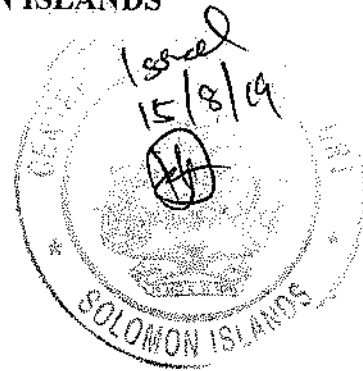


**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT TULAGI**

(Criminal Jurisdiction)

Criminal Case No 652 of 2019

REGINA



-v-

PATTERSON NGUSI

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr J. Saugaro and E. Kangea, for the Crown (CIP Police Prosecutions)

Mr F. Kama of Public Solicitors Office for the Defendant

Date: 17 July 2019.

Notice: *This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication.*

SENTENCE

1. The Defendant, Mr Patterson Ngusi, was charged with one count of Malicious Damage contrary to section 326(1) of the *Penal Code* [Cap 26].
2. On 16 July 2019, he pleaded guilty to the said charge and I record a conviction against his name based on the guilty plea entered.
3. The basic agreed facts can be summarized as follows. On or about 7th July 2013, between 11:00 and 12:00 in the afternoon, at Voloa village in the Central Islands Province, the offender did willfully and unlawfully damaged two wooden dugout canoes, which are the properties of Michael and Mary Kela. The defendant was under the influence of liquor when he committed the offence. He used an axe and used it to cut the two wooden canoes which were located at Voloa Village seafront. One of the wooden canoes was about three meters in length and approximately valued at SBD 600.00. The second canoe is about 4-5 meters long with a value of about SBD 800. The shorter canoe can be repaired while the longer one is beyond repair.
4. On 9th July 2013, the matter was reported to the police and an investigation was carried out.

5. On 13th August 2013, the defendant was charged with the above count. The offender was released on a principal bail of SBD 500 awaiting further court proceedings.

Discussion and Analysis

6. Section 326(1) of the *Penal Code* [Cap 26]¹ provides that:

Any person who willfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanor, and he shall be liable, if no other punishment is provided, to imprisonment of two years.

Aggravating factors:

7. The aggravating factors are as follows:

- 1) The use of an axe to destroy the two canoes, one of which was beyond repair.
- 2) The defendant was under the influence of alcohol
- 3) He destroyed not only one canoe, but two canoes simultaneously which is repeating the same offence at the same time.
- 4) The value of both canoes approximately exceeded SBD 1000 dollars.
- 5) The offence carries a maximum of two years which shows that this is quite a serious offence.

Mitigating Factors:

8. The mitigating factors are as follows:

- 1) He is a first-time offender.
- 2) He pleaded guilty to the offence at least on the first available opportunity.
- 3) He is the sole bread winner.
- 4) He has a family and children to look after.
- 5) He is remorseful and said sorry to the court.
- 6) He is an elder in the village.
- 7) The long period of time since 2013 before bringing the matter to finality which means it could be unfair to impose a heavy penalty against the offender.
- 8) He has reconciled with the victims.

9. This present case involves the damage of two canoes and one of the aggravating features is the use of a weapon that is an axe to destroy the canoes. The offender was under the influence of alcohol and he destroyed the canoes using an axe. The offender knew very well that what he did was wrong. The offence was committed in broad day light and some people might have seen him but that fact that he was in possession of an axe, means that the people or men were scared to even intervene and saved the canoes from being destroyed. In the rural setting and villages, a canoe is a means of transportation and a valuable property in Solomon Islands.

¹ *Penal Code* [Cap 26], s 326(1)

10. Having considered both the aggravating factors and the mitigating factors, I understand that the nature of the offence attracts a custodial sentence.²

11. Notwithstanding that supposition, section 24 (3) of the *Penal Code* [Cap 26]³ provides that:

A person liable to imprisonment for an offence may be sentenced to pay fine in addition to or instead of imprisonment.

12. I am satisfied that a penalty fine of SBD 3000 is appropriate for this case, and the offender is required to pay that amount instead of imprisonment. The amount of fine determined is to show the court's disapproval of such behaviors and to show the public that the court will not tolerate the damaging of properties of other people illegally by individuals. The protection of property is a fundamental right provided for by the *Constitution*⁴ and the penal provisions such as section 326 of the *Penal Code* [Cap 26] are basically to ensure that people who are willing to break the law are punished, and also to ensure our constitutional rights are always respected.

13. I hope this sentence will deter the offender not to reoffend in the future, and send a general deterrence message to the public. If people have problems, there are many avenues and forums such as the chiefs, community leaders, church organizations, and even the Police are available, where people can seek counselling and assistance from, rather than taking the law into their own hands.

14. The Orders of the Court are as follows:

- 1] **The offender is sentenced to a fine of SBD 3000.00 for the one count of malicious damage contrary to section 326(1) of the *Penal Code* [Cap 26],**
- 2] **The Offender shall pay that amount within two weeks from today, and in default of payment, he will be imprisoned for six months.**
- 3] **Right of Appeal within 14 days of this ruling.**

²I initially done my computation as follows: that the starting point of thirteen (13) months is appropriate. I deduct four (4) months for the early guilty plea which shows that he is remorseful. I also take into account the fact that he was a first-time offender, he had reconciled with the victim although it was not clear whether he had replaced the canoes and paid some form of compensation to the victims and deduct another two (2) months. I also take into account the passage of time since 2013 and deduct another one (1) month. Therefore, the total sentence should be six months imprisonment. It follows therefore, that I will not be able to invoke a suspended sentence because of the operation of section 44 (2) which provides that "...the provisions of subsection (1) of this section shall not apply where the offence involved the use or the illegal possession of a weapon."

³Section 23(3) of the *Penal Code* [Cap 26] empowers me to sentence a person to pay a fine instead of the imprisonment term which is quite different from a suspension of sentence under section 44(1) of the *Penal Code*.

⁴*Solomon Islands Constitution 1978.*

F. Hollison

PRINCIPAL MAGISTRATE FELIX HOLLISON

