

**IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS AT HONIARA)**
(Criminal Jurisdiction)



Criminal Case No. 611 of 2021

REGINA

-v-

NELSON MOFIN

Date of plea: September 14, 2021
Date of hearing: September 14, 2021
Date of sentence: September 21, 2021

Michael Maelanga for the Police Prosecution
Daniel Kwalai for the Defendant

SENTENCE

1. The defendant, Mr. Nelson Mofin is charged with an offence of Larceny by Servant contrary to section 273 (a) (i) of the Penal Code (Cap. 26). He was arraigned September 14, 2021, and pleaded guilty to the offence. Consequently, a criminal conviction was thereby entered. The matter return today for sentence, I shall now do so.
2. The brief summary of facts, produced by prosecution was agreed by Mr. Kwalai of counsel for the defendant, thus, the signing and tendering it in court. The facts reveal that on June 5, 2021, between 3:30pm to 4:00pm, at Pioneer Trading Company Limited Shop, Point Cruz. The victim was informed by one of their workers that their Mobile Top-up Agent monies was missing from the Mobile Top-up Agent cash tray.
3. The money was from customers who did mobile Top-Up during the day. This was discovered by one of the shop assistants, who was assigned to work with the defendant at the time of offence.
4. At this point, the shop assistant advised their CCTV operator to replay the footage for investigation purposes. It was after reviewing the CCTV footage that they identified the defendant as the person who took the Mobile Top-Up Agent monies. The defendant did it while his other colleagues were busy serving customers. The amount of monies were calculated around \$8,538.00.
5. The stolen amount of \$8,538.00 was never retrieved, and it was also unclear as to the way he spent the money. There had been an undeniable shortfall of cash for the Top-Up business on that date, which ultimately, a loss to the victim's business.

6. The offence of Larceny by Servant under s. 273 of the Penal Code (Cap. 26) carries a maximum penalty of 14 years imprisonment. The maximum penalty predominately illustrates the seriousness of the offence. However, the maximum term is always reserved for the worst or extreme type of offending¹. It is the sentencing norm that, cases are judged on their own set of facts. Previous cases of similar nature, with the maximum penalty and individual facts are used in establishing the sentencing yardstick.
7. After having gleaned from the facts herein, the following stood out as aggravating factors. First, the breach of trust. He worked as a shop assistant, and at that time tasked to administer the mobile Top-Up and the monies collected from customers for that purpose. He had taken advantage of his position to steal from his employer. I accept that there was some degree of trust placed on him by his employer and other employees, albeit distinguishable to the level of trust placed on the defendant in *R v Leua*² ("*Leua*"). Second, there was some level of planning. The audacious act to do the removing of money in front of the others while they were busy serving other customers only demonstrates some degree of organization. Finally, the money was used to his own gain, and the amount was never recovered. He took off with the \$8,538.00 and squandered it.
8. Apart from his early guilty plea. He is a first-offender with a clean slate of criminal history, this is his first-encounter with the law. He has cooperated well with the police during investigation, and in court to progress his matter as well. He is a youth in his early 20's and has a lot to experience and explore in life.
9. The important sentencing guidelines set in the English case of *R v Barrick*³, which was also adopted and referred to by Palmer CJ in *R v Kobi* ("*Kobi*") and *R v Leua* ("*Leua*") must be applied in this present case. The criteria are, first, he referred to the quality and degree of trust reposed in the offender, including his rank. Second, the period over which the offence has been carried out. Third, the use to which the money was put. In addition, there are other factors relating to effect on fellow employees and the public confidence, which has been taken into account.
10. In applying each criterion to the particulars of facts herein, I will address them as stated above. First, there was some degree of trust reposed in the defendant, considering the fact that he was tasked with administering the top-up, and funds collected. Second, it is undisputed that he did this on a single incident, and not over a chain of events. Third, the facts is unclear as to how, when and where he disposed the stolen monies. However, it is irrefutable that the stolen monies had been used for his personal gain. For the remaining factors, it was unclear from facts and submissions, as to the effect on fellow employees. Regarding the impact it would have on the public confidence, I agree it would be minimal.

¹ See for example *R v Saungao* CRC No. 30 of 1995

² [2012] SBHC 16; HCSI-CRC 105 of 2011 (22 February 2012)

³ CRC No. 006 of 1995

11. To establish the sentencing yardstick for this case, I shall now consider the previous case authorities of similar nature. I was referred to numerous cases by counsel for the defendant, which I am grateful for the assistance. However, most of them are serious and involved large sums of money.
12. In *Fiuadi v Reginam*⁴ (“*Fiuadi*”), the facts were that, the Appellant was employed by Marine Division as an engineer. He was seen on the roof of the Marine Office on one Saturday evening removing a solar panel. And on inspection, it was found that the electric cables had been cut. He argued that he made the cutting to pass a message to the bosses that members of Seaman’s Association had a grievance. The value of the solar panel had not been indicated. The trial court found him guilty after trial and he was sentenced to 9 months’ imprisonment. The Appellant appealed against the conviction and sentence, but his appeal was dismissed.
13. In another case of *Regina v Leua*⁵ (“*Leua*”), the facts were that, the defendant was a Principal Magistrate during the time of offending and was charged with 6 counts of larceny by servant. In that case, the defendant was alleged to have stolen \$5,750. The money stolen were fines obtained during Courts circuits in 2008 and 2010 respectively. He was found guilty after trial in High Court and sentenced 6 months’ imprisonment to be served concurrently to his other counts.
14. In the case of *Tioti v R*⁶ (“*Tioti*”), the defendant was convicted after trial of the offence of larceny by a servant. The amount involved was \$2,000. The defendant was sentenced to 5 months imprisonment.
15. In a recent case of *R v Kilatu*⁷ (“*Kilatu*”), the facts were that, the defendant was employed as a bar supervisor for heritage park hotel. It became known on January 29, 2021, that the defendant had removed bottles and cans of Solbrew and Canoe beer from the fridge, and had replaced them with empty bottles and cans. The defendant was revealed as the perpetrator after an investigation was carried out by the Chief Security and with the assistance of the CCTV footages. The defendant did the offence over period of two months, from November 2020 to January 2021. The value of properties were calculated around \$2,600. He pleaded guilty to the offence and was sentenced to 3 months’ imprisonment.
16. Having considered the above case authorities and distinguishing their facts to the one at hand, it would be appropriate to say that, this case herein is more akin to the one of *Tioti*, and *Kilatu*. Its facts are more similar, although the difference of the value stolen. In *Tioti*, the defendant was sentenced to 5 months’ imprisonment, after trial, as oppose to *Kilatu*, in which the sentence of 3 months imprisonment was achieved after a guilty plea.

⁴ [1989] SBHC 17; [1988-1989] SILR 150 (12 December 1989)

⁵ [2012] SBHC 16; HCSI-CRC 105 of 2011 (22 February 2012)

⁶ [1999] SBHC 96

⁷ SBMC Criminal Case 217 of 2021

Therefore, I fix the starting point for this case at 8 months imprisonment. A further 4 months' is added to reflect the aggravating factors. In total, a head sentence of 12 months imprisonment is reached.

17. I shall now proceed to address each mitigating factors and deduct the head sentence accordingly. First, a 3 months is deducted from the head sentence to reflect the early guilty plea, and genuine contrition demonstrated. Second, a further 3 months is deducted to consider him being a first-offender, and cooperation with the police during arrest. Therefore, the defendant is hereby sentenced to 6 months imprisonment.
18. The defendant through counsel has asked the court to consider his tough chance of securing a job once released from custody, and his restorative process after serving his imprisonment term. I accept that this is an important factor which I must not shun. Therefore, I shall further deduct a month from the 6 months imprisonment, to consider the principle of totality and to avoid any conceivable crushing effect on him.
19. I trust that this sentence should serve the defendant a strong message, to never allow the 'love for money' to dictate him, and to avoid any form of stealing in the future; either from employer, other employees, or from any individual. Stealing has no justification in law.
20. For what good would a man benefit himself by taking from another, and causing the other loss, pain and sorrow? Stealing would only lead one to come before the Courts and Correctional Centre. It is time that the defendant put his hands to good use, instead of succumbing to things that would damage his future self.
21. The defendant is a young person, and change is still available for him. But, that's a choice for him to make. I urge him to make a change for good.
22. Mr. Kwalai of counsel have submitted that any sentence imposed by this court be partially suspended. However, the basis for which was unclear. Thus, I will simply put that application aside, as it has no basis or authority to persuade the court to invoke s. 44 of the Penal Code (Cap. 26). Therefore the defendant will serve the 5 months in prison.

Sentence orders

1. I hereby sentenced the defendant, Mr. Nelson Mofin to 5 months imprisonment.
2. Sentence to commence from date of first remand.
3. Conviction is entered.
4. 14 days right of appeal is applied.

5. Order accordingly.

THE COURT



MR. LEONARD B. CHITE
Principal Magistrate
Central Magistrates' Court

