



In the Central Magistrates Court  
Criminal Jurisdiction  
Criminal Case number 124 of 2022

Regina

V

John Maga

*Before: Emma Garo Chief Magistrate  
Ms. Kukura Public Solicitors Office for defendant  
Ms. Letiara Director Public Prosecution for the Crown*

*Date of hearing: 5 August 2024  
Date of Sentence: 12 August 2024*

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**Sentence**

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1. The defendant is to be sentenced for the following offences: Sedition contrary to section 4(1) (a) and 3(1) (iv) of the Sedition Act and Unlawful assembly contrary to section 74 of the Penal Code. The maximum penalty for Sedition is 2 years imprisonment or a fine of \$200. The maximum penalty for the offence of unlawful assembly is 1-year imprisonment.
2. The defendant is a first offender. The defendant becomes a first offender at the age of 54 years old. I accept that life expectancy for men in a village setting in Solomon Islands is a factor to take into account in sentencing. I consider this as mitigating factors.
3. Ms. Kukura submitted a sworn statement from the defendant's wife explaining the difficulty that she and their children have experienced since the defendant was charged and his remand in custody following his conviction. I accept that any sentence imposed on the defendant will affect his family and children.
4. Ms. Kukura submitted that the defendant has health issues and that his medical card shows he is a diabetic patient and has high blood pressure. Ms. Kukura submitted a report from Handsford Afia Inspector Medical at the Correctional Services of Solomon Islands. The report states that on 12 June 2024, the defendant sought medical attention complaining of numbness of both legs and always feeling thirsty

and passing urine frequently. The initial treatment given is metformin 500mg daily with a special diet. Mr. Afia concluded the current health status of the inmate is not normal due to medical related illness and as well as old age. Mr. Afia also observed that the environment is not conducive that can have an impact on both his mental and physical health. The report was dated 10 July 2024.<sup>1</sup>

5. Ms. Kukura submits that I take into account the health condition of the defendant. In support of her submission, Ms. Kukura relies on the Medical Report of Inspector Hansford Afia.
6. The Court noted that the report by Inspector Hansford Afia failed to address the following:
  - i) Whether the convicted prisoner was taken to the National Referral Hospital for further tests and diagnosis and treatment.
  - ii) What specific health issues the prisoner suffers from.
  - iii) Whether Inspector Afia had raised these issues with the Commissioner of Correctional Services of Solomon Islands.
  - iv) If Inspector Afia had raised these issues with the Commissioner of Correctional Services of Solomon Islands, what steps, had CSSI taken to address the issues of concern raised by Inspector Afia in his report for the prisoner.

The Court gave time to allow Ms. Kukura to obtain further information from Inspector Afia.

10. On 9 July 2024, Ms. Kukura filed a sworn statement. Inspector Hansford Afia holds a Diploma in Nursing from Solomon Island College of Higher Education, Diploma in Correctional Administration from Queensland Correctional Academy, Australia, and a certificate in Health Care in Detention, Thammasat University, School of Public Health, Thailand (online). Inspector Hansford Afia has 25 years of experience as a nurse. In the sworn statement filed, Inspector Hansford Afia explained that what he meant when he said in his earlier report that the prison environment is not conducive and will impact on both the mental and the physical wellbeing of the prisoner is that he was referring to the following factors:

*"i. The prison facility is not a suitable facility to keep the very sick prisoners as due to its setting in terms regimes and security procedures. Like sick patients need care and moral supports from immediate family members when at home or admitted at NRH. But for the prison setting, sick inmates accommodated at their cells are given limited support from the cell roommates. The support of immediate family members gives a power of recovery to the sick patients. Also the treatment itself cannot be able to help the patient like for non-communicable Diseases for instance, Hypertension, Diabetes etc but need to be on proper diet.*

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<sup>1</sup> Refer to medical report by Mr. Afia dated 10 July 2024

ii. *The prison menu or diet supplied at the Rove Correctional Centre is not consistent which also contributed to the status of the prisoner's illness. Whilst at home, you can access to any kind of healthy food but in prison, the supply is not in consistent.*

iii. *Medications sometimes can be run out of stock at the Rove Correctional Centre clinic and as well as at the National Medical Stores. To purchase a medication from the private pharmacies will depend on the availability of the imprest if funds are available. The sick patients without treatment causes a great risk to them. The diet and medications has play an important role in any Non-Communicable disease management...." Emphasis mine*

11. The report by Inspector Hansford Afia high lights serious issues affecting the management of sick prisoners at Rove Correctional Services. I take into account the fact that the prisoner has some health issues. However, in light of the issues raised in the report by Inspector Hansford Afia, the issue the court must address is, should this court not impose an immediate custodial sentence on the prisoner?

12. In the case of *Regina v Matamu*<sup>2</sup> a report by a Clinical Psychologist namely Francine O'Meara Cade, recommending that the accused will almost be unable to receive recommended treatment for PTSD condition in any prison. His symptoms of extremely severe anxiety and depression are likely to exacerbate in excessively stressful environment as in prison. The therapist went to say, so far to advert to monitoring for suicide risk.... His Lordship Deputy Chief Justice, Justice Rex Foukona observed that "*This submission is necessary in circumstances where the court is considering a non-custodial sentence. In this case it is almost redundant to consider such. Both counsels had consented during the course of submission that a custodial sentence is eminent. What is left for this court is to consider the length of the custodial sentence to be imposed. In any correctional institution medical treatment of prisoners is always and readily available*"<sup>3</sup>

14. The distinguishing features, between the case of the prisoner before his Lordship Deputy Chief Justice, and the prisoner in this case before me, is that, Inspector Handsford Afia, states that the prison facility at the Rove Correctional Services is not conducive and can have an impact on both his mental and physical wellbeing. Inspector Afia elaborated further by explaining that the Rove Correctional Facility is not consistent is supplying a healthy diet and that medication sometimes run out of stock at the CSSI clinic, as well as the National Medical Store, coupled with the inability to purchase medication from the private pharmacies because of unavailability of funds. This is a sorry state of affairs at the Correctional Services of Solomon Islands at Rove. Nevertheless, the report by Inspector Afia failed to make a clear diagnosis regarding the Health issues that the prisoner suffers from. Inspector Afia failed to state whether the prisoner, was taken to the National Referral Hospital for further assessment, diagnosis and treatment. Inspector Afia in his report failed to state what steps the CSSI took to rectify the situation facing sick prisoners at Rove Correctional Services.

15. In the case of *Regina v Kong Ming Khoo*,<sup>4</sup> the defendant produced evidence of his medical condition to support his application for bail. His Lordship Chief Justice Gordon

<sup>2</sup> *Regina v Matamu* [2010] SBHC 33; HCSI- CRC 78 of 2010 (21 May 2010) at paragraphs 42 and 43

<sup>3</sup> *Regina v Matamu* [2010] SBHC 33; HCSI- CRC 78 of 2010 (21 May 2010) at paragraphs 42 and 43

<sup>4</sup> [1991] SBHC 24; HC-CRC 1991 (27 March 1991)

Ward said, "Of the defence submission, I am unimpressed with the medical aspect. Mr. Young does not labour the point but simply adds it as one facet of the whole picture. I do not feel it affects the position at all. The applicant's medical problem present no difficulty, if the prison authority are made aware of them and I hope and assume they will ensure they are properly addressed."<sup>5</sup> In this case, Chief Justice Sir Gordon Ward, refused the defendant bail but made certain observations which included that the prison authorities must ensure that the accused is accorded all the rights of an unconvicted prisoner in relation to contact with his lawyer, visits from relatives and where and if it is possible, access to a telephone for urgent business contact subject to his agreeing to meet the costs and to a prison officer being present within earshot during the call and the prisoner is to have access to all medicines he needs subject to approval from a doctor."<sup>6</sup>

16. From the observations made by Chief Justice Sir Gordon Ward, in *Regina v Kong Ming Khoo*<sup>7</sup>, and Deputy Chief Justice, His Honour, Justice Rex Foukona in *Regina v Matamu*, it is clear that the responsibility to ensure that health issues affecting convicted prisoners are effectively addressed, lie with the prison authorities.

17. I accept that the prisoner is sick. However guided by the case authorities cited in this judgment on sentence, I am bound by precedent, to conclude that the issues raised by Inspector Afia are administrative matters for Correctional Services of Solomon Islands to address.

18. Ms. Kukura submits that there were some unreasonable delay. The offences were committed on 24 November 2021. The defendant was not charged until 29 June 2022, about 6 months after the alleged incident. I accept that the delay in bringing this matter to finality is not entirely the fault of the defendant. The first delay relate to the settling of the issues for trial. The second delay relate to two interlocutory applications that the court had to deal with before this matter was listed for trial. The third issue relates to the delay by the police to execute the warrant of arrest issued by the court against a co-defendant in this matter. The failure by the police to execute the warrant of arrest against the other defendant resulted in the Court proceeding with this defendant's case.

19. The reason for the Court proceeding with this defendant's trial was because the defendant had been faithfully attending his court dates in answer to his bail, and to vacate the second trial date would not be fair to this defendant. I take into account his obedience to his bail during the many mentions of this matter to reduce sentence. I also take into account that the delay in concluding this matter is not entirely the fault of the defendant. I consider delay as a mitigating factor. If this matter had been dealt with earlier, the defendant would have completed serving any sentence imposed on him.

20. The upshot of the arguments, pressed by Ms. Kukura is that, given the level of participation by the defendant, the powerful mitigating factors pressed on behalf of the defendant, his health and the delay in bringing this matter to finality, the sentence imposed on the defendant should be short and sharp and that the defendant should be sentenced and ordered to be released at the rising of the Court.

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<sup>5</sup> [1991] SBHC 24: HC-CRC 1991 (27 March 1991) at page 3 paragraph 3

<sup>6</sup> *ibid* at page 4

<sup>7</sup> [1991] SBHC 24: HC-CRC 1991 (27 March 1991)

22. Ms. Letiara for the crown argues that the defendant's arrival from Auki and participation in the unlawful march from the wharf to the Northern end gate at the Parliament precinct involves pre-planning. Ms. Letiara also argued that the threat to public safety and threat of violence used to demand that the Prime Minister step down is serious. The rioting, looting and burning of buildings that followed because of the civil unrest. Ms. Letiara submitted that the Central Bank of Solomon Islands (CBSI) conducted an initial impact assessment over the damage to the economy caused by the riots in Honiara on 24 November 2021. The findings have revealed that the loss to the local economy is estimated to be around \$227 million at a minimum.

23. Ms. Letiara argues that in this case the defendant was part of a group of people that marched to the Northern end gate of parliament to raise discontent or disaffection about the Prime Minister. Ms. Letiara submitted that although the defendant did not say any words or appear to control the crowd, his form of participation in the unlawful assembly should not be seen in isolation. In support of her argument Ms. Letiara cites the case of *Igi v Regina*<sup>8</sup> [1997] SBCH 39; HC-CRAC 047 of 1996. In this case, his Lordship Chief Justice Palmer stated:

*"The second ground raised was that the extent of the damage had been done by several other hundreds of people who had never been identified. In other words that the court should have regarded the individual acts of these Appellants as if they have been committed in isolation; such as damaging sign boards, pulling up goal posts and tearing the goal nets, throwing stones at the buildings or kicking the boxes at the grand stand.*

*With respect however, the approach taken by the Courts on this is to the contrary. In R v Caird 91970)54 Cr. App 499, per judgement of Sachs L.J, referred to by the learned Director of Public Prosecutions, his Lordship made the following pertinent statement:*

*"Any participation whatever, irrespective of its precise form, in an unlawful or riotous assembly of this type derives its gravity from becoming one of those who with, by weight of numbers, pursue a common interest and unlawful purpose. The law of this country has always leant heavily against those who to attain such a purpose, use the threat that lies in the power of numbers..*

*...In the view of this court, it is a wholly wrong approach to take the acts of any individual participator in isolation. They were not committed in isolation and as already indicated, it is the very fact that constitutes the gravity of the offence"*

24. His Lordship Chief Justice Sir Albert Palmer in the case of *Igi v Regina* further observed that:

*"the fact that there may have been hundreds others who have never been arrested and charged does not alter the fact that these appellants had taken part in a grave criminal offence. Lord Justice Sachs in R v Caird (ibid) describes this ground as the "why pick on me?" argument. He states:*

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<sup>8</sup> [1997] SBHC 39; HC-CRAC-047 of 1996 (23 July 1997)

*"it has been suggested that there is something wrong in giving an appropriate sentence to one convicted of an offence because there are considerable numbers of others who were at the same time committing the same offence, some of whom indeed, if identified and established as having taken a more serious part, could have received heavier sentences. This is a plea which is almost invariably put forward where the offence is one of classed as disturbances of the public peace-such as riots, unlawful assemblies and affrays. It indicates a failure to appreciate that on these confused and tumultuous occasions each individual who takes an active part by deed or by encouragement is guilty of a grave offence being one of the number engaged in a crime against peace. It is, moreover, impractical for a small number of police when sought to be overwhelmed by a crowd to make a large number of arrest. It is indeed all the more difficult when, as in the present case, any attempt at arrest is followed by violent efforts of surrounding rioters to rescue the person being arrested....if the plea were acceded to, it would reinforce the feeling which may undoubtedly exist that if an offender is one of a number he is unlikely to be picked upon, can escape proper punishment because others were not arrested at the same time. Those who choose to take part in such unlawful occasions must do so at their own peril."* at pages 3 and 4.

25. In the case of *Jeremiah v Republic*<sup>9</sup> the Court of Appeal of Nauru referred to the case of *Secretary for Justice v Law Kwun Chung*<sup>10</sup> where the Court of Appeal in Hong Kong had this to say on the offence of "unlawful assembly with violence"

- *"at Para 123(2) Although the definition of unlawful assembly in section 18 of the Public Order Ordinance is relatively simple, the range of factual situations covered is wide. The seriousness of the facts involved varies from case to case and may, depending on the actual circumstances, run from extremely trivial to the extremely serious. Incidents involving violence are certainly much closer to the serious end of cases, but the facts of different cases still vary. So even for the more serious, there will still be a spectrum, of seriousness. Within the spectrum, the court will accord appropriate weight to the applicable principle sentencing factors based on the actual circumstance of the case and the seriousness of the facts pertaining to the commission of the offence.*
- *(3) On the basic premise that the public order must be maintained, taking into account the gravamen of the offence of unlawful assembly, the Court has to consider the factor of deterrence in sentencing. As to how much weight it should accord to this factor, the court has to have regard to the actual circumstances of the case.*
- *(4) If the case is of a relatively minor nature, such as when the unlawful assembly was unpremeditated, small in scale, involving very little violence and not causing any bodily harm or damage to property, the court may give proportionality more weight[101] to such factors as the personal circumstances of the offender, his motives or reasons for committing the offence and the sentencing factor of rehabilitation while proportionality less weight to the sentencing factor of deterrence.*
- *(5) If the case is a serious one, such as when the unlawful assembly involving violence is large scale or it involves serious violence, the court would give the two sentencing factor's, namely punishment and deterrence, great weight and give very little or no*

<sup>9</sup> [2018] NRCA 1; Criminal Appeal Case 1 of 2018 (7 December 2018)

<sup>10</sup> [2018]HKCFA4,FACC 9/2017 (6 February 2018)

*weight to factors such as the personal circumstances of the offender, his motives or reasons for committing the offence and the sentencing factor of rehabilitation.*

26. The Nauru Court of Appeal in the Jeremiah case concluded that the principle in this authority is that motive or reasons for committing the offence are relevant for purposes of assessing weight to be attached on sentencing principles of deterrence and punishment depending on whether the riots, which occurred, were of a minor or major nature.<sup>11</sup>

27. The unlawful assembly, on 24 November 2021, turned riotous, followed by three days of rioting, looting and burning of buildings in Honiara, and further, resulting in His Excellency the Governor General, invoking his powers under the Public Security Act, to declare a curfew, cannot, be said to be minor or at the end of the lower scale as submitted by Ms. Kukura.

28. In the Jeremiah case, the Court of Appeal of Nauru further observed:

*“We do not agree however, that no custodial sentences should be imposed in the particular circumstances of this case. We form the view that sufficient aggravating features exist in the circumstances surrounding the offence of riot and disturbing the legislature in this particular instance, all these occurring within and in front of the vicinity of Parliament. We form the view that it is this factor as to the location and place where the rioting and disturbing the legislature occurred that separates and distinguishes this case. Had the unlawful assembly, which initially was planned and organised to take place as a peaceful protest and dissipated thereafter without any violence, further disturbance, nothing would have arisen. The unlawful assembly however descended into violent confrontations when they were asked to disperse and prevented from getting near parliament. While motives and intentions were peaceful initially, their intention and purpose to march to Parliament overtook reason and directions to disperse. They not only confronted and violently resisted police, but trespassed into the airport runway, a prohibited zone. Even when asked by the Commissioner of police to leave, they refused causing an international flight to be diverted to Honiara, incurring costs, inconvenience and fear. The riot, which occurred thereafter, engendered much fear, intimidation, threats, and violence, including damage to property and injury to persons. All these occurring within the precinct of Parliament and thereby disrupting a meeting of the Parliament, noting to the extent that Members of Parliament had to be locked away in a safe room until well into the night (10pm): such was the fear, uncertainty, and anxiety engendered at that time. As one of the third pillars of Government, making vital decisions for the good governance and law and order, of the Island Nation of Nauru, Parliament must be respected and allowed to make decisions without fear and intimidation in the discharge of its national responsibilities.” emphasis mine*

29. The Solomon Islands National Parliament sitting on 24 November 2021 was disrupted by an unlawful assembly, which turned violent and followed by rioting, looting and burning of properties. Many business houses suffered huge loss and many people lost their homes and businesses. As aptly stated by the Court of Appeal of Nauru, “... Parliament must be respected and allowed to make decisions without fear and intimidation in the discharge of its national responsibilities.” I adopt these comments in this judgement.

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<sup>11</sup> Ibid at paragraph 29

30. Considering the circumstances of the commission of the offences in this case, I find that the aggravating features in this case calls for the imposition of an immediate custodial sentence, for specific and general deterrence.

31. I am of the view that the starting point for the offence of unlawful assembly contrary section 74 of the Penal Code should be the maximum of 12 months imprisonment. I deduct 4 months imprisonment to reflect the combined mitigating factors present to reduce sentence. I impose a sentence of 8 months imprisonment. For the offence of Sedition contrary to 4(1) (a) and 3(1) (iv) of the Sedition Act, it must be accepted, that his participation in the unlawful assembly, is part and parcel of the same transaction as that constituting the sedition charge. I am of the view that the starting point should be one of 12 months imprisonment. I deduct 4 months to reflect the combined mitigating factors present. I impose a sentence of 8 months imprisonment. I order that the sentences be served concurrently. This means that the prisoner will serve a total of 8 months imprisonment backdated to time spent in custody.

32. I direct that a copy of this judgement on sentence, be delivered to the Office of the Commissioner of the Correctional Services of Solomon Islands before 4:30pm today for his attention and action to ensure that the prisoner receives the required medical attention, treatment and dietary requirements.

Dated this 12 day of August 2024

