

IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS

CRIMINAL JURISDICTION

Criminal Case No. 471 of 2019



REGINA

v

DOROTHY MAELANGA

Date of Hearing: 28 April 2020

Date of Sentence: 5 May 2020

Mr. Iete Tebakota for the prosecution

Mr. Stephen Weago for the accused

SENTENCE

1. This is a sentence for the accused, Dorothy Maelanga, who pleaded guilty to stealing \$10,000 from her employer, Ms. Juan Li Jenny, as a retaliation for the bad, shameful and demeaning words uttered to her by her employer. \$8,000 of that money has already been recovered and taken by police but only \$6,000 was handed over to Juan. The accused admitted that she still held on to the balance of \$2,000 and never misappropriated it. The accused with the assistance of her lawyer had tried on four

occasions to return the money to Juan but were unsuccessful. Juan however preferred the Court to deal with the matter.

2. Faced with the background of the case, the question for the Court to decide is what would be the appropriate sentence for the accused.
3. This question will be answered in the sentencing remarks. At the outset, it is pertinent to set out the background and facts that gave rise to the offending.

Background of the case

4. The accused action is one of larceny by servant contrary to section 273 of the *Penal Code*. It is a felony and has 14 years maximum penalty. The detail circumstances regarding her offending has been set out clearly in the 'Memorandum of Summary of Facts' signed by both parties and presented by the prosecution on 28th April 2020. The accused had the opportunity to go through that document with counsel and has accepted the facts for purposes of the sentence.

Summary of the facts

5. In August 2018, the accused was employed to work in a Kaibar shop owned by South Sea Traders Limited Kaibar Company. In that shop, she sometimes worked as a waiter, or a cleaner or a cashier. On 4 June 2019, she was given \$10,000 by her employer, Ms. Juan Li Jenny, so that she would deposit it at the BSP Bank. She went and deposited the money, and returned to the shop with a deposit slip. She gave the deposit slip to Juan but instead, Juan accused her and said that she should deposit the money

in ANZ bank. Juan did this to the accused despite she had given her wrong instruction at the first place. She continued to utter bad and demeaning words to the accused and threatened to terminate her from work because of the wrong deposit of the money. She then asked her to go and withdraw that deposited money.

6. The accused went and withdrew the money. Because she was very embarrassed and ashamed by the utterance of the bad words, she took the money and escaped.
7. It was agreed by both parties that the amount of \$8,000 was seized and confiscated by the police when she was remanded at the Rove Correctional Centre. However, only \$6,000 was disclosed and given back by the police to Juan on 8 August 2019. By implication, \$2,000 of that confiscated money had gone missing while under the effective control and custody of the police.
8. The accused with the assistance of her lawyer had tried on four separate occasions to return the \$2,000 of the \$10,000 to Juan but she refused and preferred the Court to deal with the matter. Through her counsel, it was submitted that she still keep that money and it has never been misappropriated. She asked the Court for any sentence that should allow her or facilitate the return of the money to the complainant.

Parties' submissions

9. Counsel for the accused submitted that she did not plan the theft of the money, but only did so as retaliation or a momentary reaction to the bad and demeaning words uttered to her by Juan in the presence of others

inside their place of work the material time. It was not a planned and pre-meditated offending as suggested by the prosecution. Implicit from that line of submission, the defence argued that since the significant portion of that money was already recovered by police and that she had tried on few occasions to return remainder of the money to its owner but were unsuccessful, the Court should consider this case in that unique circumstance and impose a noncustodial sentence that would allow her to return the money to the complainant. This submission in effect calls for a compensation order under section 27 of the *Penal Code*.

10. The prosecution on the other hand did not nominate a custodial or noncustodial sentence. It only asked for a sentence that would uphold the public and personal deterrence. This submission unfortunately is not assisting the Court. It is vague and unhelpful, and leaves the Court in suspense in relation to the prosecution's suggested sentence for this case.

Breach of trust

11. Stealing by servant from the employer normally involves a breach of trust. That trust relationship arises from the employee and employer relationship and the expectation that an employee should perform the work with honesty and trustworthiness. That trust relationship continues unceasing until the end of the employment. So for example, if an employee is asked by the employer to do a certain task such as bank deposit, it is inherently expected that the employee is entrusted to honestly perform the assigned job. A failure to comply with the instruction amounts to the breach of that trust. However, as a matter of principle, the degree of the trust given to an employee can be varied according to the nature of the job. This is an important factor to distinguish so that cases

of employment in a position of financial trust are more seriously regarded than cases of employees who are not employed in that position but steal in the course of their employment.¹

12. It is well settled law in this jurisdiction that a custodial sentence is imminent for an offence that involves a breach of trust. For example, in *Fiuadi v R*² then CJ Ward said the following:

"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."*³

13. A similar sentiment was also expressed by the same judge in *DPP v Jones*⁴ in these terms:

"It is clearly necessary to pass immediate sentences of imprisonment in cases of breach of trust by employees...In offences such as these, the amount of money obtained is relevant in

¹ Regina v Pont [2000] NSWCCA 419 at paragraph 69

² [1988/89] SILR 150

³ At page 3 of the decision

⁴ [1990] SBHC; HC-CRC 037 of 1990

measuring the seriousness of the offence but the most important factor is the breach of trust.... The greater the responsibility of the position, the greater the betrayal of the trust when an offence is committed."⁵

14. In reaffirming the approach taken by CJ Ward in *Fiuadi*, Judge Apaniai (as he was then) in *Regina v Leua*⁶ also stressed that breach of trust is a serious matter and a custodial sentence is inevitable. In saying that, he echoed: "*The words of Ward CJ, in Fiuadi ring loud and clear and that a custodial sentence is inevitable*".⁷ Having said that, I must also state here that these cases do not make it mandatory that larceny by servant attracts an automatic imprisonment. This position is made clearer in *Fiuadi* where the Court explains that if the accused is a person of good character for larceny by servant cases, the Court should always move to consider whether to suspend a sentence.⁸ This category is not closed and the unique circumstances of the offending can also be a relevant factor for the imposition of a noncustodial sentence. For example, the higher the amount of money involved, the greater the penalty expected for the crime. This principle also operates the other way round. Further, it must be understood that there is this judicial discretion of the court to impose an appropriate sentence that fits the nature of the crime.

Aggravating and mitigating factors

⁵ At page 2 of the decision

⁶ [2012] SBHC 16

⁷ At page 3 of the decision.

⁸ See fn 1 at page 5

15. There are few factors of aggravation for this present case. The money and that is, \$10,000 taken by the accused from which \$2,000 still unrecovered is quite significant. At the very least, this has caused financial loss to Juan and also deprived her business from its intended use and benefit. The accused also breached the trust expected of her to withdraw the money so that she would give it to Juan. As the facts revealed, she was asked to withdraw the money and handed it to Juan. She failed to comply with what Juan had asked her to do. She instead took the money and escaped without Juan's consent. Her action amounts to the breach of the trust bestowed on her as an employee of Juan.

16. In her favour, I treat her as a first time offender and take into account her guilty plea. She is very cooperative with the police authority. The significant portion of the money was already recovered and restored to the owner and that only \$2,000 was still in her possession that she wanted to give it back to the owner on four occasions but were unsuccessful. This indicates her intention not to permanently deprived Juan from the use of the money. I understand that she could have handed it over to the police but since there was mishandling of the money by police that was why she preferred to personally give it to Juan. She is a family woman with 3 children. I accepted that she is a person of good character. This offending has been known by her previous co-workers and the public, and have brought shame on her and her family. I do not wish to prolong this humiliation further. Ordinarily people learn from their mistakes and the accused is no exception.

Comparative sentences

17. A number of case laws from this jurisdiction outlining the range of the sentence for guilty and contested cases for this offence has been referred to me by counsel for the accused. In my view, these cases reflected more serious culpabilities than the present case. Most of them involved sentences following a trial.⁹ I think for a non-contested matter, only comparative sentences following a guilty plea is relevant for consideration.
18. The case of *Kobi v Regina*¹⁰, is worthy of note. In that case, the accused was sentenced by the High Court to 2 ½ years imprisonment following a guilty plea for stealing \$65, 519.66 from Bowmans Ltd, being his employer. This case is more serious since the amount of money involved is very substantial than the present case.
19. In *Regina v Philip Onga*¹¹, the accused pleaded guilty at the Central Magistrate's Court for stealing \$65,000.00 from his employer – QQQ Holding Limited. The accused was the driver of QQQ and on the date of the offending, he was transporting two of his female colleagues to do bank deposit at the BSP Point Cruz branch. On their way to the bank, they stopped at a Lilly's Second Hand clothing shop for a brief shopping. They all went inside the shop and as his colleagues were busy looking for clothes, he sneaked out and silently returned to the vehicle. He quickly opened the door, opened the basket containing the money and escaped with \$65,000 cash. He was sentenced to 2 ½ years imprisonment to accord with the sentence reached in *Kobi*. Again this case is far more serious and the money involved is very substantial than the present case.

⁹ See pages 2-3 of the defence's written submission filed on 28/4/2020

¹⁰ [1995] SBHC 100

¹¹ CMC-CRC No. 407 of 2016

20. In the present case, although the amount of money involved was quite significant, the huge portion of it was already restored to the complainant. The accused upon realizing the unlawfulness of her action had also taken steps to return the money in her possession but were refused by the complainant. Whilst custodial sentences are normally to be imposed in circumstances such as the present, it is equally the duty of the Court to consider whether, in the circumstances of the case, some features of the case warrant a non-custodial sentence. The deprivation of liberty is always a serious matter especially for cases where the nature of the offending is not extremely serious and that significant portion of the money has been restored to the owner with indications of further restitution.
21. I understand the accused had committed the crime as retaliation for the bad and embarrassing words uttered to her in the presence of others by her employer. Her employer is of a foreign country and has graciously permitted by the authority to operate business here in Honiara. To treat local employees as mere objects by throwing at them bad, disrespectful, demeaning and shameful words is equally unacceptable. In some countries, this instance could result in a brutal or even fatal retaliation by disgruntled employees. I make these comments not to condone this offending but this incident could have been easily avoided if Juan had taken a sensible and appropriate approach towards the accused.
22. Despite that claimed grievance, the accused should know that the money did not belong to her and to take it home without the consent of her employer is a crime. Resorting to self-help or criminal means as a way of expressing frustrations against an employer is not the right way of dispute

resolution in the workplace environment. It is worthwhile to stress it here that people must learn to think first before doing actions because quite often it will lead to committing a crime.

Decision on sentence

23. So what would be the appropriate sentence for the accused? This is the main issue for determination in this case. A consideration of this question requires the Court to carefully consider and weigh the factors operating for and against the accused. Based on her guilty plea, I accept that Dorothy Maelanga has committed a serious offence of stealing from her employer as prohibited by the law of which custodial sentence can be expected. I also accept that her action towards her employer is deceitful and was fraudulently done. It amounts to a crime so to speak.
24. Stealing of money or anything from an employer is evil and punishable by the law. Common sense tells us that what you steal does not belong to you. Be it from a large corporation, a bank or a small grocery shop, it is simply a wrong and immoral thing to do. The property belongs to someone else and that should ring a bell not to take it without the consent of the owner. Those who steal are lazy and want to get quick money from the sweat of others through criminal means. It is described in one of the High Court cases as it "*stinks in the eyes of the community*".¹² I make this comments in obiter since theft related offences are common in Solomon Islands and therefore, there is a legitimate public expectation for the Court to denounce this offence with a deterrence sentence.

¹² See *Eapa v R* [2001] SBHC 77; HC-CRC 248 of 2001 at page 1 of the decision

25. But there is this cardinal principle in sentencing, alluded to in paragraph 14 above, that the Court normally would impose a sentence that fits well the nature of the crime. I accept the nature of this offence including the facts and unique circumstances of the case itself place this case at the lower end of the scale. Furthermore, the mitigating factors I outlined above have substantially mitigated the severity of the offence.
26. I have thoroughly and carefully considered the nature of this offending and it is my view that a custodial sentence of 12 months is appropriate. In light of her good character and coupled with the accepted fact that the significant portion of the money has already been restored to Juan and that she had made few attempts to give the balance of the money to Juan but were vigorously refused, I order that this sentence is to be fully suspended for 12 months on the condition that she will not commit any further offence during the operational period. The reason to suspend this sentence is that, I feel it is not right for the accused who is of good character to be held accountable with a goal sentence for an offence that she had easily admitted and had tried to vindicate it by making genuine attempts to return the stolen money, only to be refused by the complainant.
27. I feel that this sentence is still inadequate. Hence, pursuant to section 27 of the *Penal Code*, I order that in addition to this sentence, **the accused is to pay compensation in the sum of \$2,000 to Juan, payable within 3 days.** Consequent to this order, it is ordered that the accused is to be accompanied by the prosecutor in this matter for payment of that money to the complainant. If the accused breaches this order, she is to be arrested and brought to Court for further dealings.

28. 14 days right of appeal applies.
29. Order accordingly.



(Augustine Aulanga – Principal Magistrate)