

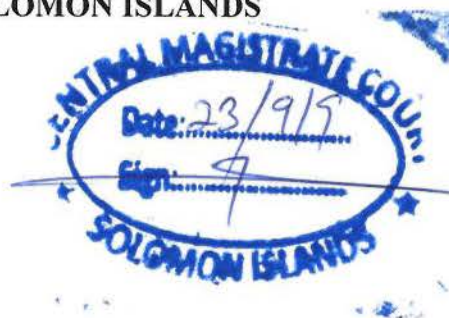
IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 1044 of 2018

REGINA



-V-

DICKSON IROFINAO

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr S. Tonowane for the Crown (DPP)

Mr R. D. Pulekera, Public Solicitors Office, for the Defendant

Date of hearing (Sentencing and mitigation): 11th September 2019

Date of Ruling on sentencing : 23rd September 2019.

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

SENTENCE

Introduction

1. The defendant, Mr Dickson Irofinao, was charged with one count of willful and unlawful damage contrary to section 326(1) of the *Penal Code* [Cap 26], and one count of Intimidation contrary to section 231(1) of the *Penal Code* [Cap 26].

2. On 9th July 2019, Mr Irofinao pleaded guilty to one count of willful and unlawful damage contrary to section 326(1) of the *Penal Code* [Cap 26], and one count of Intimidation contrary to section 231(1) of the *Penal Code* [Cap 26].
3. I now convict Mr Irofinao on both charges based on his guilty pleas.

Agreed Facts

Personal Details:

4. The Defendant's personal details are as follows:
 - 1) Mr Dickson Irofinao of Loina Village, North Malaita, Malaita Province.
 - 2) Mr Irofinao was born on 31st December 1986 and was 32 years at the time of the offending.
 - 3) Mr Irofinao was an employee of the Solomon Water as a Backhoe Excavator Operator.
5. The Facts for the Charge of Intimidation:
 - 1) On 11th October 2018, between 0800 hours to 13000 hours he called the Coral Sea reception desk three (3) times and swore at Caroline Tapidaka, the employees and their bosses.
 - 2) On or about 11th October 2018, around 1300hrs and 1400hrs, the defendant drove in a backhoe excavator and deliberately and recklessly speeds in the lobby of the Coral Sea Resort and scared the guests and workers there with the backhoe excavator.
 - 3) On or about 11th October 2018, between 13,000hours and 14000hours, the defendant threw a bucket filled with petrol in the reception area of Coral Sea Resort.
 - 4) The victims in this matter are: Kirten Laufilu, Carolyn Tapidaka, John Sango, Martin Lutia, Hendry Hero, Trazy Zapo, Deni Adita, Rhianny Hatamane, Samuel Koso and Jody Tununto which at all material times are the employees of Coral Sea Resort.
6. The Facts for the Charge of Willful and Unlawful Damages are as follows:
 - 1) On 11th October 2018, around 1300hrs and 1400hrs, the defendant drove in a backhoe excavator and deliberately and recklessly speeds in the lobby of the Coral Sea Resort and damaged properties with the backhoe excavator blade.
 - 2) The backhoe excavator belongs to Solomon Water with a Registration No. MB7115.
 - 3) The defendant damaged the following valuable property that belong to Coral Sea Resort:
 - i. The bi-folding doors
 - ii. The signage
 - iii. Ceiling Reception Counter
 - iv. Floor Colour
 - v. Flooring and timber around steel columns
7. The repair of the damaged property costs **SBD 277, 138.00.**

8. The defendant drove the backhoe excavator to the Central Police Station and handed himself to the Police on the same day of the incident.

DISCUSSION AND ANALYSIS

9. To begin with, some of the principles and main purposes of sentences, amongst others, are for punishment, deterrence and rehabilitation. In the case of *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017),¹ the Court of Appeal explains that the approach to sentencing should be as follows:

21. *A sentence should be crafted to attain the goals of punishment, deterrence and rehabilitation.*

22. *The starting point should be consideration of the facts of the offence and of the appropriate range of penalty for the offence constituted by those facts. Then any aggravating circumstances should be identified.*

23. *The sentencing judge's attention should then turn to facts relating to the offender – his antecedents (including personal circumstances and criminal history, if any) and mitigating factors such as youth, remorse, or plea of guilty (including the circumstances in which the plea was entered). Intoxication may be an explanation for an offender's conduct, but not an excuse for it: in other words, it should not be treated as a mitigating factor*

Count 1: Willful and Unlawful Damage

10. Section 326(1) of the *Penal Code* [Cap 26]² 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.

11. The maximum sentence for malicious and unlawful damage is two years.
12. In the present case, some of the notable facts in relation to the charge of willful and unlawful damage is the value of the properties which were destroyed was computed at **SBD 277, 138. 00**, and the use of an excavator machine, when used illegally, is a powerful, destructive and dangerous weapon.
13. It is a well-established principle in terms of sentencing that each case must be decided and determined on a case to case basis, and in accordance with their respective set of facts. In the case *Sahu v Regina* [2012] SBHC 122; HCSI-CRC 504 OF 2011 (3 October 2012)³, the Court said:

It is well accepted that the technique of comparing sentences imposed in different cases is of limited assistance and provides only imperfect guidance as to the appropriate sentence in any given case

¹ *Tii v Regina* [2017] SBCA 6; SICOA-CRAC 14 of 2016 (5 May 2017),

² *Penal Code* [Cap 26], s 326(1)

³ *Sahu v Regina* [2012] SBHC 122; HCSI-CRC 504 OF 2011 (3 October 2012)

Comparative Sentences

14. In the case of *Regina v Wanefalea* [1992] SBHC 62; HCSI-CRC 13 of 1992 (27 May 1992)⁴, the offender was sentenced for a number of offences including malicious damage. In that case, the offender plunged the knife into two fibre-glass canoes damaging them. He was sentenced to four months each for the two counts of malicious damage, which were served concurrently with the more serious charge of armed robbery for two and half years.
15. In the case of *Regina v Sukulu* [2017] SBMC 55; Criminal Case 873 of 2017 (30 October 2017)⁵, the offender was sentenced to four months imprisonment for wilful and malicious damage contrary to section 326(1) of the *Penal Code* [Cap 26]. The properties damaged were as follows: a 2 feet light valued \$250, 2 buckets valued \$156 and a wheel barrow valued \$450.
16. In the case of *Regina-v-Goro* [2016] SBMC 24; Criminal Case 1277 of 2015 (15 September 2016)⁶, the offender pleaded guilty to a number of offences including two counts of malicious damage contrary to section 326(1) of the *Penal Code*. He was sentenced for five (5) months each for the malicious damage. The offender in the *Goro case* actually pulled down the verandah and the walling of the victim's house.⁷
17. In the case *Regina-v-Junior* [2016] SBMC 23; Criminal Case No 1277 of 2015⁸; the defendant was charged with a number of offences including malicious damage. The damage committed in that case includes the damaging of three bulbs, he was sentenced to five (5) months imprisonment but the total sentence was higher because it combined with other serious offences.
18. In the case of *Regina v Alatala* [2017] SBMC 57; Criminal Case 777 of 2017 (16 November 2017)⁹, the offender was charged and found guilty of malicious damage including other offences. The offence involved the shooting and breaking of the back glass of a moving vehicle. The offender was sentenced to one (1) year or twelve months for malicious damage. The final sentence, however, combining other offences is two years and nine months.
19. In the case of *R v Homelo* [2019] SBMC 16; Criminal Case 85 of 2019 (25 March 2019)¹⁰, the offender was sentenced to eighteen months for damaging a Toyota Caldina especially the back-rear glass with a hard object.

⁴ *Regina v Wanefalea* [1992] SBHC 62; HCSI-CRC 13 of 1992 (27 May 1992)

⁵ *Regina v Sukulu* [2017] SBMC 55; Criminal Case 873 of 2017 (30 October 2017)

⁶ *Regina-v-Goro* [2016] SBMC 24; Criminal Case 1277 of 2015 (15 September 2016)

⁷ The Court in that case imposed a sentence of 2 years and 2 months which included other offences combined with the malicious damage.

⁸ *Regina-v-Junior* [2016] SBMC 23; Criminal Case No 1277 of 2015

⁹ *Regina v Alatala* [2017] SBMC 57; Criminal Case 777 of 2017 (16 November 2017),

¹⁰ *R v Homelo* [2019] SBMC 16; Criminal Case 85 of 2019 (25 March 2019),

20. In the case of *Ghele v Reginam* [2004] SBHC 38; HC-CRAC 169 of 2004 (6 May 2004)¹¹, the matter was appealed to the High Court on the basis that the total sentence of twelve (12) months imprisonment for malicious damage and three (3) months imprisonment for common assault imposed by the Principal Magistrate were manifestly excessive. However, his Lordship Judge Kabui, as he then was, disagreed and increased the sentence for malicious damage to eighteen (18) months whilst the sentence for common assault remained unchanged.
21. The sentences imposed so far in the superior courts and this court include the following: penalty fines, non-custodial sentences, and custodial sentences ranging from one month up to eighteen months. In many malicious damage cases, the value of the property damaged is one of the determining factors in sentencing.
22. Therefore, whatever sentence that will be imposed in this present case should be within the range of sentences imposed in the *Alatala, Homelo and Ghele's cases cited above* because in the present case the damage of the Resort's properties were valued at a staggering amount of **SBD 277, 138. 00**. The value of repair is arguably unprecedented in Solomon Islands, as far as the offence of malicious and willful damage, is concerned. In other words, this is one of the worst willful and malicious damage cases in the country.

Count 2: Intimidation contrary to Section 231 of the Penal Code [Cap 23]

23. Section 231(1) of the *Penal Code* [Cap 26] provides as follows:

231.-(1) Any person who intimidates or molests any other person shall be guilty of an offence and liable to imprisonment for three years.

24. The offence of intimidation carries a maximum penalty of three years.
25. In the present case, the deliberate and reckless driving of the backhoe excavator with speed to the lobby of the Coral Sea Resort caused considerable damages to the Coral Sea Resort. In addition, the throwing of a bucket filled with petrol in the reception area of Coral Sea Resort also caused fear amongst the employees and guests.

Comparative Sentences:

26. In the case of *Regina-v-Goro* [2016] SBMC 24; Criminal Case 1277 of 2015 (15 September 2016)¹². The accused was charged for a number of offences including intimidation. He was sentenced to seven months of imprisonment for intimidation and the total sentence is two years and 2 months.
27. In the case of *Kilatu v Regina* [2005] SBHC 118; HCSI-CAC 206 of 2004 (22 September 2005), the accused was charged with a number of offences including intimidation and other assault related offences. He was sentenced to six (6) months imprisonment for intimidation and upon appeal to the High Court the sentence for the intimidation remain intact but the total sentence imposed by the High Court is thirty months imprisonment for all the other offences.

¹¹ *Ghele v Reginam* [2004] SBHC 38; HC-CRAC 169 of 2004 (6 May 2004). The value of the damage is estimated to be \$38,750.00 in total and the 18 months imprisonment issued by Kabui J reflected that.

¹² *Regina-v-Goro* [2016] SBMC 24; Criminal Case 1277 of 2015 (15 September 2016)

28. In the case of *Regina v Ramosala* [2016] SBMC 8; Criminal Case 1297 of 2015 & 27 of 2016 (5 April 2016)¹³, the Defendant was sentenced to one (1) year imprisonment for intimidation and it was to run concurrently with the sentences for malicious damage and common assault.
29. In the case of *Regina v Ome* [2011] SBHC 109; HCSI-CRC 265 of 2006 (1 June 2011)¹⁴, His Lordship Chief Justice Palmer imposed a two year sentence respectively on the counts of intimidation against Mr. John Ome and David Suiti. Both men were also charged for arson and other offences respectively. Mr Ome received a total sentence of five years which include intimidation and other offences whilst Mr Suiti received a total sentence of four years.
30. In the case of *Regina v Gora* [2016] SBMC 18; Criminal Case 1456 of 2015 (25 July 2016)¹⁵, the defendant was charged with two counts of intimidation contrary to section 231(1) of the *Penal Code*, and one count of in possession of firearm contrary to section 5(2)(a) of the *Firearms Ammunition Act*. The Court imposed a 24 months' imprisonment term for the count of intimidation, and a total sentence of 30 months or 2 years and 6 months for both offences.
31. Hence, the sentencing tariff with respect to intimidation ranges from bound over, non-custodial sentences, custodial sentences ranging between one month and 24 months or 2 years.
32. I also note that it is an established rule when sentencing, that each case must be decided by its own facts or circumstances in the present case.

Aggravating Factors

33. The aggravating features are as follows:

- 1) The use of the excavator machine to damage the said properties at the Coral Sea Resort. In this case, the excavator machine was used as weapon.
- 2) He deliberately and recklessly drove into the lobby at a high speed which shows how arrogant and irresponsible he was.
- 3) The Coral Sea Resort is a tourism service provider and normally hosts both local and international guests. Such actions actually painted a bad picture with respect to our tourism industry. The guests were very much disturbed by this incident.
- 4) The defendant's attitude of damaging the tables and plates and throwing of the table using the back hoes in the presence of both customers, guests and employees who were there speak volumes of his stupidity, wild and careless attitude in its worst form.
- 5) The throwing of a bucket filled with petrol in the reception area of Coral Sea Resort. This suggested that the attack on the Resort is arguably premeditated.
- 6) The value of the properties damaged were so substantial and considerable. The repair of the damaged property costs the Coral Sea Resort a staggering amount SBD 277, 138.00. The valuable properties damaged were as follows:
 - i. The bi-folding doors;
 - ii. The signage;

¹³ *Regina v Ramosala* [2016] SBMC 8; Criminal Case 1297 of 2015 & 27 of 2016 (5 April 2016)

¹⁴ *Regina v Ome* [2011] SBHC 109; HCSI-CRC 265 of 2006 (1 June 2011)

¹⁵ *Regina v Gora* [2016] SBMC 18; Criminal Case 1456 of 2015 (25 July 2016)

- iii. The Reception counter
- iv. The floor Color
- v. Flooring and timber around steel columns.

Mitigating Factors

34. The mitigating factors in the present case are as follows:

- 1) Early guilty plea, which shows that the accused is remorseful and sorry for what he did. It also saves the court's time and resources in conducting a trial. He also apologized to the court through his lawyer.
- 2) Personal circumstances.
- 3) He cooperated with the Police.
- 4) He is a first time offender with no previous conviction.
- 5) Time spent in custody from the 13th -28 November 2018.
- 6) High chance of rehabilitation. Mr Irofinao is currently 32 years of age and has a good prospect of rehabilitation.

Starting Point and Sentencing

Count 1: Malicious and Unlawful Damage contrary to 326(1) of the Penal Code [Cap:26]

35. I will start with the count of malicious and unlawful damage. After having considered the personal circumstances of the offender, and the aggravating and the mitigating factors, it is my opinion that a starting point of twenty two (22) months is appropriate. I take into account the early guilty plea entered and deduct 4 months. I also note that he is a first time offender with no previous conviction, his personal circumstances, he cooperated well with the Police, and time spent in custody, and his chances of rehabilitation and I deduct another two months. This leaves the defendant with sixteen months. On the other hand, the value of the damage is so substantial and it cost around more than SBD 277,138.00, the use of the dangerous weapon, which in this case, the excavator machine, and the need to send a definite deterrence message to the members of the general public, and I add another two months. His Lordship Kabui J in the case of *Ghele v Reginam* [2004] SBHC 38; HC-CRAC 169 of 2004¹⁶, said as follows:

Whilst 12 months imprisonment for malicious damage is regarded by the appellant as excessive, I think otherwise in this case in terms of its deterrence purpose to bring the message home that property ought to be respected by all of us. In terms of section 293 (2) (a) of the Criminal Procedure Code Act (Cap. 7) "the CPC", this Court can quash the sentence passed by the Magistrate and replace it by either reducing it or increasing it with the sentence this court thinks appropriate in the circumstances of this case.

In the exercise of my power under section 293 (2) (a) of the CPC cited above, I quash the sentence of 12 months imprisonment on the count of malicious damage and substitute for it a sentence of 18 months imprisonment effective from 18th April 2004.

36. Hence, it is my considered view that eighteen months of imprisonment is appropriate for the count of malicious and unlawful damage caused to the properties owned by the Coral Sea Resort.

¹⁶ *Ghele v Reginam* [2004] SBHC 38; HC-CRAC 169 of 2004 (6 May 2004)

Count 2: Intimidation Contrary to Section 231 of the Penal Code [Cap 26]

37. In relation to the count of intimidation contrary to section 231(1) of the *Penal Code*. I have considered the circumstances of this case, both the aggravating and mitigating factors, and it is my opinion that a starting point of twenty six (26) months is appropriate. I take into account the early guilty plea, and I deduct 4 months for the early plea taken. I also take into account the fact that he is a first time offender, his personal circumstances, he cooperated well with the Police, time spent in custody and high chance of rehabilitation and I deduct another two months. This leaves the defendant with twenty (20) months. On the other hand, I take into account the aggravating features especially the use of the weapon, which is an excavator, the fact that he recklessly drove into the lobby at a high speed and destroyed the Coral Sea Resort's valuable properties. At the same time, he intimidated and almost injured the people at the Resort, through the use of the excavator and the throwing of the bucket of petrol. The need to send a strong deterrence warning to the members of the public is also important, and I add another four (4) months. Hence, I am of the opinion that twenty four (24) months of imprisonment is appropriate for the offence of intimidation in the present case.
38. I note that defence counsel submitted that the reason why Mr. Irofinao committed the offences, was out of anger stemmed from an alleged affair that his partner Ms Laufilu had with another man. Ms Laufilu was supposedly having an affair with a fellow male employee of the same resort. Counsel further submitted that Ms Laufilu is the wife of the defendant in custom, however, the Court is not provided as to the evidence substantiating the purported marriage. These facts should have been included in the agreed facts, but counsels have not done so, and I am mindful not to place too much weight to the other facts apart from what is contained in the agreed facts. In any event, relationship and matrimonial issues, are not legitimate justifications or does not confer the right to a person to destroy another person's property, and in this case, the Coral Sea Resort. The Resort is an innocent entity and has nothing to do with that purported adulterous marriage. It is blatantly stupid for a person to vent his anger by damaging other innocent people's property. Such people must be punished for their reckless and careless attitude.
39. After having considered both the aggravating and the mitigating factors, the submissions of the parties, and having done my own computation as illustrated above, I now sentence the defendant to eighteen (18) months and twenty four (24) months respectively for the two counts of offences he was charged with. The sentences should run concurrently as they arose out of the same transaction taking into account the totality principle.
40. Mr Pulekera of counsel for the defendant in his written submissions urged the court to consider suspending the sentences. Unfortunately, the use of the weapon is an aggravating factor and it warrants a custodial sentence. Section 44(2) of the *Penal Code* [Cap 26]¹⁷ provides as follows:

(2) The provisions of subsection (1) of this section shall not apply where the offence involved the use or the illegal possession of a weapon.

¹⁷ *Penal Code* [Cap 133], s44.

41. Section 44(2) of the *Penal Code* [Cap 26] is unequivocally clear, hence, I cannot suspend his respective sentences for the two counts in this matter because a weapon was used.¹⁸ In this present case, an excavator machine was used to destroy the properties of the Coral Sea Resort, and also to intimidate the workers and other people who were present at the Resort.
42. The right to protection of property is a constitutional right entrenched in the constitution.¹⁹ This means that, apart from any lawful process permitted by the Constitution, any pieces of legislation, law or the courts, there is no justification for a person to destroy another person's property. Property rights are fundamental rights, however, it appears that a good number of people in this country no longer respect or are simply ignorant of such rights; and a classic example is this present case.
43. The actions of the defendant brought disrepute to the country's struggling tourism industry as this case also attracted media attention since the commencement of the criminal proceeding. The investors who owned the Coral Sea Resort had to dig deep into their coffers for the repair of their damaged properties, and it shows to some extent that the economic climate here is not attractive and conducive for investors. That is to say that such absurd actions have adverse repercussions as to our country's reputation in the international stage for the purposes of investment.
44. In this case, Mr Irofinao had options to deal with or contain the alleged situation that he went through but certainly not in the manner that he reacted. People must always try to solve their problems amicably and peacefully rather than resorting to violence or taking the law into their own hands.
45. It must be noted that the trend with respect to the offence of willful and malicious damage, committed against other people's properties, is sadly increasing throughout many parts of the country, as far as my anecdotal observations are concerned²⁰. These observations are also true for the offence of intimidation. Such unlawful actions must be condemned by the Court. The Court through its sentences, such as in this case, must warn members of the public of the consequences of breaking the law with a strong message of deterrence and that is exactly what I am doing.
46. These sentences imposed should be a lesson for Mr Irofinao.

Orders

47. The Orders of the Court are as follows:

- 1] **The offender, Mr Dickson Irofinao, is sentenced to eighteen months (18) imprisonment for count 1, that is, malicious and willful damage contrary to section 326(1) of the *Penal Code* [Cap 26].**

¹⁸ *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011).

¹⁹ *Constitution 1978* (Solomon Islands), s 3-16, bill of rights.

²⁰ So far in all the court circuits this year that I attended in Tulagi, Yandina, Marau, Lata, and Buiala malicious damage cases were recorded. This is also the same for Honiara.

- 2] The offender, Mr Dickson Irofinao, is sentenced to twenty four (24) months imprisonment for count 2, that is, intimidation contrary to section 231(1) of the *Penal Code* [Cap 26].
- 3] These sentences enumerated in orders [1] and [2] are to be served concurrently taking into account the totality principle, and the resulting or total sentence is twenty (24) months or two years imprisonment.
- 4] Time spent in custody to be deducted accordingly.
- 5] Right of Appeal within 14 days.

