

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

CRIMINAL JURISDICTION

CMC-CRC No. 340 of 2019

REGINA

V

STANLEY LULU

Date of Sentence hearing: July 18, 2019

Date of Sentence Ruling: July 19, 2019

*Police Constable Oneone for Prosecution
Manebosa for the Accused*

SENTENCE

Introduction

1. The Accused, Stanley LULU, appeared before the court with one count of Restriction on making Liquor contrary to section 50(2)(b) of the *Liquor Act*.
2. He pleaded guilty to the charge and I convict him accordingly.

Maximum Penalty

3. The maximum penalty of the offence is 30,000 penalty units as per the *Miscellaneous and Penalties Act 2009*.

Facts

4. Important to note in the facts are that, Police have information that sales of kwaso drinks were done around the Offender's residential area. At around 3am on 19th April 2019, the Police Liquor Squad did a search at the Offender's house and found 13 items counted as 54 altogether, as utensils and implements that were used to brew and distil kwaso drinks. The items were confiscated and the Offender apprehended. He voluntarily cooperated with Police and admitted to distilling kwaso to support his family.

Antecedents of Accused

5. The antecedents of the Offender are:
 - (a) He was 47 years old;

- (b) Married;
- (c) Has five children
- (d) No previous conviction

Court's discussion

6. After hearing from the submissions of the Prosecutions and from the Accused person, I adjudge the sentence as follows:

Aggravating Factors

- (a) Not only was the Offender in the possession of the implements and utensils, he also sells kwaso. Sales of Kwaso is considered serious. It is common knowledge, if I may say, that a lot of social problems come from kwaso. Health problems also. It is an unlawful drink that is bought illegally from illegal production.

Mitigating Factors

- (a) Took an early plea at the first opportunity. He was remorseful. It saves everyone's time and resources.
- (b) First time offender. That the Accused was a law abiding citizen until he was arrested.
- (c) Personal circumstances of a sole bread winner with five children. One child is still breast feeding. No previous conviction and he cooperated with Police. He is 47 years old and supports four of his children at school.

Court Sentence

The sentence to be imposed must be appropriate to the circumstances of this case.

The Offender has been brewing and distilling kwaso until he was caught by Police. He is a mature person of 47 years old and should have known better about Kwaso as an illegal trade and production. The Offender should know this well. Earning money to help a family from an illegal activity is no excuse. The obvious and right thing to do is to employ oneself in a legal activity and raise money. Breeding an illegal activity at home is just teaching the children at home to do the same. The effect takes itself to the consumers and to the community at large. What is worse is that the Offender is categorized as the factory, if I can put it that way. A factory supplies to the many consumers. Cut the factory, you cut the supply. Therefore, specific and general deterrence should be reflected in this sentence.

Palmer CJ in *Sisione v Regina*¹ had discussed that leniency would have been granted to offenders who would genuinely seek for permit from the Minister to carry out the activity, than those that knowingly and blatantly carry out illegal brewing for commercial gain. The Offender in this case falls in the latter category.

¹[2004] SBHC 69

I agree with Defence that in this type of offence and circumstances, this court should take an immediate imprisonment of 3-4 months or less with a fine as highlighted in *Sisione* case. Stiffer or longer sentence should be reserved for re-offenders.

I have considered the mitigating factors along with his personal circumstances. I wish to point out that he has a child who depended on the mother for breastfeeding. If the father is away in custody, the child can rely on the mother for breastfeed. But the father (Offender) should be in custody for a lesser time in order to come back and do his responsibility as a father to care for his children and wife. It is then that this court hopes he would have learnt his lesson and do legal activities to teach his children and live to the sweat of his brow lawfully. And also not to come back to the court for the same offending.

The Court therefore orders that:

- i. The Offender is sentenced to one and a half months ($1\frac{1}{2}$ months) imprisonment.
- ii. Right of Appeal to any aggrieved party within 14 days of this sentence judgement.

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THE COURT
Ishmael Kekou – Magistrate First Class

