



**IN THE CENTRAL DISTRICT MAGISTRATE'S COURT  
OF SOLOMON ISLANDS – AT HONIARA**

Criminal Jurisdiction

Criminal Case No.: 235/2022

On the 29<sup>th</sup> day of August 2022.

For Prosecution: Mr. Taupongi

For the Accused: Mr. Apaniai

**BETWEEN:            REGINA                            Complainant**  
**AND:                 ELLISON GITO BAKO                    Accused**

**SENTENCE**

**Introduction**

The Accused has been charged with the offence of failure to submit a statement of accounts specifying expenses incurred during his election campaign. This is contrary to section 125 (2) of the Electoral Act as read with section 69 (1) (a), (b) of the Electoral Act 2018. He pleaded guilty to the charge on 17 August 2022.

The maximum penalty for this offence is;

- (a) 20,000 penalty units or 2 years imprisonment, or both; and
- (b) 100 penalty units for each day the offence continues.

**The Agreed facts**

The Accused is Ellison Gito Bako ("the Accused") of Sepi village, Isabel Province and is the founder and Pastor of Kingdom Harvest Church located at Henderson, Central Guadalcanal.

The Complainant is the Solomon Islands Electoral Commission ("the Complainant").

The Accused was registered as a member of the National Transformation Party of Solomon Islands. He was endorsed by the Party as a candidate to contest the National General Election ("the NGE") in 2019.

On 3 April 2019, the NGE was held. The defendant was a candidate for East Honiara Constituency in the NGE.

On 19 April 2019, the Solomon Islands Electoral Commission ("the Commission") published the NGE results. The defendant came second following the results and eventually lost the election.

A requirement under section 69 of the Electoral Act 2018 is for candidates to submit a statement of account specifying all expenses incurred during the election campaign. The statement must be delivered within 90 days after the declaration of the NGE results. The 90 days period started on 19 April 2019 and ended on 20 July 2019.

During this period, the complainant broadcasted service messages on the local radio station Solomon Islands Broadcasting Cooperation (SIBC), published articles in the local newspapers (Solomon Star & Island Sun), and posted on its social media page to inform and remind candidates to collect the appropriate forms at the SIEC office or via email and fill them out.

The defendant did not submit his report to the Commission until 20 July 2019 (the date where the 90 days period lapsed).

After the 90 days lapsed, the defendant did not file and submit his statement of account on the expenses during the election period to the Chief Electoral Officer (CEO) of the Commission up until he was formally charged.

The former CEO of the Commission Mr Mosé Saitala wrote to the former Police Commissioner and provided a list of candidates who failed to comply with the requirements. The list of candidates was recorded by the Commission and referred to the police for further dealings. Among the candidates, the CEO confirmed that the defendant was one of them.

Consequently, the defendant was charged with one count under section 125 (2) of the Electoral Act as read with section 69 (1) (a), (b) of the Electoral Act 2018.

#### **Mitigation**

The Accused has pleaded guilty to the offence at the earliest opportunity and therefore saved the Court's time and resources. The plea also indicates remorse on the part of the Accused. I must give him credit for the plea.

The Accused is a first time offender. This is the first time that he finds himself in conflict with the law. To this he maintains that that is unintentional.

In support of his mitigation, the Accused filed Sworn Statements from Pastor John Subu and Pastor Geoffrey Alacky. They have testified to the character of the Accused and the kind of person he is.

Archbishop Chris Cardone of the Catholic Church, also provided a support note as part of mitigation and testified to the character of the Accused. He stated that the Accused is not the kind of person who would intentionally break the law.

I note from the Accused's Sworn Statement that he is a person who preaches the word of God to the nation over SIBC as well as to Government Departments and bodies.

Counsel for the Accused submitted in mitigation that the offence was the result of an honest mistake on the part of the accused and those wanted him to comply with the law. It is submitted that it was not a case where the accused did not fill-in a form or did not file a form as required by law. They submitted that it was simply a case where the accused did fill-in a form and file the form, but it was the wrong form and the form was filed with the wrong authority - that is the Political Party Commission. Counsel submitted that the offence was not intentional and submitted that the Sworn Statements by the accused, Grace Leah and Dr. Derek Mane have testified to this fact.

#### **Features of aggravation**

The only feature that aggravates this offending is that despite the reminders sent by the SIEC through radio, print and social media, the Accused was not prudent in ensuring that the appropriate forms are filled and a report is submitted at the Electoral Commission's office.

I believe that the Accused was fully aware that when he made the decision to engage in the election campaign as a candidate, there are legal requirements that must be satisfied before, during and even immediately after election. This is one of such requirements. Because of such legally imposed obligation on the Accused as a candidate, he should remain vigilant that he fulfil this legal requirement under the Electoral Act 2018. Over-trusting others to do things on one's behalf without monitoring or questioning them can result in situations that may not be desirable to oneself such as what happened on this instant.

#### Submissions on sentence by parties.

The Prosecution submitted that the Court should consider the circumstances of the case and the principles of general and specific deterrence when deciding the sentence to be imposed in this case.

Counsel for the accused however, submitted that this is a case befitting for the exercise of the Court's discretion in discharging the accused without punishment pursuant to section 35 of the *Penal Code* based on accused's good character, the extenuating circumstances - unintentional commission of the offence and the plea of guilty entered.

Section 35 of the *Penal Code* states;

*"Where, in any trial, the court thinks that the charge against the accused person is proved but is of opinion that, having regard to the character, antecedents, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is not expedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge either absolutely or conditionally."*

#### Conclusion

The status of a person in society should not determine the level of treatment that he or she should be accorded under the law. I am mindful of the statement echoed in the English case of *Millberry v R*<sup>1</sup> where the Court stated;

*"... the defendant's good character, although it should not be ignored, does not justify a substantial reduction of what would otherwise be the appropriate sentence"*.

I have no doubt that the penalty prescribed for this offence aims to deter non-compliance with this particular requirement under the Electoral Act 2018. This is a new piece of legislation and the Accused and others are the first to be prosecuted under this law. Because of this, there is no comparative cases available against which to see what form of sentence is applicable and what length of imprisonment or amount of monetary fine to be imposed in this case. Subsequently, there is nothing to suggest that non-compliance with this requirement by past

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<sup>1</sup> [2002] EWCA Crim 2891 (09 December 2002), [2003] 1 Cr App R 25, [2003] 1 Cr App R(5) 396, [2003] 1 Cr App Rep 25.

election candidates is prevalent and thus, the principle of deterrence although, must be considered, may not really have a significant influence on the subsequent outcome of this case.

In the present case, the good character of the accused, although part of the equation in this consideration, does not weigh heavily on the final order in this case. The extenuating circumstances in which the offence was committed, in particular, the fact that the wrong form was filled –in and submitted with the wrong authority, has weighed heavily towards exercising the Court’s discretion under section 35 of the *Penal Code*.

Having been served with the Sworn Statements by the Defence, the Crown had not made any attempt to contest, test or rebut the evidence filed by the Accused that the report was in fact filed with the Political Party Commission rather than the Solomon Islands Electoral Commission. Therefore, the evidence remains as per the Sworn Statement of the accused, Grace Leah and Dr. Derek Mane that the wrong form was filled and submitted at the Political Party Commission. In the absence of any evidence in the contrary, that is a fact I accept on the evidence before this Court.

Whilst the Court is satisfied that the offence has been proved by the guilty plea entered, having regard to the character of the accused but more significantly, to the extenuating circumstances in which the offence was committed, I am of the view that, it is not expedient to inflict punishment in this case and therefore; no conviction is recorded. The charge is therefore dismissed absolutely.

