

**IN THE SOLOMON ISLANDS MAGISTRATES' COURT  
AT HONIARA**

Criminal Case Number 558 of 2019



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**REGINA**

**v.**

**DAVID IRO KONARE**

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Before Principal Magistrate Ms. Fatimah Taeburi  
Mr. Tex Riwa (PPS) for the Crown.  
Mr. Rodney Manebosa (PSO) for the defendant.

Date of Hearing: 30<sup>th</sup> October 2019

Date of Sentence: 31<sup>st</sup> October 2019

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**SENTENCE**

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1. You pleaded guilty to one count of larceny by servant contrary to section 273(a)(i) of the Penal Code.
2. It is agreed that you worked for the complainant as a shop keeper. On the 15<sup>th</sup> of July 2019, you accompanied the complainant in his vehicle. The complainant had a bag of money in the vehicle at the time. The total amount of money in the bag is \$29,560.00. At one point the complainant got out of the vehicle. You took the bag of money and ran away.
3. I convict you on these facts.
4. You stole from your employer thus there was a breach of trust. Clearly the complainant trusted you enough to leave you alone with his money inside the vehicle.
5. The amount of money you stole is substantial in my view. The police were only able to recover \$5,159.00 of

the total amount. It is quite shocking that you spent about \$24,000.00 within a day.

6. I consider the loss suffered by the complainant.
7. I find the following mitigating factors;
8. You pleaded guilty to the charge at a very early stage. You demonstrated remorse and save time and resources. You also made admissions to the police during the investigations of the matter.
9. You have no previous convictions.
10. You are a very young person of 20 or 21 years of age.
11. I agree with your lawyer that there is a higher possibility of rehabilitation with young offenders like you who have no previous convictions and accepts responsibility for the wrongs committed.
12. I find that there is no premeditation in this case. The opportunity to steal presents itself when the complainant left you alone in the vehicle.
13. I consider your personal circumstances.
14. The maximum penalty for the offence of larceny by servant is 14 years imprisonment.<sup>1</sup>
15. In considering the appropriate sentence, I find it useful to refer to the sentences imposed by our various courts in the same charge in the past.
16. In the case of *Fiuadi v Reginam* [1989] SBHC 17, the accused was stole a solar panel from his employer. He was sentenced to 9 months imprisonment in the Magistrate's Court. He appealed against his conviction and sentence. The High Court upheld the decision made in the lower court.<sup>2</sup>

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<sup>1</sup> Penal Code [Cap 26]

<sup>2</sup> *Fiuadi v Reginam* [1989] SBHC 17

17. I must repeat the remarks made by His Lordship Chief Justice Ward (as he was then). It was stated,

*The principle involved here is that the appellant, as an employee of the Marine Department, was in a position of trust. 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 this case the appellant was a man of previously good character and, in such circumstances, the courts should always move on to consider whether to suspend the sentence.*

*However, in cases of breach of trust, the deterrent aspect of the sentence is an important factor. The majority of honest employees who resist the temptation to steal their employer's property must see that those who succumb are punished. It is therefore only in the most exceptional circumstances that it would be appropriate to suspend a sentence of imprisonment imposed for larceny by servant.<sup>3</sup>*

18. I take note that the case of *Fiuadi* was decided about 30 years ago. Although the principles relevant to sentencing an accused person on the charge of larceny by servant remains the same though out time, in my view, the sentencing needs of the present society are not the same as they were 30 years ago.

19. With the increase in both the private and public sectors of the country and the prevalence of this type

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<sup>3</sup> Ibid

of offending in our society, the current need for general deterrence is more pressing compared to 30 years ago.

20. In the case of *Regina v Kobi*, the accused was employed as the salesman or a counter clerk of Bowmans Limited and was responsible for handling the company's finances.<sup>4</sup>
21. The factors that the court took into account when sentencing the defendant are; that he has no previous convictions; he committed the offences over a period of 2 ½ years; he stole a total sum of \$65,519.66; the repayment of the money was done at the personal expense of the accused; the young age of the accused and the personal circumstances of the accused. The accused was then sentenced to 2 ½ years imprisonment.<sup>5</sup>
22. I take note that the case of *Kobi* is more serious than the present one. In *Kobi*, there was a higher degree of trust, the amount stolen was larger and he stole from his employer several times over a period of time.
23. In this case, I am satisfied that the appropriate starting point is 9 months imprisonment. I take into account the aggravating factors and mitigating factors. In my view the appropriate sentence is 9 months imprisonment.
24. In my view there is no exceptional circumstance in this case therefore I will not order for a suspension of the imprisonment term.
25. The time spent in custody is taken into account.
26. Right of appeal within 14 days.

  
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Ms. Fatimah Taeburi  
Principal Magistrate



<sup>4</sup> *Regina v Kobi* [1995] SBHC 100

<sup>5</sup> *Ibid*