

Summary of facts

5. The Defendant in this case is none other but you, Mr Denilson Kereperi, a 24-year-old native of Suena Village, in Ugi Islands, Makira/Ulawa Province. The Complainant is Mrs Joylyn Salo who is also a native of Suena Village, Ugi Islands, Makira/Ulawa Province. The Complainant is closely related to you as your aunty.
6. The alleged offending was said to have occurred between 3:00 am and 4:00am on the morning of 1st March 2023, at the Complainant's residence at Honiara. It was alleged that you stole a white colour New Zealand brand veon Bluetooth speaker, valued at SBD \$1,500.00, and a Aspera touch screen phone A45, valued at SBD \$300.00. All these were done with the intention to permanently deprive the complainant off her property. The police were informed which resulted in your arrest and the charge at hand.
7. It is further stated that none of these items were retrieved to date.

Note: I must say that I am greatly unimpressed with the prosecutions for only filing a copy of their sentencing submissions moments before this sentence is delivered.

Maximum penalty

8. Section 261 (1) of the Penal Code, states that the act of simple larceny is a felony and is liable for an imprisonment term of five (5) years¹. I could not agree more with the remarks highlighted in **Regina v Kemakeza**, where the court states 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"*².
9. The act of simple larceny or stealing is highly condemnable by the law and therefore warrants a much higher maximum penalty as compared to misdemeanour offences.

Matters of aggravation

10. With reference to the summary of facts, I note that the offending was said to have occurred at a time between 3:00 am and 4:00 am on the morning of 1st March 2023. Clearly these are hours in which ordinary people in the Solomon Islands should still be sleeping, except for persons working on the midnight shift at the hospital, night shift security guards, and others who find this hour suitable to meditate on prayer, study or work. You chose a time that people were still sleeping to commit this act, to avoid any form of disturbance.
11. I also note that the Complainant is a very close relative of yours, this in my view breaches the trust that exists between you and the Complainant. It is now common for offences such as stealing to occur in the comforts of our very own homes by very close relatives who have been fending off our hospitality here in Honiara as well as elsewhere in the Provinces. This must stop.
12. Instead of appearing before me at the Central Magistrates Court on the 27th of March 2023, you chose not to, and eventually travelled back to Makira without a care in the world that there is a charge hanging over your head. The very act of stealing itself, is deemed very serious as reflected in its maximum penalty. In terms of your level of culpability, I find as per the facts, you played the role of both leader and perpetrator in committing this offence. I therefore find your level of culpability at the mid-range of the seriousness involved.

Matters of mitigation and personal circumstances

¹ Section 261 (1) of the Penal Code of Solomon Islands.

² [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

13. I will give you credit for entering a guilty at the earliest opportunity given. While I give you credit for the time spent in custody, I must emphasize on the fact that this is a result of your own decision making, had you shown up in court on the 27th of March 2023, your case would have been disposed in good time.
14. I am told that you are a first-time offender, meaning that you have never broken the law before this very encounter. I am also told that you are very remorseful for your actions hence your guilty plea, but also find this contradictory as you have been evading court for over 5 months until you were arrested and remanded in Kirakira on the 6th of October 2023.
15. At paragraph 5.0 of his sentencing submissions, Counsel Bosa has explained the reason behind the offending, as one resulting from an earlier incident, where a cousin brother of yours was said to have damaged your head-phone. This resulted in the act you took in stealing the properties highlighted in the charge. In terms of the clean hand's doctrine, your actions still outweigh the very act that you want me to consider, as being the driving force behind your actions at the time in question, I therefore will not consider this explanation since the items were never retrieved and their fate can never be determined.
16. In terms of your personal circumstances, I do find that you a youthful offender with a high prospect for change. On the other hand, I believe you should have been cautious of the fact that you are married with a child that is now 2 years old. You should blame yourself in the event that you are to be incarcerated for your actions, and you should blame yourself further for denying your child the right to grow up with a fatherly figure while you are away, and for denying your wife the right to be supported and loved by you during the time that you will be incarcerated.

Sentencing considerations

17. I am referred to three (3) cases, that is, the case of **Eapa v Reginam**³, **R v Rikiloni**⁴, and **R v Goro**⁵. I note that these cases occurred in 2001, 2015 and 2016 respectively. The case of Eapa involves a stolen CD player and speakers. A 9 months imprisonment was imposed at the Magistrates Court, but was suspended for 2 years upon appeal to the High Court. It turns out that the items were returned to the Complainant by the Defendant, but was never put before the Magistrate's attention. The Case of Rikiloni involved the stealing of two boxes containing electrical supplies that were never retrieved. A 7 months imprisonment was therefore imposed. As for the case of Goro, the Defendant was also charged with stealing a light bulb, inter alia. A 3 months imprisonment was ordered but made concurrent to the multiple counts involved.

Comparative sentencing

18. In terms of comparative sentencing, previous courts have advocated on both the need to ensure consistency in imposing sentences, and the need for cases to be dealt with upon assessment of their own set of facts and circumstances.
19. In **Joel Likilua & Allen Kokolobu v R [1988 – 89] SILR 148** Ward CJ commented at page 149: *Sentencing is not a process that follows exact mathematical rules. Circumstances and people vary and it is undesirable to consider such comparisons as more than a very imprecise guide*⁶.
20. In **Sau v R [1982] SILR 65** Daly CJ commented at page 69:

³ [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

⁴ [2015] SBMC 2; Criminal Case 674 of 2015 (22 April 2015)

⁵ [2016] SBMC 24; Criminal Case of 2015 (15 September 2016)

⁶ [1988 – 89] SILR 148

'I must add one further observation on the sentencing process and on appeals against sentence. There is an increasing practice of reference being made to specific previous cases in court. This was done by the learned magistrate in this case and the dissimilarities give counsel a ready-made ground for argument which they understandably take. Sentencing is not an exact mathematical process; if it were it could be done by a computer. The human element both in the person before the court and the sentencer remain a vital part of the process. Previous sentences demonstrate principles or parameters of sentence; but they should not be used as binding precedents to reach a sentence in a particular case. All the judiciary have access to each other's sentences and we must rely upon the good sense and experience of the judiciary to reach sentences which reflect not only their own views but also the views of the community⁷.' (emphasis added)

21. In **R v Ben Tugale, Brown Beu, Nelson Oma, James Sala, Loius Lipa, Charles Meaio & John Teti (Unrep. Criminal Case No. 12 of 1997)** Lungole – Awich J commented at page 21:
Punishment in one case usually cannot be matched exactly with punishment in another. Circumstances usually differ even if only in details. Public view about how serious an offence is regarded also changes. Prevalence or otherwise of an offence during particular period also counts⁸."

Comments on the act of stealing and Sentencing remarks

22. The act of stealing should never be used as some sort of justification in any given society. Any person who steals, must be taught the consequences of engaging in such behaviour. When one steals to permanently deprive the owner of his or her property, it can only tell of how shallow minded one is, and how arrogant one is towards the other.
23. The general act of stealing continues to increase in all parts of this country regardless of the sentences that the previous courts have been imposing. This then begs the question of whether or not much harsher sentences should be imposed, given the level and skills associated with the advanced level of stealing people are being victimised to?
24. How effective has the criminal justice system prove to be when dealing with these kinds of offences? I, hold the view, that court's whilst paying consideration to the existing sentencing principles, they should also uphold more robust and effective approaches that not only punishes an offender, but to also set the goal in achieving sentencing regimes that aims to bring out better and resilient outcomes that strikes a balance between the need to protect society from the evil actions of offenders in this regard, and to also address the need to determine and eliminate the very forces that leads an offender into committing crime.
25. Whilst I acknowledge Counsel Bosa for referring me to the cases highlighted in his sentencing submissions, we must also acknowledge that cases must be dealt with based on their own set of facts and circumstances. I must say, that circumstances have drastically changed if we are to look between the years starting from 2001 to the current year that we are in. What was practical in 2001, 2015 and 2016, should not determine the outcome of any offending in 2023 or 2024. I say this on the basis that the courts have continued to show their stance since we gained independence in the year 1978 particularly to the act of stealing, but the skills, knowledge and understanding associated with this offending continues to elevate.
26. The cases highlighted in paragraphs 18, 19 and 20, were cited for the very aim of establishing the need to consider changes in circumstances that existed over 5 years ago to what we are currently experiencing. In my view, stealing remains the same for the years starting from 2001 right up to

⁷ [1982] SILR 65


⁸ (Unrep. Criminal Case No. 12 of 1997)

2024. What I believe has changed drastically, is the manner in which stealing is carried out, hence, the need to consider cases on its own facts and matrix.
27. Coming back to the facts and history of this case, I wish to reiterate on the fact that, the items you stole were never retrieved to date. It could be that you have already sold these items at very cheap prices and had used the proceeds for your own benefit.
 28. Furthermore, you evaded the court with the hope to escape the criminal justice system, but failed.
 29. Having said all these, I find that the appropriate sentence I must impose on you to achieve the greater need for general deterrence and specific deterrence, rehabilitation, retribution and prevention, is that of a custodial sentence.
 30. With what has been stated in the foregoing paragraphs, I believe the facts and circumstances involved, warrants a range between 10 months to 18 months. I pitch the starting point at 15 months, given the circumstances herein. I deduct 1/3 to reflect the guilty plea given at your earliest opportunity, resulting at 10 months. I further deduct 4 more months for the remaining mitigating factors, resulting in 6 months. I add 5 months to reflect the aggravating factors involved, and therefore reach 11 months.
 31. Having reached this, I now order as follows:

ORDERS:

- i) **Mr Denilson Suikerepei, I hereby order you to serve an imprisonment term of 11 months for the offence of Simple Larceny, c/s 261 (1) of the Penal Code.**
- ii) **The period of imprisonment is to be back-dated to the 6th of October 2023, when you were remanded at the Kirakira Correctional Centre.**
- iii) **Right of appeal applies with 14 days from today.**

Dated this 12th of March 2024.


THE COURT
Emily Z Vagibule Pakoa (Mrs)
Principal Magistrate