

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

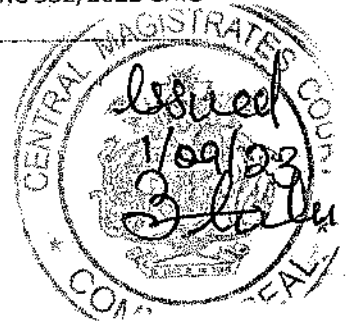
Criminal Jurisdiction

Criminal Case No. 532 of 2022

REX

V

GABRIEL EKE & FLORENCE FIFIRI



Date of Sentencing Hearing: 20 July 2023 & 3 August 2023

Date of Sentence: 1 September 2023

Prosecutions: *Mr Samuel Tovosia (ODPP)*

Defence: *Mr Owen Maingatonu (PSO)* for the defendant Gabriel Eke

Ms Jennifer Happilyn (PSO) for the defendant Florence Fifiri

SENTENCE

Introduction

- 1) This is one of the cases that occurred during the November 2021 civil unrest. Because of the significant similarity in both cases, I will deliver the sentence for both defendants in one ruling.
- 2) Both defendants were each charged separately with the following statements of offences:
 - a. Count 1: *Behave in a riotous manner* contrary to section 175(d) of the *Penal Code*.
 - b. Count 2: *Simple Larceny* contrary to section 261(1) of the *Penal Code*.
- 3) The *particulars of the offences* for each defendant in their respective count 2 are different. Mr Gabriel Eke was charged for stealing one carton of Pall Mall cigarette the property of Solomon Islands Tobacco Company Limited. Ms Florence Fifiri stole a computer monitor which is also a property of the Solomon Islands Tobacco Ltd.
- 4) Both defendants entered guilty plea to the charge. I formally enter a conviction on their own pleas of guilty. They now appear before this court today for their sentence.

THE CHARGES AND MAXIMUM PENALTY

- 5) Section 175(d) of the *Penal Code* provides for *Idle and disorderly persons* and states as follows:

"175. (d) any person who is drunk and disorderly in any public place or who, in any public place, behaves in a riotous or disorderly manner, and every person who in any other place whatsoever assembles together with others and while so assembled behaves in a riotous or disorderly manner;"

- 6) Those who commit such offence are deemed 'idle and disorderly' persons and shall be liable to imprisonment for two months or to a fine of six hundred dollars. The initial fine penalty was increased from \$20 to \$600 dollars. This is a significant increase that shows seriousness on the part of our Lawmakers to ensure such offending is deterred.

- 7) Section 261(1) of the *Penal Code* also creates the offence of *Simple Larceny* as follows:

"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."

- 8) The prescribed penalty for this offence is five years' imprisonment. It is clearly a serious offence. However, the law is clear on the imposition of maximum penalty, that it is reserved for the worse kind of offending.

FACTS

Facts in relation to Defendant Gabriel Eke

- 9) The defendant is from Tauba Village, Lau Mbaelelea in Malaita Province. The victim is the Solomon Islands Tobacco Company Limited (SITCO). The defendant was employed by Solomon Sheet Steel in the delivery section at the time of the offending.

- 10) On 26 November 2021, the defendant was part of the crowd of hundreds of people who assembled in front of SITCO. The defendant was part of the crowd that went into the SITCO area. The SITCO securities could not do anything to stop the crowd because there were too many people.

11) The defendant told a security guard who was manning the entrance upon entry in the SITCO premises that he wanted to help them with security. Later, upon entering the factory area of the company, the defendant proceeded into one of the warehouses and stole a carton of Pall Mall Cigarettes. The defendant took the carton of Pall Mall Cigarettes and walked out from the company's main gate.

Facts in relation to Defendant Florence Fifiri

12) The victim is also SITCO. The defendant is from Niuhari village, East Kwara'ae in Malaita Province. The defendant was employed as a casual worker for SITCO when she committed the offence.

13) On 26 November 2021, the defendant was part of the crowd of hundreds of people who assembled in front of SITCO. The defendant was part of the crowd that went into the SITCO area. The SITCO securities could not do anything to stop the crowd because there were too many people.

14) When a Security Supervisor opened the door of the Administration and Finance Office of SITCO and walked inside, the defendant went after him into the office. The defendant walked straight to a desk in the office and removed a computer monitor which was the property of SITCO. As she was doing this, the Security Supervisor told her not to do that because she was an employee. The defendant responded to the Security Supervisor and said "*Time blo looting ya, you no talem me.*"

15) The defendant carried the computer that she took from the Administration and Finance Office and walked out. She went to the main gate of SITCO and left. After the offending, the defendant handed the stolen computer to another SITCO employee to return it to SITCO.

PERSONAL CIRCUMSTANCES

16) The defendant Gabriel Eke is 34 years old. He is married and has three children who all attend school. His wife is unemployed. He currently works in the delivery section at the Solomon Sheet Steel and is the sole-breadwinner for his family.

17) The defendant Florence Fifiri is 36 years old and married. She has three children who are all attending school. The defendant had been the sole breadwinner in her family until the incident. Her husband is a taxi driver and is the sole breadwinner since the offending. I am told that Ms Fifiri's family are facing financial difficulties since the offending.

MITIGATING FACTORS

18) The common mitigating factors for the defendants are as follows:

- a. **Guilty plea:** The defendants pleaded guilty to the offences they are each charged with at the earliest opportunity offered to them. Their early guilty plea has saved the courts time and resources to run a full trial. It was further submitted on behalf of both defendants that their early guilty plea shows that they are remorseful and accept the consequences of their actions.
- b. **First-offender:** The defendants do not have previous convictions recorded against them and are therefore first-time offenders. This citizens until their first brush with the law during this offending.
- c. **Cooperation with Police:** The defendants cooperated well with police on the respective charges they were charged with during their arrest.
- d. Mr Maungatonu submitted on behalf of Mr Eke that his youthfulness is of great importance to the society and that he deserves a second chance. I am of the view that he has the potential to be a good citizen, however, I must also express that he had used his youthfulness to commit a crime against the state, leaving the victim in a state of commercial loss during the riot.

AGGRAVATING FEATURES

19) There are aggravating features noted in the case of both defendants as follows:

- a. **The manner of entry into the SITCO premises was unauthorised.** Both the Prosecutions and the defence agreed that the defendants went into the SITCO premises without authorisation when the crowd that was unlawfully assembled entered the premises.
- b. **Financial Loss:** The defendant's actions led the victim SITCO to suffer financial loss since the offending and during the period of that civil unrest.

20) Both the prosecutions and defence submitted that the defendants conducted themselves at the time of the offending in a riotous or disorderly manner and were part of the crowd

that was behaving in such manner. I do not think this should be considered as an aggravating feature because it forms part of the element of count 1 in their charge.

21) Furthermore, Mr Maungatonu submitted on the delay in prosecuting this matter. I have had the benefit of going through the court's records on each appearance since the defendants were charged on 22 November 2022. It is my view that there is no unreasonable delay in disposing of this matter. Therefore, I will not consider delay as an aggravating feature.

Sentencing Regime

Idle and Disorderly persons section 175(d) of the Penal Code

22) The defendant in *R v Pitamama*¹ was charged for behaving in a disorderly manner at the Central Magistrates court area. He was intoxicated and threatened people around the area with a rock. He was previously convicted for the same offence on two occasions. He clearly had not learnt his lesson, so the court imposed one-month imprisonment.

23) Similarly, in *Miriki v R*² the High Court quashed a sentence of 6 months imprisonment with 1 ½ months imprisonment. The appellant was sentenced by the lower court to 6 months and the appellant appealed the sentence on point of law that it was excessive. The defendant had two previous convictions of the same offence.

24) The defendant in *R v Masuru*³ was charged with multiple offences including *Idle and Disorderly person* contrary to section 175(d) of the *Penal Code* and *Simple Larceny*. He was sentenced to one-month imprisonment for section 175(d) offence and 12 month's imprisonment for the *Simple Larceny* count.

25) The sentences imposed by the court for this offence as indicated in the above cases is 1 month to 1 ½ months imprisonment.

¹ [2018] SBMC 14

² [2012]

³ [2019] SBMC 40

Simple Larceny, section 261(1) of the Penal Code

26) I have noted the cases cited by *Counsels* and observed that the sentencing regime for the offence of *Simple Larceny* ranges from a suspended sentence to 2 years' imprisonment. I must bear in mind that the seriousness of the offence must be parallel with the defendant's level of culpability. As stated by Palmer CJ in *R v Kemakeza*⁴:

"The level of the seriousness of offences is reflected on a prima facie basis by what the law imposes as the maximum penalty. The more serious an offence the greater the maximum penalty imposed."

27) In determining the appropriate sentence for the count of *Simple Larceny* in *R v Kemakeza*, Palmer CJ substituted the sentence of 5 months to 16 months' imprisonment. The defendant was also charged with demanding with menaces and intimidation.

28) In *R v Tata*⁵ the defendant pleaded guilty to the offence of *Simple Larceny* and was sentenced by the High Court to 12 months imprisonment for stealing \$300 from the victim. He was also charged and sentenced for sexually offending the same victim.

29) The defendants in *R v Luimalefo*⁶ were sentenced to 1 ½ years and 2 years respectively. The sentence imposed took into account the level of culpability for each offender. The defendants stole SB\$10,000.00, USD5000 and a pair of shoes from the victim's car. Only SB\$700.00, USD4500 and the pair of shoes were recovered. The victim was still deprived of a total of SB\$9,300 and USD500. The court considered that these were significant amount of monies stolen.

30) In another *Simple Larceny* case of *R v Rikiloni*⁷ the defendant was sentenced to 7 months imprisonment for stealing a box containing electrical supplies from a vehicle.

⁴ [2008] SBHC 41

⁵ [2021] SBHC 151

⁶

⁷ [2015] SBMC 2

parked at the Honiara Central Market. The box of electrical supplies was recovered the same day.

31) The defendant in *R v Ilala*⁸ was sentenced to 12 months imprisonment fully suspended for 2 years. He had already spent over 4 months in prison. He was charged with other offences. The defendant stole a mobile phone from the victim at the Honiara Central Market. The phone was taken by another defendant *Laumae* who was sentenced to 18 months' imprisonment earlier on by another Magistrate.

32) The other case referred to by the defence were *Eapa v R*⁹ and *R v Pilly*¹⁰. I note that these are cases from more than 20 years ago. There has been an increase in the number of cases involving *Simple Larceny* of different circumstances. In the appeal of *Eapa v R*, the sentence of 9 months imposed by the lower court was maintained by the High Court during appeal but a suspension of that sentence for 2 years under section 44(1) of the *Penal Code* was further imposed. The High Court when reviewing *R v Pilly* set aside the conviction of *Housebreaking and committing felony* contrary to section 300(a) of the *Penal Code* with the offence of *Simple Larceny* contrary to section 261(1) of the *Penal Code*. The defendant was sentenced to 6 months' imprisonment. The 10 months' imprisonment was set aside.

33) In the present case, the properties stolen were computer monitor and 1 carton Pall Mall Cigarette. They have value but there is nothing before me to suggest the value of those said properties. Regardless, it does not take out the fact that the elements have been fulfilled. The defendants had intended to permanently deprive the victim of the property. There is nothing expressly suggesting that they had no intention of permanently depriving the victim of the carton pall mall cigarette nor the computer monitor.

⁸ [2017] S'CMC 18

⁹ [2001] SBHC 77

¹⁰ [2001] SBHC 64

Sentencing Principles

34) The courts have repeatedly remarked that sentences imposed on defendant must serve the purpose of *deterrence*, *restitution* and *rehabilitation*. The court in *Veen v The Queen*¹¹ stated:

“sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.”

35) The basic principles of sentencing must always be adhered to by the courts. This court is no exception. However, in deciding the appropriate sentence, each case must be decided on its own unique set of facts. I have echoed this in other cases and I will do the same here, the reliance on past cases can be of significant assistance so that consistency and soundness in decisions are achieved. Past cases can only be used as a guide and sometimes can be of little value. In *Sahu v Regina*¹² the Court stated:

“It is well accepted that the technique of comparing sentences imposed in different cases is of limited assistance and provides only imperfect guidance as to the appropriate sentence in any given case.”

36) The sentence this court will impose on each defendant must deter them from committing further offending in the future. It should teach them a lesson that the courts will not tolerate such a riotous and disorderly behaviour. It should also deter other potential offenders from offending.

¹¹ (No. 2) (1988) 164 CLR 465

¹² [2012] SBHC 122

Sentencing Remarks

37) Many business owners including the victim have suffered loss one way or the other. Their business routine was affected because of the defendants' actions. Law abiding citizens have also felt the effects of the violence and have suffered from it to some extent. This is not a hidden secret as the whole nation was affected at that time, some have recovered and some not. The defendants should by now realise that involving in riot or even when caught in the middle of such a situation is wrong and unlawful. It is important for them to make the right decision under those circumstances. It is equally important that they make amends now and focus on building a good future free of trouble and protect their country whenever they encounter similar situation in the future.

38) In considering the gravity in terms of the impacts that the defendants' actions have on the victim and the country, I am satisfied that a custodial sentence is appropriate. The aggravating features present are also considered. I further consider the mitigating factors, especially the early guilty plea by both defendants and for being first-time offenders. I therefore order the following sentence for each defendant:

- a. Count 1: *Behave in a riotous manner* – One-month imprisonment.
- b. Count 2: *Simple Larceny* – 12 months' imprisonment.

39) Count 1 is to run concurrently with count 2. I also note that Mr Eke is the sole breadwinner for his family and Ms Fifiri has returned the computer monitor to the victim, I invoke section 44(1) of the *Penal Code, Cap 26* and hereby impose a 2 years' suspended sentences for both defendants on each count.

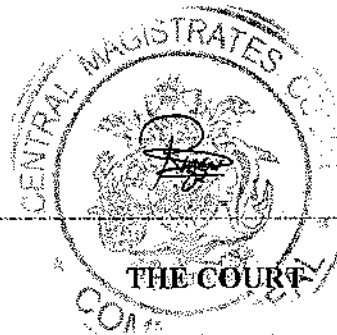
Orders:

- 1) The defendants Mr Gabriel Eke and Mrs Florence Fifiri are each convicted on one count of *Behave in riotous or disorderly manner* contrary to section 175(d) of the *Penal Code, Cap 26* and one count of *Simple Larceny* contrary to section 261(1) of the *Penal Code, Cap 26*.
- 2) Both defendants are each sentenced to:
 - i. Count 1: One-month imprisonment.
 - ii. Count 2: 12 month's imprisonment.

- 3) Both counts to be served concurrently by each defendant.
- 4) Sentences in both counts are hereby fully suspended for 2 years.
- 5) Further commission of any offence under any law in the Solomon Islands during the operational period will attract an automatic reinstatement of the imprisonment term.
- 6) Right of appeal applies to any aggrieved party within 14 days from today.

- 7) Order Accordingly.

Dated 1 September 2023



Elma Veenah Rizzu Hilly – Principal Magistrate