

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

Criminal Case No: 799 of 2020

In the Criminal Jurisdiction.

BETWEEN: HONIARA CITY COUNCIL

V

AND: GORETHY HA'APO'O

Mr Ambrose Motui for HCC Prosecution Unit

Accused self-represented.

Date of hearing: 10th of September 2020

Date of ruling: 16th of September 2020

RULING ON NO CASE TO ANSWER

Introduction

1. The Accused in this matter is Mrs Gorethy Ha'apo'o, she was charged for the offence of hawking in a public place without a hawker's license. On the 18th of August 2020, she entered a not guilty plea for the charge against her.
2. The court made directions for the matter to proceed into trial, hence the trial commenced on the 9th of September 2020. Prosecution made submissions in relation to their opening address and further informed the court, that they will be calling two witnesses. These witnesses were to give evidence to support the fact, that on the 13th of August 2020, the Accused, Mrs Gorethy Ha'apo'o was displaying betel nuts for sale to the general public, without a hawker's license.
3. The offence at hand, is contrary to section 3, as read with section 8 and 2 of the Honiara City Council Hawker's Ordinance. Section 3, 8 and 2 of the Honiara City Council Hawker's Ordinance reads as follows:

S3- No person shall, within the limits of the Honiara Town boundaries hawk any goods whatsoever, unless he shall have taken out and is in lawful possession of an unexpired hawker's license in his own name issued by the Council¹.

S2- To hawk means to carry for sale, barter, or exchange, any goods, and includes the act of selling or exposing for sale any of the aforesaid articles by an person at any place, in which

¹ Section 3 of the Honiara City Council Hawker's Ordinance

he does not usually reside or carry on business, but shall not include the seeking of orders for subsequent delivery from persons who are dealers therein and who buy to sell again².

S8- any person who contravenes or fails to comply with any of these by-laws shall be guilty of an offence and liable to a fine of 1,000 penalty units³.

Elements of the offence

4. In terms of the elements essential to the offence at hand, parties would agree to the following:
 - (a) There must be a Defendant;
 - (b) The date of the alleged offending;
 - (c) The place of the alleged offending;
 - (d) Carry about or display for sale; and without a hawker's license.
5. In order for the court to determine whether there is sufficient evidence against the Accused, the above elements must also be satisfied to the requisite standard.

Law on no case to answer

6. The law regarding a no case to answer in the Magistrate's Court, is section 197 of the Criminal Procedure Code. This section states as follows:

"If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit the accused"⁴.

Prosecution evidence

7. The first prosecution witness called, was Mr Michael Maomaiasi. Mr Maomaiasi states that he is employed by the Honiara City Council, as a Law Enforcement Officer. On the day in question, he was part of the group that carried out a high visibility patrol within the central business district (CBD) of the town. It was when they have reached the round about at Town Ground that he sighted a female sitting down with her betel nuts under the mango, next to the first entry /exist at Town Ground. I note how he has only been referring to the area in question, as Town Ground.
8. He further states that during the time in question, he was sitting in front of the vehicle they were travelling in. He further states, that when the female saw the vehicle they were travelling in, she quickly hid the plastic she was displaying, in her bag. He also states that when he saw her, she was handing or passing on an item to a person that was standing next to her. She tried to escape when she saw the vehicle but could not. As a result, she then acted as if she had not done anything.
9. Mr Maomaiasi stated that the woman he saw was a common vendor at the Town Ground area, and that he knew that her name is Gorethy. When he got off the vehicle and

² Section 2 of the Honiara City Council Hawker's Ordinance

³ Section 8 of the Honiara City Council Hawker's Ordinance

⁴ Section 197 of the Criminal Procedure Code of Solomon Islands

approached Gorethy, she told him that she was not selling betel nuts and that she was just eating. She even said that the plastic she was holding only contained the food she had been eating (fish and chips). At the same time, a cab driver told him that the woman identified as Gorethy, had just sold him betel nuts. When asked to accompany the law enforcement officers to give his statement, he refused and drove off.

10. Since Gorethy was a common vendor at the Town Ground area, and the fact that the cab driver had mentioned buying from her, she was then apprehended and taken to the law enforcement office at the Honiara City Council. At the law enforcement office, the items that were said to have been confiscated, were handed over to the investigation team.
11. The second witness called, was Mr Leizy Mesa. Mr Mesa stated that he is a law enforcement officer, employed by the Honiara City Council. On the 13th of August 2020, he was part of the group that were patrolling around the city boundary. When they went down to Town Ground, they saw the Accused. She was doing a transaction, which he described as passing a betel nut to a man standing next to her. When she saw the vehicle they were in, she took a plastic and put it in the black bag she was carrying.
12. When the vehicle had stopped, he accompanied another officer and together they went and approached the Accused. He further states that the Accused denied selling betel nut. He continued to state that he and the other officer have asked a cab driver to accompany them to give his statement, but he only stated that he had bought betel nuts from the Accused. Having said that, the he drove off in the cab he was driving. He also stated that when they saw her, there were about two people standing next to her, he guessed that they may have bought betel nuts from her as well.
13. He further states that the Accused strongly denied selling betel nuts but since she was a common vendor and that there were items in her possession, she was asked to accompany them back to their office.

Analysis

14. The case of **Regina v Lutu**, is the leading authority in this jurisdiction, parties would agree that the principles handed down in this case, have been widely used in this regard. In his ruling, Ward, CJ, as he was then, highlighted the following:
*"In this case I am the judge both of fact and law. As such my duty to decide whether a case has been made out sufficiently to require the accused to make a defence under section 196 goes further than that of a judge sitting with a jury"*⁵.

*"Thus if at the close of the prosecution case I, as judge of fact, do not feel that there is sufficient evidence even at that stage on which I could convict, I should stop the case"*⁶.

"I feel that the words in section 196 that where "it appears to the court that a case is not made out sufficiently to require (the accused) to make a defence" suggest that, where the

⁵ [1985/86] SILR 249

⁶ Above n 5

tribunal is judge of fact as well as law, it is entitled to consider the sufficiency of the evidence at the close of the prosecution case”⁷.

15. Parties would agree that the key word highlighted by Ward CJ, as he was then, and section 197 of the Criminal Procedure Code, is sufficient. The online **Cambridge Dictionary**, defines sufficient as: “*Enough for a particular purpose*”⁸. In the case of Regina v Luvana, His Worship, Principal Magistrate Augustine Aulanga referred to the Australian Modern Dictionary which defined the word sufficient as “enough”.

16. In his ruling on the case of *R v Maenadi Watson, Smith Pitapio, Youngston Watson & Saro Norman* Muria CJ, as he was then, stated the following to elaborate on the wordings of section 197:

“The starting point on the consideration of a no case to answer submission is section 197 Criminal Procedure Code”.

“That section is specifically worded to suit the circumstances of a criminal trial where there is no trial by jury. As such in Solomon Islands where a judge is both a judge of fact and law he is entitled to go beyond the mere consideration of evidence on the essential element of the offence as expressed in the English Practice Note [1962] 1 All ER 448 and referred to in Archbold Criminal Pleading Evidence and Practice, 38 Ed. para. 575 (a). A judge in a criminal trial in Solomon Islands is entitled to consider the sufficiency of the evidence at the close of the prosecution case in order to determine whether or not the accused has a case to answer”⁹.

17. The question I must determine in this regard, is whether or not, prosecutions has indeed adduced enough evidence, or has the evidence alluded to by prosecutions enough for the purpose at hand? Clearly and as highlighted in the case of **Lutu**, this is not the time to call out the discrepancies in the prosecution evidence, but one where the court is to rule on the sufficiency of the evidence given by prosecutions.

18. I acknowledge that there are two different sections applicable in the High Court and the Magistrates Court, when it comes to no case to answer applications. It is very important that these sections be differentiated, to avoid misconceived submissions, as put by Principal Magistrate Augustine Aulanga, in the case of **Regina v Luvana**¹⁰. In the High Court case of **Regina v Tara**, Palmer CJ states and I quote:

“Although the wordings of the relevant section in the CPC for a no case to answer in the High Court, section 269(1) is different from the wording used for the Magistrates Court (section 197), being “that a case is not made out against the accused person sufficiently to require him to make a defence” the essential requirements in my respectful view are basically the same. In the Magistrates court, the test to be applied is that there is either no evidence or insufficient evidence to prove the element of the charge. If the submission of ‘no case to answer’ is successful, the defendant will not be required to answer the charge or make a defence and shall be entitled to a finding of not guilty”¹¹.

⁷ Above n 5

⁸ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/sufficient>, 14th of September 2020.

⁹ (Unrep. Criminal Case No. 16 of 1997)

¹⁰ CMC-CRC NO: 173 of 2016

¹¹ [2005] SBHC 91

19. Coming back to the evidence adduced by prosecutions, I have noted how both witnesses have seem to fully rely on what they heard from the cab driver. Further to that, is the fact that both have claimed that the Accused, Mrs Gorethy Ha'apo'o is a common vendor at the Town Ground area. From the evidence given by both witnesses, I highly doubt that the Accused was selling betel nuts as alluded to by prosecutions. I say this on the basis that both witnesses have not provided me with enough evidence that could have convinced. Further to that, the actions of the law enforcement officers, on the day in question, were somewhat based on what they heard from someone else. Since prosecutions has not done its part in ensuring that a statement was obtained from the cab driver, I do not see why I should be relying on what he said. I will not accept what someone else has said to be used as prosecution evidence, especially when those giving evidence under oath only heard it and are not in the position to verify it. Clearly, this piece of evidence is indeed hearsay and therefore falls under the wordings of section 117 of the Evidence Act 2009.
20. The case of **Lutu**, clearly states that when there is so little or unconvincing evidence, the court should not require the accused to give evidence¹².
21. From the evidence given by prosecution, I am not of the view that they have provided sufficient evidence that is capable of supporting the conclusion that the Accused is indeed guilty of the offence at hand. I strongly believe, that even if prosecutions was to tender the betel nuts that were said to have been confiscated from the Accused, there will still be insufficient evidence since there was no independent witness, specifically those who may have bought betels nuts from the Accused, if she was indeed doing what she was charged for.
22. Hence it is with these findings that I strongly believe that prosecutions has failed to establish sufficient evidence that is capable of supporting a conclusion of guilt on the part of the Accused.
23. With this, I must stop the trial and hereby order that the Accused, Mrs Gorethy Ha'apo'o, be acquitted forthwith from the charge relating to hawking in a public place without a hawker's license.
24. The items confiscated during her arrested are to be forfeited and destroyed in a manner deemed appropriate.
25. Right of appeal applies within 14 days from today
26. Order accordingly.

Dated this 16th day of September 2020



¹² Above n 5