

**IN THE CENTRAL MAGISTRATE'S COURT)
OF SOLOMON ISLANDS)**

(Criminal Jurisdiction)



Criminal Case No. 573 of 2023

**REGINA
-v-
KWADI MILTON**

Prosecution: Mr. Iete Tebakota.

Defence: Accused in person

Plea date: 9th October 2023

Submissions date: 13th October 2023

Sentence: 19th October 2023

SENTENCE

Introduction.

1. The defendant Mr, Milton Kwadi, you were charged with one count of liquor for sale without licence contrary to section 59 (2) (a) of the Liquor Act [cap 144]¹.
2. On 9th October 2023, you pleaded to the charge and matter was adjourned to 13th October 2023 for sentencing and mitigating submissions where prosecution further made application to forfeit to the state the confiscated items.
3. I have had the privilege to peruse the facts and I am satisfied beyond reasonable doubt that you committed this offence. Hence, I now hereby enter criminal conviction against you.
4. Today I will now hand down your sentence.

¹ Section 59 (2) (a) of Liquor Act (cap 144)

Agreed Facts

5. The agreed facts, which was read out in court and signed, by both Prosecutor and you showed that on 23rd of September 2023 around 20:45pm, Police operation team at Central Police station executed a search warrant at your residence at Lemon Area, Borderline, East Honiara.
6. Search was based on information supplied to and gathered by police revealing that you were selling liquor in your shop/canteen without a liquor license.
7. At your residence, the Police officer approached you, explained the contents and purpose of the search warrant to you, and served you a copy. Upon search defendant's shop/canteen the police discovered, seized and confiscated the following beers;
 1. 7 Carton of Saratoga Lager beers.
 2. 2 cartons of Sara Gold beers.
8. These beers were exposed for sale.
9. On 25th September 2023, you participated in the record of interview at Central Police Liquor Office and you made admissions to the allegation of exposing liquor for sale without license laid against you. Because of his admission to the commission of the offence, you were then charged with one count liquor for sale without license contrary to section 59(2)(a) of Liquor Act [cap 144] by which you have pleaded guilty to on 9th October 2023.

Maximum penalty

10. Section 59(2)(a) of the Liquor Act states:

(2) Any person carrying about, offering or exposing for sale any liquor without a license shall be guilty of an offence and shall be liable

a) for a first offence to a fine of two hundred dollars²,

10. However in accordance with Penalties Miscellaneous Amendment Act 2009³ the \$200 maximum penalty has now increased to 1500 penalty units, which is equivalent to \$1500 SBD. Hence, the maximum penalty this offence carries is \$1500.00

Analysis.

11. Illegal sale of liquor is one of the prevalent offences not only in Honiara but also in the provinces. Some people have genuine reasons for involving in such quick cash activity as a means for survival in a society where there is inflation and high rate of unemployment. However, as genuine your reason might be, I must remind you that there are other options available for survival, which are legal and proper. In the case of *Regina v Brown Talui criminal case No: 351 of 2020*⁴ where defendant was also charged with the same offence, the Presiding Magistrate in his sentencing remarks stated and I quote, “there are many options available in life in terms of earning an income but not through illegal means such as in this present case⁵”.

12. I note from your mitigation that you are unemployed and relied on your canteen for survival. Unfortunately, this is no excuse for you to involve yourself in such unlawful activity. You have done the right thing by selling other goods in your canteen as a means of survival but your choice to offer or expose liquor without license is unlawful. It is a breach of the Liquor Act of Solomon islands.

² Above n1.

³ Penalties Miscellaneous Amendment Act 2009

⁴ *Regina v Brown Talui criminal case No: 351 of 2020*

⁵ Above n4

13. I further note from facts that your canteen is in a residential area which in my view is not a right place to sell liquor and to make it worse you have no license to do so. This type of illegal activity is also a contributing factor for the continuous common nuisance in residential areas. Hence, this court must and will always take its stance to put a stop to such illegal activities.

14. Not only do such illegal activities encourage nuisance in residential areas but you also deliberately deprived Honiara City Council and the Government on taxes and revenues accordingly. At this point, there is nothing else to say but to punish you accordingly.

Aggravating factors

15. The court took into consideration the following aggravating factors;

- i. The maximum penalty of the offence itself is a reflection of the seriousness of the offence. Before the Penalties Miscellaneous amendment Act 2009, penalty was only \$200 for first instance, however it has now increased to \$1500.00 or penalty units. In *Regina v Kemakeza*⁶ at paragraph 19, CJ Palmer stated and I quote: "*the level of the seriousness of offences is reflected on a prima facie basis by what the law imposes as the maximum penalty. The more serious an offence the greater the maximum penalty imposed*".⁷ This shows the level of seriousness of offending and the seriousness need to deter you from committing such offence again.
- ii. Defendant's ignorance of the law. You were exposing for sale liquor without license in a residential area. You were engaging in illegal activity by not complying with the necessary requirements of the Liquor Act. It is common knowledge for most Solomon Islanders that activity such as carrying about, offering or exposing for sale without license is illegal. Yet you ignored the law.

⁶ *Regina v Kemakeza* [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

⁷ Above n6

16. Sale or offering to sale liquor in a residential area can also be seen as an aggravating factor. Especially when you are offering and exposing for sale in a residential area as opposed to a commercial area. It contributes to social problems within residential areas such as common nuisance.
17. Lastly, one factor, which the prosecution did not raise, is your illegal exposing for sale without license deprived Honiara City Council and the government fees or revenues and taxes.

Mitigating Factors

18. I paid due consideration to the following mitigating factors;
- i. Your early guilty plea, which saves both courts and prosecution's time and resources.
 - ii. You are a first time offender therefore has no previous conviction.
 - iii. Genuine remorsefulness. After admitting your engagement in selling, exposing liquor for sale without license, you promised to never commit this offence again. There is a chance of rehabilitation.
 - iv. Cooperated well with Police. You faithfully came to court after your admissions to this offence until today your case is completed.
 - v. Personal circumstance. 44 years old father of seven children, unemployed and rely much on your canteen for survival.

Sentencing Principles and Tariffs

19. The sentencing principles of deterrence, prevention and rehabilitation must be considered when sentencing a defendant. Pertaining to the case of *Ahi v Regina* [2005] SBHC 53; HCSI-CRAC 124 of 2005 (29 March 2005)⁸ I acknowledge that each case must be dealt with according to its own set of facts and merits.
20. In accordance with the breached section of the Liquor Act, a penalty of fine is prescribed for first instance offender. The only issue to decide is how much fine is appropriate to impose on the you for the offence you have committed.

Sentencing Remarks:

⁸ *Ahi v Regina* [2005] SBHC 53; HCSI-CRAC 124 of 2005 (29 March 2005)

21. It is important to pay attention to the sentencing principle given to you in order that a strong message of specific deterrence is sent to you and to the General Public that this type of offending is not accepted within our society.
22. This is to teach you a lesson to never commit this offence again and to send a similar strong message to likeminded offenders that those who wish to break the laws of this county in this regard will face the full force of law.
23. It should also teach you a lesson to refrain from engaging in illegal activities as a means of survival for your family. To realise that there are other options to earn a living in the right way.
24. I believe that coming to court on the past few days has taught you a lesson to stop from engaging in such illegal activities and to be a good and law-abiding citizen from today forward.

Starting Point.

25. In *Joel Likilia & Allen Kokolabu v R* [1998/89] SILR⁹, where the court stated, and I quote:

“Sentencing is not a process that follows exact mathematical rules. Circumstances and people vary and it is undesirable to consider such comparisons as more than a very imprecise guide” (Emphasis added¹⁰)

26. In light of all the relevant factors and circumstance of your case, I am satisfied that a fine sentence is appropriate to impose upon you.

27. Having considered all aggravating factors of your case, I impose a starting point of \$1400 upon you.

28. I then deduct \$400 to reflect your mitigating factors.

29. After balancing both aggravating and mitigating factors, I am satisfied that a fine of \$1000 is appropriate to impose upon you.

⁹ *Joel Likilia & Allen Kokolabu v R* [1998/89] SILR

¹⁰ Above n9

Court orders

30. The following are the Orders of the Court:

1. The defendant Mr. Milton Kwadi you are to pay a fine of \$1000.00 by 9th November 2023 by 3:00pm. In default Payment 40 days imprisonment
2. The cartons of beers confiscated by the Police above (paragraph 7) shall be forfeited to the state. Irrespective of brands and varieties, the cartons of beers shall be sold at \$70.00 per carton.
3. Rights to appeal applies within 14 days.

Dated this 19th day of October 2023

