

IN THE CENTRAL MAGISTRATES' COURT OF
SOLOMON ISLANDS



Criminal Jurisdiction

Criminal Case No. 568 of 2016

On the 23rd day of July 2019

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Allan Tinoni for the Accused,
Ms. Freliz Fakarii for the Crown at trial,
John Wesley Zoze for the Crown at the Sentencing hearing.

BETWEEN:	REGINA	Complainant
AND:	EDWARD PAOHAWE	Accused

SENTENCE

The Accused, Edward Paohawe has been convicted after trial on one count of Larceny and embezzlement by servant, contrary to section 273 (1) (a) of the Penal Code. He was found guilty on 11th June 2019.

The facts established at trial

The defendant was an employee of the body corporate, Bemobile Vodafone Company Limited at the material time. He was an employee of Bemobile Vodafone Company in the year 2013 and 2014. He worked in the IT Unit in the Bemobile Vodafone Company Ltd. He was the IT team leader at the material time and had access to the *Sysadmin* that is the Online Charging System (OCS) and the Electronic Voucher Distribution (EVD) systems used for top ups and sending of credits to customers. When Mr. Paohawe worked at the Bemobile Vodafone Company Ltd, his mobile work number was #8444557.

The Court found that the defendant, between 11 January 2013 and 4 July 2014, whilst being a servant of Bemobile Vodafone Company Ltd, did steal credit worth \$373,906.00 from the Bemobile Vodafone Company Limited when on numerous and on different occasions, he transferred the \$373,906.00 worth of credits to his mobile number - #8444557.

The credits were properties of BeMobile Co. and were credits that were not authorised to be sent to his number.

Aggravating factors

This offending is aggravated by a number of factors. One is the fact that the defendant has been doing the act for some time between 11 January 2013 and 4 July 2014. Although, he was only charged with one count, the conduct was repeated on a number of occasions.

It can also be assumed from the manner in which he had been engaging in this conduct (unauthorized transferring of credits to his mobile phone on numerous occasions) that his actions were premeditated.

Another factor that makes the offending serious is the value of the mobile credits he had stolen. The credits were worth \$373,906.00. That is substantial.

The other factor that makes the offending serious is the fact that the defendant has breached the trust of his employer - Be-Mobile Company Ltd. He not just an ordinary employee but was the IT Team leader at the material time. It can be safely assumed that the level of trust placed on him was significant therefore this Court consider this as a significant breach of trust by the defendant.

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This Court shared the remarks made in *Fiuadi v Reginam*¹ by Ward CJ as he then was when he said;

"Any offence of dishonesty is serious but, when it is committed by a person in a position of trust in breach of the trust placed in him, it is more serious.

An employee, by the nature of his employment, always has the opportunity to steal his employer's property. The public service and all commercial undertakings can only function properly if they can rely on the loyalty and honesty of the people they employ.

It must be clearly understood that in any offence where a breach of trust is involved a sentence of imprisonment will always be appropriate."

In light of those comments and the circumstances of this case, the defendant's case is of no exception, a custodial sentence, in my view is the appropriate form of sentence to be imposed in this case. This is also to deter the defendant and any likeminded employees of any employer or members of the public from committing similar offences in the future.

I noted from the cases referred to by the Crown at the sentencing hearing that the sentences seems to be increased with the amounts of money involved. I agree that the length of any custodial sentence to be imposed in this case must also reflect the amount involved.

Having taken into the aggravating factors in this case I am of the view that the appropriate starting point in this case is 3 years imprisonment.

Mitigating factors

I accept that the defendant was a man of good character before he was convicted on this offence.

I also, noted from a letter from the Director of the National Training Unit, that the defendant's government awarded scholarship has been revoked as a result of his conviction. That is a lost opportunity and the defendant himself must take the blame.

The sentence will certainly affect his family as they will miss the physical presence of their father and his support for some time. Again, he alone must be blamed.

To reflect the above mitigating factors, I will deduct 6 months from the head sentence above.

There is also a delay in disposing of this matter since he was charged in 2016. I will further deduct 6 months on the basis of delay.

The total effective sentence to be served is 2 years imprisonment.

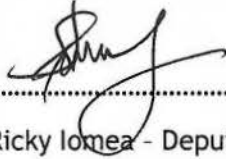
¹ [1989] SBHC 17; [1988-1989] SILR 150 (12 December 1989)

On the question whether to suspend the imprisonment sentence or not, there is no exceptional circumstances present, in the present case, warranting any order for partial or full suspension of the sentence.

The sentence to commence today.

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The Court,



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Ricky Iomea - Deputy Chief Magistrate

