

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



In the Criminal Jurisdiction

REX

-v-

AXELY SANGA

Prosecutor: Mr Moffatt Tei

Defence: Ms Jennifer Happylyn.

Date of Plea: 3rd November 2023

Date of Sentencing and Mitigation submissions: 13th November 2023

Date of Sentence: 27th November 2023

SENTENCE

Introduction

1. Mr. Axely Sanga, you were charged with one count of Simple Larceny contrary to section 261(1) of Penal Code¹.
2. You pleaded guilty to the charge on 3rd November 2023. After perusing the agreed facts, I formally enter criminal conviction against you.
3. Matter proceeded to sentencing and mitigating Submissions on the 13th November 2023.
4. Matter was further adjourned to 27th November 2023 for Sentencing. Hence, I will now hand down your sentence.

Maximum Penalty

5. The offence of Simple Larceny carries a maximum penalty of 5 years imprisonment².

Agreed facts:

6. The agreed facts of your case tendered and accepted by the court revealed that you committed this offence on 25th June 2023 at around 12:30am under Mataniko Bridge at China town, Honiara. It was revealed that on that material date, time and place, you together with another unknown person took off with a 1x10kg flour the property of Simon Vugesi without his consent and headed westerly direction. The matter was reported to Honiara City Council Law enforcement and they apprehended you and co-accused. Facts further showed that the stolen item was recovered.

¹ Section 261(1) of Penal Code

² Above n1

Prosecution and Defence Submission

7. Prosecution oral submission highlights the agreed facts, antecedent aggravating factors and the sentence to be considered by the court. Without any supporting cases, Prosecution submitted that the appropriate sentence to be considered by the court in light of the relevant factors of the case at hand should be one of a bound over sentence.
8. Defence on the other hand tendered their written submission, which covers, personal circumstance and mitigating factors of the defendant. Highlighting several supporting cases, Defence submitted that either a suspended sentence or a sentence of good behaviour bond is appropriate for this matter. Alternatively, any other sentence the court thinks fit.
9. Comparative cases cited by Defence in support of their sentencing recommendations is as follow;

Comparative Case Authorities cited by Defence.

10. *Eapa v Reginam [2001] SBHC 77; HC-CRC 248 OF 2001 (2 November 2001)*³ where the defendant was a first-time offender. He was sentenced to 9 months imprisonment for stealing a CD. However, on appeal Justice Kabui although upheld the 9 months sentence, suspended it for 2 years under section 44(1) of the Penal Code after considering the mitigating factors.
11. *R v Teleu [2017] SBMC 17; CMC-CRC 388 of 2017 (6 June 2017)*⁴ the complainant, parked his vehicle at the ITA hardware car park area, opposite the Hyundai Mall. He left the vehicle with all doors closed and walked out to the street. The defendant observed the vehicle was abandoned, walked over and opened the back booth. He entered through the back of the vehicle, and went straight to the front seats. He opened the drawer and removed \$850. He pocketed the money and exited the vehicle. The complainant saw him got out of vehicle and quickly followed him and yelled out for him to stop. The defendant did not stop but kept walking away from the complainant. Some police officers conducting the visibility patrol came to assist the complainant and stopped the defendant along the street. They managed to retrieve the money from the defendant. He was then sentenced to 9 months imprisonment backdated to time spent in remand and having spent 1 month in custody, Court Ordered the Balance of the term be suspended for 2 years on the condition that he will not commit any further offence during 2 years suspension.
12. In the unreported case of *R v Gwali & Others*⁵ (Florence Fifiri) the accused is charged with 2 counts and one of which simple larceny contrary to section 261(1) of the Penal Code. Facts showed that the accused took a desktop inside the admin room of the Tobacco Company during the riot and took it home later the accused returned the item. The accused was sentenced to 12 months imprisonment but fully suspended for 2 years.

³ *Eapa v Reginam [2001] SBHC 77; HC-CRC 248 OF 2001 (2 November 2001)*

⁴ *R v Teleu [2017] SBMC 17; CMC-CRC 388 of 2017 (6 June 2017)*

⁵ (Unrep *R v Gwali & Others criminal case No 532 of 2022*)

Analysis:

13. I note from the submissions made that at 12:30am on June 25th 2023 under the Mataniko Bridge at China Town Honiara, you stole Simon Vugesu's Property namely 1x 10kg bag of flour. As an adult, you know perfectly well that the bag of flour is not your property, yet you intend to deprive the owner of the said item. I agree with prosecution that your unlawful action was pre-planned and it is my view that had it not for the assistance of the Honiara City Council Law enforcers, you could have benefitted yourself with the stolen item.
14. As an adult who knows what is right and wrong, you could have made the right choice never to steal from others. In this case, you obviously decide to do the opposite by stealing from the victim Mr Simon Vugesu that resulted in you facing the law today.
15. The fact that the item was recovered will have a direct effect on your sentence today.
16. Previous cases before the court had shown distinction between cases where stolen items were recovered and those that were never recovered. At this point, I commend defence for assisting the court with supporting cases. As raised by defence, In *Eapa v Reginam* [2001] SBHC 77; HC-CRC 248 OF 2001 (2 November 2001)⁶ defendant was sentenced to 9 months imprisonment for stealing a CD. However, on appeal Justice Kabui although upheld the 9 months sentence, suspended it for 2 years because the CD was recovered, further stating that this is a serious offence⁷. Also, in the case of *R v Telei*,⁸ item stolen was recovered. The only difference was that defendant had 10 previous convictions.
17. In the case of *R v Gwali & Others*⁹ (Florence Fifiri) the accused is charged with 2 counts and one of which is simple larceny contrary to section 261(1) of the Penal Code. Facts showed that the accused took a desktop inside the administration room of the Tobacco Company during the riot and took it home. Later the accused returned the item. The accused was sentenced to 12 months imprisonment but fully suspended for 2 years.
18. On the other hand, In *R v Luimalefo*¹⁰, both defendants were first time offenders. Regardless, both were sentenced to 1 ½ years' and 2 years imprisonment respectively taking into account portions of monies that were never recovered because both have taken and used up for themselves.
19. I note that the influential and extenuating factor of these cases are recovery or non-recovery of stolen items.
20. In the present case, I note from facts that stolen item was recovered.

Sentencing Remarks

⁶ Above n3

⁷ Above n3

⁸ Above n4

⁹ Above n5

¹⁰ *Regina v Luimalefo* [2017] SBMC 46; Criminal Case 958 of 2017 (26 September 2017)

21. In properly sentencing you today, pertaining to the case of *Ahi v Regina* [2005] SBHC 53; HCSI-CRAC 124 of 2005 (29 March 2005)¹¹ I acknowledge that each case must be dealt with according to its own set of facts and merits.
22. Nevertheless, cases that have come before the court will assist in determining the appropriate sentence for the present case. I note that the fundamental case of *Eapa v Reginam* [2001]¹² that draws distinction between recovery and non-recovery cases occurs about 20 years back and it is my view that with the prevalent and rapidly increasing nature of this offence today, it is time that the court fully utilized the punishment stipulated under our laws.
23. As highlighted in the ruling of the court in the case of *R v Rafita* SBHC 150; HCSI-CRC 63 of 2011 (3 December 2012)¹³, when the Court referred to the case *R v Soni*, stated that "it is time for our Courts to better utilise the scope of the maximum sentence made available to them by the legislature in a way that better reflects current sentencing and community needs and in a way that recognises the apparent contemporary ineffectiveness of benchmarks set so long ago and in *R v Chachia*, at paragraph 19 the Court stated that the " level of past sentencing practice runs the danger of making a mockery of the maximum penalty provided by the legislature and risks a serious erosion of confidence and faith in the sentencing process within the community at large"¹⁴
24. Hence, a strong message of specific a general deterrence, rehabilitation and retribution must therefore be sent out to you and the public that this offence is serious and anyone who wish to break the law in this regard will face the full force of law.
25. This is to teach you and other likeminded offenders to make better judgement when tempted to steal from others even when their properties are unattended to.
26. It is the court's view that Public interest must be protected first and far most. People must be protected not only in their homes but also from individuals with such unlawful intentions on the streets. Individuals,' communities must be protected against such unlawful actions. People's wealth and properties must be protected from others who are lazy and think to enrich or benefit themselves in the manner you have committed this offence.
27. In light of the case of *Likualua and Kokololabu v Reginam* [1989] SBHC 10; [1988-1989] SILR 148 (10 November 1989)¹⁵ where appeal was upheld, the court state and I quote;

There is no great value in comparing similar cases. Sentencing is not a process that follows exact mathematical rules. Circumstance and people vary and it is undesirable to consider such comparison as more than a very imprecise guide.

28. I accept the following Aggravating factors and mitigating factors'

Aggravating features

26. This court accepts the following Aggravating factors;

¹¹ *Ahi v Regina* [2005] SBHC 53; HCSI-CRAC 124 of 2005 (29 March 2005)

¹² Above n3

¹³ *R v Rafita* SBHC 150; HCSI-CRC 63 of 2011 (3 December 2012)

¹⁴ *Regina v Soni* [2012] SBHC 120; HCSI-CRC 128 of 2011 (7 September 2012)

¹⁵ *Likualua and Kokololabu v Reginam* [1989] SBHC 10; [1988-1989] SILR 148 (10 November 1989)

- i. First, the seriousness of the offence generally. Both counsels would agree with me that the 5 years imprisonment maximum penalty of this offence is a reflection of the seriousness of the offence. In Regina v Kemakeza¹⁶ at paragraph 19, CJ Palmer stated and I quote: "*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*". Hence, such penalty also shows the level of tolerance within this society for such offence, which in my view society completely dislike.
- ii. Secondly, Offending occur at 12:30am under the cover of night or darkness when people are sleeping and their properties are left unattended. It is serious compared to offending at daylight as it is a time when people are sleeping peacefully in their homes.
- iii. Value of the stolen item was around estimated to be around \$85 dollars. Although seem small, it is of value to the victim and although recovered, it does not excuse defendant for the offence he committed.

Mitigating Factors

27. I give credit to the defendant for the following mitigating factors;
- i. Plea of guilty at the earliest opportunity, which saves court's time and resources as this matter no longer need to proceed to trial.
 - ii. Defendant is remorseful. He deeply regrets his action.
 - iii. Defendant is a first-time offender. No previous conviction.
 - iv. Stolen item was recovered
 - v. Personal circumstance- He is 30 years old, single, employee of Umi Kabani liquor Haus. Highest level of education Form 6 at Mbua valley Community High School.

Sentencing Consideration.

29. In light of your case weighing all the relevant factors aggravating, mitigating factors and personal circumstance of your case, it is my view that despite recovery of the stolen item 1x10kg bag of flour you must meet the consequence of your actions. Therefore, the appropriate sentence in my view is that of a custodial sentence.
30. However, I further Order that the custodial sentence to be suspended pertaining to section 44 (1) of the Penal Code.
31. Therefore, in light of the above assessment I sentence you as follows;

¹⁶ Regina v Kemakeza [2008] SBHC 41; HCSI-CRC 467 of 2007 ((3 September 2008)

COURT ORDERS

- (1) Mr Axely Sanga for the offence of Simple larceny, contrary to section 261 (1) of the Penal Code, you are hereby sentence to 6 months imprisonment**
- (2) The 6 months imprisonment term to be fully suspended for 2 years.**
- (3) Order 2 is subject to the condition that you must not re-offend or commit any offence throughout the duration of your suspended sentence;**
- (4) Re-offending will result in having you serve the suspended term.**
- (5) Rights to appeal within 14 days from today applies.**

Dated this 27th day of November 2023

