

**IN THE CENTRAL MAGISTRATES' COURT  
OF SOLOMON ISLANDS**

CRIMINAL JURISDICTION

CMC-CRC No. 463 of 2019

**REGINA**

**V**

**TERERE AND TATA**

Date of Sentencing hearing: May 7, 2019

Date of Sentence (Ex tempore): May 7, 2019

*Constable Pitasua for Prosecution*

*Mr Dive, R. for the Defence*

**JUDGEMENT**

**INTRODUCTION**

1. The Accused persons Mr Joseph Tata Teingoa and Ms Terina Terere are charged with Illegal Sale of Liquor contrary to section 57(1) of the *Liquor Act* and section 21 of the *Penal Code*.

2. The particulars of the offences for both Accused persons are:

*"That Mr Joseph Tata Teingoa of Komaleai Village, at Honiara in the Guadalacanal Province on 23<sup>rd</sup> May 2019 between 8pm and 9pm together with Ms Terina Terere did sell liquor without holding a license authorizing the sale thereof."*

*"That Ms Terina Terere of Titiana Village, at Honiara in the Guadalacanal Province on 23<sup>rd</sup> May 2019 between 8pm and 9pm together with Mr Joseph Tata Teingoa of Komaleai Village did sell liquor without holding a license authorizing the sale thereof."*

3. Both Accused persons pleaded not guilty to the charges on 14<sup>th</sup> September 2019.

4. The Prosecutions alleged that a Police Informer saw Accused One (A1) who was Ms Terina Terere, sold some beers around 8pm on 23<sup>rd</sup> May 2019. Police was reported immediately and they arrived shortly. The person who bought the beer was still there with the beer that was bought. The Police asked that person about the beer which he said that he bought the beer from A1. A search was conducted which Police found and confiscated beers there. A1 admitted that she sold the beer for the Accused 2 (A2) who is Mr Joseph Tata.

5. In support of their case Prosecutions tendered three exhibits and called two witnesses:

PE1: Statement of Jerry Tabiru dated 12<sup>th</sup> September 2019  
 PE2: Record of Interview of Terina Terere dated 12<sup>th</sup> June 2019  
 PE3: Record of Interview of Joseph Tata Teingoa, undated  
 PW1: Police Constable Michael Koroa  
 PW2: Police Constable Jerel Raga

6. The Defence contended that the Accused persons did not sell any beer after 6pm and that they have a valid liquor license at the material time and have called witnesses and Exhibits as:

DW1: Noelyn Tatoataki Basiolo  
 DW2: A2 or the second Accused Joseph Tata Teingoa  
 DE1: Oba Bottleshop-B/Licence YR 2019 dated 26<sup>th</sup> February 2019.  
 DE2: Certificate of Incorporation of Oba Trading Limited dated 24<sup>th</sup> May 2017.

#### **ISSUES**

7. Given the contention by Defence, it is clear that the only issues to be determined are:
- i. Whether the Accused persons sold beer around 8pm.
  - ii. And if they do, whether they have valid liquor license to do that.

#### **BURDEN OF PROOF**

8. To prove the case is the Prosecution's onus. And this must be beyond reasonable doubt. The Defence does not have any duty to prove anything. If there is any reasonable doubt, the Accused persons must be acquitted.
9. However, the Accused persons has the onus to prove on the balance of probability that they have any liquor license as is required under section 89(1) of the *Liquor Act*.

#### **WHETHER THE ACCUSED PERSONS SOLD BEER AT AROUND 8PM.**

10. PW1 said in evidence in chief that on 23<sup>rd</sup> May 2019, he was in a police truck at the Honiara City Council Roundabout when they received a call from an Informant that a girl sold some beers at Oba. They attended to the report. The girl was described to be in a purple shirt and a man in stripe shirt with a black plastic. Arriving at the scene, they entered the oba premises and located the man and girl as described. They conducted a search and found some beers.
11. In cross examination, PW1 maintained his evidence and continued that it was not him that asked the girl. It was a colleague. That the other accused was called but no response. He

was just standing there when the conversation was happening. He also said that they confiscated 21 saratoga, 15 cans of blue canoe beer and 4 SB cans.

12. PW2 said they received a call that Oba was selling beer. They attended to it and saw a man with a black plastic with three beers in it. They searched the premises and found 2 cartons of beers with a bundle of black plastic bag beside it. And the girl said that the carton was theirs.
13. In cross examination PW2 said they received the call at HCC Roundabout. Their team leader Constable Jasper Bone received the call. It was 8pm. He was moved when asked about his police statement whereby he stated he resumed work at 8pm. It was inconsistent. With the difference, he chose the evidence in court as true. He cannot be in two locations at one time. The statement he wrote was proximately closer to when the incident occurred. The space in time from the incident to the trial was furtherer and the memory he recorded in his statement is closer to the incident and is more vivid than it was in trial.
14. With this, it then tests the evidence by PW1. Because PW2's evidence resembles to PW1's evidence.
15. This then brings PE2 and PE3 to be compared with. These two exhibits contain evidence of admissions by the Accused persons. PE1 corroborates PW1's evidence that she sold beer to Eddie. Three lager beers. This is consistent with PW2's evidence that the man who bought beer from A1 has three beers inside the plastic bag. A1 even admitted in PE2 to selling beer sometimes between 8pm and 9pm for A2 in that night. In PE3, A2 confirmed that he sold beer on that night between 8pm and 9pm.
16. Beer was sold by A1 for A2 at night between 8pm and 9pm. The probable time of transaction of between 8pm and 9pm means that the timing as referred to PW2 may not be accurate but the transaction did happen between 8pm and 9pm.
17. A2s evidence was that he was drinking beer with Edmond. Awaiting results of the HCC elections. And that they bought some beers after 5pm and started drinking until sometime after 7pm. They were drinking beer at the Oba residence behind the Oba commercial area of the building. When finished drinking, they left but police arrived and took Edmond and A1.
18. A2 also stated in PE3 that he sold beer that night between 8pm and 9pm. This was confirmed by PE2. As it is, I accept it that at the time he was drinking beer he also was selling beer that night.
19. PE2 confirmed that Edmond bought beer from A1. PW1 and PW2 confirmed the three beers consistently with PE2. I accept this evidence.

20. However, hearsay evidence as raised by Defence. That there were no exhibits of any beers and the information from the Informant was only hearsay. To make it worse, Edmond was not provided by the Prosecutions to testify or even charged.
21. The Defence had the opportunity to object in examination of evidence to all those hearsay evidence but left it to be admitted. Our *Evidence Act* has no specific provisions for this. Nor was there any of our local precedents. Thus I turn to common law. In the Victorian Court of Criminal Appeal of *R v Radford*<sup>1</sup>, evidence of hearsay when is not objected is said to be accepted by the party not objecting to it. Guided by that approach, the Defence have waived their right to refuse admission of the hearsay evidence. The hearsay evidence have been admitted through examination in chief, cross and re-examination. And those evidence are subject to the court to consider their natural probative effect. And I have done that already.
22. I am satisfied that PE2, PE3, PW1 are consistent with the sales of beer by A1 and A2 between 8pm and 9pm in that night of 23<sup>rd</sup> May 2019. That any inconsistency by PW2 was only peripheral to the timing of 8pm.

#### WHETHER THERE WAS A VALID LIQUOR LICENSE

23. The defence argued that the license was in the name of DW1 is part of the family business including A2. This was as per DE2 a certificate of Incorporation of Oba Trading. That the Oba bottle shop is a subsidiary whereby A2 works under DW1 as family under DE2.
24. A slight complication was that there was never any certificate of liquor licence issued.
25. In evidence, DE1 shows of Oba Bottle Shop payment of liquor licence on 26 February 2019 in the name of the Applicant Noelyn Tatoataki Basiolo who is also DW1.
26. A certificate to authorise the issue of liquor licenses was issued on 12<sup>th</sup> December 2018. The requirement under section 27(1) of the *Liquor Act* was that the fee must be paid after 28 days of the certificate.
27. However, the 28 days expired. And on 26<sup>th</sup> February 2019, the fee of \$8,000 was paid. Strictly section 28(1) will hold the certificate void. Because it was not paid within 28 days of the issuance of the certificate. Further section 28(2) allows for Provincial Secretary to allow out of time upon satisfaction of the circumstances for the Applicant to pay his or her fee. The only evidence was PE1 that there was acceptance by the Secretary Liquor Licensing Board that she has met all the requirements of license. With that I must say that the provision section 28(1) has been met by the Licensee DW1.

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<sup>1</sup> (1993) 66 A Crim R 210.

28. The Liquor licence was in the name of DW1.
29. A2 said in court that he did not have any liquor licence. The same was in PE3. Further, there was no evidence that A2 stated that he was selling beer at that night between 8pm and 9pm on 23<sup>rd</sup> May 2019 for DW1. He said he was selling for himself in order to make ends meet. For school fee. For his livelihood because he was unemployed. A1 confirmed selling for A2 in PE3.
30. Clearly, the Accused persons do not have any licenses to sell beer between 8pm and 9pm. The Accused persons failed to show to the court on the balance of probabilities they have licences to sell after 8pm.
31. I am satisfied that the Accused persons do not have any license to sell beer between 8pm and 9pm.
32. I am satisfied that Prosecutions have discharged the onus placed on them and I find the Accused persons guilty of selling liquor without licence and convict them.

#### **PROPERTY CONFISCATED DURING SEARCH**

33. I am compelled to review the evidence of the search of the premises. The law on this is section 9 (1) of the Constitution. It protects persons to be searched of their premises except with their consent. Subsection 2 allows for authorities to search a property upon an order of the court or enforcing of order and it also includes where it is justifiable of detecting an offending.
34. Section 15 of the *Criminal Procedure Code* allows Police to search where an offence is about to or is being committed. However, the person doing the search must explain to the person the reason for the search unless it is impracticable.
35. PW1 stated in evidence in chief that the A1 was asked if she was the girl who sold the beer and A1 answered yes. And they looked to see in an opening of a door they saw beers. And confiscated the beers. PW2 confirmed to this.
36. There was never any reason given to A1 about the search. It was not impracticable to ask. A1 was submissive. Oba residence was behind, A2 was outside. A simple enquiry with bystanders will point out A2 which Police then can ask. To invade without asking is wrong in law. Acting under reasonable suspicion must also comply with the rights of the Accuseds. That is, to explain their reasons for doing the search. The search within the building. Property of A2. No reasons for the search were heard during the evidence. Even if there was, it did not come out in evidence. Court relies on evidence. In absence of such, the search in the house is illegal. Thus, the beers confiscated by police is wrongly

confiscated and must be returned. The beers are 21 Saratogas, 15 cans of blue canoe beer and 4 SB cans. The Police should tell the Accused why they search that area. If not, they can obtain a search warrant to legalize their search.

### ORDERS OF THE COURT

- i. Find the Accused persons, Terina Terere and Joseph Tata Teingoa guilty and convict them of selling liquor without licence.
- ii. Order that 21 Saratoga, 15 cans of blue canoe beer and 4 SB cans confiscated on the night of 23<sup>rd</sup> May 2019 be returned before close of business of 3<sup>rd</sup> October 2019.



THE COURT

Ishmael Kekou – Magistrate First Class