

MARY KENILAU V. REGINA

High Court of Solomon Islands
(Palmer CJ)

Criminal Appeal Case Number 264 of 2004

Date of Hearing: 5th August 2004

Date of Judgment: 5th August 2004 (Extempore)

Palmer CJ: The Appellant Mary Kenilaua was sentenced by the Magistrates Court to a term of one year imprisonment with 5 months suspended for two years for making liquor locally known as "kwaso" contrary to section 50(2)(c) of the Liquor Act [cap. 144]. She had been charged together with others for the same offence and had entered a guilty plea. In her mitigation she informed the court of her personal circumstances that she was a solo mother, her husband had recently deserted her, that she had two very young children to support, (one was still breast feeding - nine months old) the other was four years old, that she was unemployed and was not making any money out of the illegal activity.

In his sentence, the learned Magistrate held that the activity reflected a commercial amount, that the defendant knew it was wrong and was making money through this, that it was a curse, risks lives and causes social problems. A deterrent sentence was imposed as an example to others to stop the activity.

In her appeal she submits that the sentence was manifestly excessive on the ground that the learned Magistrate failed to take into sufficient account her previous good character, her guilty plea and personal circumstances and thereby imposed a custodial sentence which was not suspended in full.

The prosecution did not oppose the appeal but went further to submit that it considered the sentence of imprisonment imposed to be excessive in the circumstances of this case.

I accepted submissions of the learned Prosecutor Mr. Barry and quashed sentence of imprisonment substituting a sentence of fine of \$400.00 instead payable in two weeks. I now publish reasons for the sentence.

The offence for which this defendant had been convicted of and sentenced to imprisonment was for making or assisting to make liquor without a permit from the Minister - section 50(2)(c) of the Liquor Act. The making of liquor in the country is regulated to ensure that the product sold meets safety and health standards when it is sold in the open market. No one in the country is permitted to brew or distil liquor for commercial purposes or gain without a permit of approval from the Minister. If not controlled, it can become dangerous and harmful. Those who consume such drinks need to understand as well that they are putting their lives and health at risk through the purchase of such cheap drinks. This is why the law does not allow the brewing of liquor without a permit.

It is clear the activity was carried out by the defendant for monetary gain. Whether she has been able to make any profit out of it or not is not clear on the evidence. Equally it needs to be borne in mind that there was a market demand available for such product which has given rise to the illegal making of such drinks. It is the fact there is a ready market or demand for such drinks that is at the root of the problem in the community

and which needs to be addressed, giving opportunity for such illegal activities to spring up for quick and easy money.

The learned Magistrate was correct in describing it as a curse causing risk to lives and social problems. Quite recently this has been highlighted in the media by the police and concerned people. The task of stamping out this illegal activity however is not a matter for the police or the courts alone. The community must get involved and cooperate with police by discouraging members of their community from getting involved in this type of activity or reporting them to police. It is time the community starts thinking, acting and behaving responsibly in terms of the enforcement of law and order in the city and the country by coming forward and reporting those who are engaged in such illegal activities, whether they are wantoks or friends. To clean up our community it must begin with each and everyone in the country eagerly joining hands with the police and other law enforcement agencies to ensure that the laws are being complied with. This must not be seen as disloyalty to ones family or friends but for their good and the good of others as such activities can be very destructive if left unarrested.

Before a custodial sentence is imposed the court must satisfy itself that no other method of dealing with the defendant is appropriate. In so doing it must consider the circumstances of the offence and offender noting any information relevant to his character, physical and mental condition so as to ensure that the defendant is penalized for the offence and not punished for the consequences which emanate from the consumption of kwaso. Whilst the consequences of consumption of kwaso have been quite destructive, it must be borne in mind that those are separate from the offence which the defendant has been charged with. Those who consume kwaso and misbehave are responsible and accountable for their own actions and whatever offences they have committed. The defendant however cannot be punished for their misdeeds. If they exercise their independent will and refuse to buy and drink kwaso then no destructive behaviour will occur.

There is no evidence to suggest that this defendant was making money out of this venture. Rather it seems she may have gone into this activity through sheer pressure to make a living, having been deserted by her husband and having two young kids to raise; that is no easy task. She is young, has no criminal records and has entered a guilty plea at the outset. Bearing in mind that this is an activity that is regulated by the Government and the objective financial gain, a fine would have been more appropriate in the first instance, not only for purposes of protecting the public interest but also as punishment and deterrence. Each case will have to be looked at on its own merits.

Orders of the Court:

1. Uphold appeal of the Appellant.
2. Quash orders of imprisonment of the Magistrates Court dated 30th July 2004.
3. Substitute sentence of a fine of \$400.00 payable in 14 days in default 6 months imprisonment.

The Court.