

58. Mr Wanefunu is 52 years old. He works as a security officer for a prominent lawyer in Honiara. Ms Rusi submitted on his behalf that his absence from work over a month risked him losing his job. His family is also reliant on him. He was remanded since the 9th December 2021.
59. The defendants in these cases mostly have high rehabilitative prospects because of their relatively young age despite at least a few are aged in their 40s and 50s.
60. I take note of the mitigating factors enumerated above and I deduct 6 months from the starting point to reflect the said factors for each of the defendants. Hence, I am satisfied that 2 months' imprisonment is appropriate for all the defendants with the exception of Mr Ramo.
61. I will now proceed to deal with Ramo's case.
62. I am aware of the principles of parity and consistency when dealing with similar offenders. Mr Ramo should also receive a similar sentence of 2 months' imprisonment. Mr Ramo is 47 years old and has 5 children. He is the sole breadwinner in his family. Mr Hou submitted that a suspended custodial sentence is appropriate for the defendant which although I agree may be a bit unfair to his co-accused Mr Wanefunu. He was granted bail since December 2021 with a cash bail of SBD 1000. I understand that I have the powers to order a penalty fine in place of an imprisonment sentence and such powers must be invoked sparingly and appropriately.⁹ I refer to the *Penalties and Miscellaneous Act 2009* to aid me to reach a just and appropriate penalty fine.¹⁰ The penalty fine should be proportional to the 2 months' imprisonment that his co-defendants are receiving in this case. Thus, I am satisfied that a penalty fine of SBD 1500 is proportional to a 2 months' imprisonment sentence.

CONCLUSION

63. The rule of law must always be adhered to at all times in order for our country to prosper. Solomon Islanders must take ownership of this country and the spirit of patriotism should be embraced. We are fortunate to have our friends in the Pacific who are literally "one call away" in our greatest time of need. The expeditious intervention by members of the peacekeeping forces from Australia, Papua New Guinea, New Zealand and Fiji to secure the critical infrastructure and restore normalcy in Honiara last November rekindles the days of the Regional Assistance Mission to Solomon Islands (RAMSI) that ceased operations in 2017. RAMSI had been here for 14 years since 2003 because of the ethnic conflict at the time and

⁹ *Penal Code* [Cap 26], section 24(3) states: (3) A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or instead of imprisonment.

¹⁰ *Penalties and Miscellaneous Act 2009*

of the *Preservation of Public Security Regulations 2021* and section 3 of the *Preservation of Public Security Act* [Cap 27] and 21(a) of the *Penal Code* [Cap 26].

- [2] ~~Pre-Sentence-Custody.~~ The sentences for all the defendants, with the exception of Ramo, must be backdated to the 9th December 2021, being the date of first arrest.
- [3] I order that they are all released, with the exception of Ramo, at the rising of the court since they have spent over a month in custody which I believe is a substantial time.
- [4] The defendant Mr Enock Ramo is sentenced and ordered to pay a penalty fine of SBD 1500 for one count of *Restriction of Movement of Persons in Honiara: contrary to Regulation 5(1), (2) (a) and (b); and 9(1) of the Preservation of Public Security Regulations 2021* and section 3 of the *Preservation of Public Security Act* [Cap 27] and section 21(a) of the *Penal Code* [Cap 26] by the 14th January 2022 at 4:30pm. In the event that he fails to pay the fine, he shall be imprisoned for 2 months.
- [5] Right of Appeal within 14 days.
- [6] The matter of Ms Aneth Tisa is adjourned to the 14th of this month, that is this Friday for mention. Police to execute the WOA issued against her.
- [7] The court so orders.

PRINCIPAL MAGISTRATE RELIX HOLLISON

