

REGINA v. JIMMY PUA TEPAIKA

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Criminal Review Case No. 1393 of 2004

Date of Review: 14th January 2005

REVIEW JUDGMENT

Kabui, J. This case came to me for review under section 47 of the Magistrates Courts Act (Cap. 20) "the Act" on 20th December 2004 but I was already on leave then. I resume duty today. This case is rather unusual in that it came for review before sentence is passed by the learned Magistrate. There is the question to be asked whether I do have the power to deal with this case that is yet to be completed by the learned Magistrate under section 46 of the Act. Am I acting prematurely if I deal with this case now? Jimmy Puia Tepaika pleaded guilty on 27th October 2004 in the Honiara Magistrate Court to a number of charges laid against him by the Police. There were eleven counts of offences brought against him. The first count was possessing a firearm, contrary to section 5(2)(b)(ii) of the Firearms and Ammunition Act, (Cap.80), the second being four counts of going armed in the public, contrary to section 83 of the Penal Code Act (Cap.26) "the Code", two counts of preventing the transmission of a message, contrary to section 24 of the Telecommunications Act (Cap.115) and four counts of taking election boxes, contrary to regulation 50 of the Provincial Assemblies Election Regulations, 1986 as read with section 68 of the National Parliament (Electoral Provisions) Act (Cap. 87). Jimmy Puia Tepaika is a man of good character with no record of previous criminal convictions.

The orders of the Court.

The learned Magistrate deferred his sentencing for three months to take place on 1st February 2005. In the meantime, the learned Magistrate put Jimmy Puia Tepaika on a good behaviour bond in addition to undertaking community work. Such community work was to be a subject of an informal reporting to the Court for consideration when it passes sentence for the offences to which he had pleaded guilty.

The pre-sentencing orders of the Court.

The pre-sentencing orders of good behaviour bond and community service would appear to be the sentencing orders of the Magistrate Court in the normal circumstance. This is where the confusion lies in this case because to the layman, sentencing follows the guilty plea entered by the Court against the accused. That is, after the antecedents are given, mitigating factors follow after which the sentence is pronounced by the Court. There is no interim period under the law for pre-sentencing orders to be made to test the character of the convicted person for mitigation purposes for the purpose of sentencing at a later date.

The need for review.

The fact that this case came in for review from the Honiara Magistrate Court is an acknowledgement that there was a need for the review of the case at the relevant stage in this case. Lest this be not the case in this case in that the learned Magistrate did not send it for review voluntarily, section 47(4) of the Act does however provide for exceptions where the judge may act on his own motion or at the calling by petition of an interested party that the revision powers of the High Court be exercised at any time before the monthly list is due. The question I posed above on jurisdiction can therefore be answered in the affirmative in this case. That is, I can deal with this case under section 47 of the Act.

The Facts.

The Provincial Election Day for Rennell and Bellona Constituency was 5th December 2002. Bellona has four electoral wards being 7, 8, 9 and 10. Each of the wards on the election date had a polling station, a presiding officer and polling assistant. There was also an Assistant Returning Officer for the Renbel Province. Jimmy Puia Tapaika boarded a chartered Solair flight at Honiara for Bellona in the morning of the election date. He arrived at Bellona at about 8am that same morning. He carried with him a bag which contained a dismantled SR88 rifle and one magazine of live rounds all wrapped up with his clothes. He was then a Special Constable attached to the Rapid Response Unit based in Honiara. On arrival at Bellona, he went to his house where he assembled the parts of the SR88 and slung the assembled SR88 over his shoulder and directed Jeffery Taika to drive him to the first polling station being situated in ward 7. He entered the voting room and told those present that he was boycotting the election. He removed the ballot box and proceeded to ward 8. He did the same thing he did in ward 7 in ward 8. Then he went and removed the mouthpiece to the VHF radio at Ngongona village and then proceeded to ward 9. He did the same thing he did in wards 7 and 8 in ward 9. He also removed the mouthpiece to the VHF radio at Pauta village and then made his way to ward 10. He did the same thing he had

done in wards 7, 8 and 9 in ward 10. He then went to his house with four ballot boxes and two VHF radio mouthpieces. He later returned the boxes and the VHF radio mouthpieces.

Sentencing is yet to take place.

Clearly, the learned Magistrate will consider and pass the appropriate sentence on 1st February 2005 (though the court record shows 1st February 2004). I do not think I can interfere with that decision. However, the pre-sentence orders of good behaviour bond and community work made by the learned Magistrate do not seem to have any legal basis. I do not think section 33(1) of the Code applies to pre-sentence situations. I therefore order that the pre-sentence orders made by the learned Magistrate on 1st November 2004 be quashed forthwith and be set aside accordingly. The order to adjourn to pass sentence on 1st February 2005 is confirmed. I order accordingly.

**F.O. Kabui
Puisne Judge**