

REGINA -v- TEUNA JOHN NOAH

High Court of Solomon Islands

(Muria ACJ)

Criminal Case No. 1 of 1993

Hearing: 18 January 1993

Sentence: 18 January 1993

F. Mwanasalua, DPP, for the Crown

A. Radclyffe for the Accused

MURIA ACJ: The accused, **Teuna John Noah** pleaded guilty to one count of Unlawful Entering Solomon Islands contrary to section 18(1)(i) of the Immigration Act and one count of Entering Solomon Islands without a passport contrary to section 11(1) of the Passport Act.

Briefly the facts of the case as given to the Court are that the accused is a Bougainvillian of the North Solomons Province of Papua New Guinea. He comes from Sari Village in South Bougainville.

Because of the present conflict in Bougainville the accused had been staying in the Papua New Guinea Defence Force Care Centre at Ranatan where other Bougainvilleans are also staying.

On the night of 10 December 1992 the accused left the Care Centre at Ranatan by a outboard motor canoe and travelled to Ovau Island where the Solomon Island Field Force were stationed. He arrived at Ovau Island in the Shortlands at 6 a.m. on the morning of 11 December 1992. The evidence shows that the accused had previously visited Ovau Islands accompanied by Papua New Guinea Defence Force soldiers.

On arrival at Ovau, the accused told the Solomon Islands Field Force officers that he was running away from the Care Centre because one of the Papua New Guinea Defence Force soldiers had raped his sister and shot his brother. The accused then requested that the Solomon Islands Field Force officers to take him to Samanago in the Shortlands. From Samanago the accused was taken to Korovou Police Station where he was interviewed.

In his interview he told the police that the Papua New Guinea Defence Force soldiers were killing people at the Care Centre in revenge for their soldiers killed by the BRA.

Later the accused was taken to Honiara where the police again interviewed him. In that interview, the accused maintained his reasons for coming to Solomon Islands but changed his story about the Papua New Guinea Defence Force. He now says that the Papua New Guinea Defence Force soldiers did not kill anyone at the Care Centre in revenge against BRA and that the soldiers were not cruel to anyone.

In that interview the accused stated that he intended to return to Bougainville. He did not want to be in the care of the police or anyone nor did he want to be accompanied back to Bougainville by any pro-BRA Bougainvilleans. He stated he would find his own way back to Bougainville from Samanago and to join BRA when he got back.

In his mitigation for the accused, Mr Radclyffe urged the Court to accept the accused's story, as there was no evidence to disprove what the accused had stated. The Court is left only with the accused story in this case and the Court is bound to accept it, since, there was no evidence to the contrary. It is not for the Court to speculate into any other motive of the accused that are not revealed by evidence in Court.

Mr Radclyffe further urged the Court that it would be wrong to use the sentence on the accused as a deterrent measure on the would-be illegal entrants into Solomon Islands since so many Bougainvilleans illegally entered Solomon Islands and only a few had been caught. With respect to counsel's argument, I feel the Court is entitled to use its inherent jurisdiction to assist in ensuring that the sovereignty of this country is respected. This includes bringing home to those who choose to enter Solomon Islands in violation of its laws by the kinds of sentences which would reflect the need to respect such sovereignty. Such sentences, in appropriate cases, must necessarily contain some deterrent elements in them.

The accused in this case had previously entered Solomon Islands in the company of Papua New Guinea Defence Force soldiers. On 10 December 1992 the accused again entered Solomon Islands. That again was done without permit and without passport. That was done deliberately. His change of attitude in his story toward the Papua New Guinea Defence Force aroused suspicion among the police and immigration authorities in Solomon Islands. It is therefore not surprising that he was arrested, interviewed and charged.

The Court, however, can only sentence the accused based on the facts of the case as proved.

I have no doubt there are numerous illegal entering occurring at the border but that is a matter for the Government who should take appropriate steps to ensure that such illegal entries do not occur. I would be incline to suggest that when enforcing the laws relating to entry of foreigners, particularly at the borders, the underlying principle must be the respect and maintenance of the sovereign status of the country. So that those who enter the country without the authority of the laws of this country are defying the sovereignty of this country and must be brought before our courts to be dealt with according to law.

The accused in this case no doubt knew that he was illegally entering Solomon Islands on 10 December 1992 and that he was prepared to do so. That is an action of total disregard of the principle I mentioned above.

I take into account everything that had been said by Mr Radclyffe on behalf of the accused, particularly the accused's plea of guilty. However the circumstances of this case clearly justify the Court in taking a firm view on the accused's action of illegally entering the country. I feel the appropriate sentence must be one of an immediate custodial sentence.

COUNT 1 18 months imprisonment.

COUNT 2 6 months imprisonment.

SENTENCES ARE CONCURRENT

Sentences to take effect from the date taken into custody.

**(G.J.B. Muria)
ACTING CHIEF JUSTICE**