

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

Criminal Cases No. 576 of 2024 and No. 558 of 2024

**REX-V-ZIVOKA LAMANI ORODO**

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Jonathan Lui Auga, Senior Legal Officer, ODPP, for the Crown

Mr Kevin Maelanga, Senior Legal Officer, PSO, for the Defendant



Date of Ruling: 4<sup>th</sup> March 2025

Notice: *This copy of the Court's Reasons for Judgment/Sentence is subject to formal revision prior to publication.*

**SENTENCE**

**Introduction**

1. The defendant Zivoka Lamani Orodo, 21, pleaded guilty to two counts of Housebreaking and committing felony contrary to section 300(a) of the *Penal Code* [Cap 26] in the criminal case number 576 of 2024 and one count of Simple Larceny contrary to section 261 (1) of the *Penal Code* [Cap 26] in the criminal case number 558 of 2024. Both cases are consolidated given that they deal with the same defendant. He is now convicted as charged based on his own guilty pleas.

**Facts**

**Counts 1 and 2: Criminal Case No 576 of 2024-Housebreaking**

2. The complainant in this matter is Mr Albert Tugu of Gnulahage Village, Hovikoilo Ward, Isabel Province.
3. The complainant and the defendant are related to each other as uncle and nephew. The complainant is the brother of the defendant's mother. Prior to the offending, the complainant invited the defendant to assist him to carry the cartons of beers into the complainant's liquor shop. The defendant had a spare key to the shop.
4. On the 22<sup>nd</sup> January 2022, the complainant did his stock take and noted that there were four cartons of Whisky Cola beers and three cartons of Sara Whisky beers left. After conducting the inventory check, he locked his liquor shop and returned to his village.

5. The defendant unlawfully entered the liquor shop twice between the 22<sup>nd</sup> and 23<sup>rd</sup> of January 2022 and took two cartons of Whisky Cola using the spare key without the consent of the complainant.
6. On the 23<sup>rd</sup> January 2022, the complainant realized that two cartons of beers were missing and that the key to the main door of the shop had gone missing.
7. At the time, the complainant along with his wife, children, and several other villagers accompanied him to the shop in an effort to identify the individual responsible for stealing the cartons of beers.
8. During their search, they discovered fresh footprints behind the shop and decided to follow them. The footprints led directly to the defendant's house.
9. Upon arrival at the defendant's house, they observed that the defendant was still drinking and the area surrounding his house was scattered with empty cans of the beers. He immediately became the suspect due to the circumstantial evidence.
10. The matter was reported to the Buala Police and the defendant admitted to committing the offences using the spare key he had with him.

#### Count 3: Criminal Case No 558 of 2024-Simple Larceny.

11. On the 25<sup>th</sup> January 2024, in the evening, the defendant and three other boys were drinking beer. They had no musical instruments for entertainment, so they decided to go and take the guitar owned by the CRC Church at Buala Village in the Isabel Province. The defendant with his two friends then stole the guitar from the church to use whilst drinking their beers.
12. On the same day at around 8pm, a pastor at the CRC Church in Buala discovered that the church's electric guitar was missing from the church.
13. The guitar was temporarily hidden in one of the defendant's friend's residence for a few days.
14. Few days later, the defendant's friend took the guitar to the defendant at Sorousitana area which is few kilometers west of Buala. The defendant and his accomplice hid the stolen property at an old abandoned house.
15. On the 2<sup>nd</sup> February 2024, one of the witnesses saw a black electric guitar covered with a blue canvas and dried coconut fronds in a drain at Sorousitana area which is where the defendant's residence is located.
16. The guitar was retrieved and returned to the church.
17. The defendant also admitted that he committed the offence.

#### Discussion and Analysis

18. The principles of sentencing such as punishment, retribution, deterrence and rehabilitation must be taken into account.
19. In *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)<sup>1</sup>, his Lordship Ward CJ stated as follows:

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<sup>1</sup> *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

*For a normal burglary case, the only appropriate penalty must be an immediate custodial sentence. Where the burglary is not aggravated in any way, the starting-point for an adult first offender should be two years' imprisonment. From that point, this Court should consider any aggravating factors such as committing the offence with the support of others, theft of personal items that can be little or no value to the thief, general ransacking of the house, wanton damage, pre-planning, and the degree of breaking necessary to gain entry. If such matters are present they should add to the penalty. Where masks are used, weapons are carried, threats are made, or similar escalations in the seriousness of the offence are present, the penalty should be further increased and it would rarely be appropriate to pass a sentence of less than four years.*

#### **Factors to be considered**

20. **Maximum sentence.** The maximum sentence for housebreaking contrary to section 300(a) is 14 years imprisonment which means this is a serious offence.<sup>2</sup>

#### **Aggravating features**

21. The aggravating factors are as follows:

##### **Pre-Meditation and Planning**

22. The manner in which the offences was committed depicts premeditation on the part of the defendant. He knew he had the spare key to open the shop and he entered it twice on the same day to steal the cartons of beers from the complainant.

##### **Property stolen and economic loss**

23. The complainant lost two cartons of beers which is also an economic loss for him as far the liquor business is concerned.

##### **Breach of trust.**

24. His actions breached the trust that his uncle had on the defendant as members of the same extended family.

#### **Mitigating Features**

25. The mitigating factors are as follows: early guilty plea, remorse, first-time offender, cooperation with the Police and the defendant's personal circumstances including his age and youthfulness.

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<sup>2</sup> Penal Code [Cap 26], s 300 (a)

### Comparative sentences:

#### Housebreaking

26. In *Regina v Onumumu* [2016] SBMC 15; Criminal Case 181 of 2016 (13 June 2016)<sup>3</sup>; the defendants were sentenced to 30 and 31 months imprisonment respectively for one count of office break-in contrary to section 300(a) of the *Penal Code* [Cap 26].
27. The offences of burglary or housebreaking contrary to sections 300 and 301 of the *Penal Code* [Cap 26] must attract immediate custodial sentences unless the circumstance in the offending is so peculiar and warrants a lesser form of penalty.<sup>4</sup>

#### Starting Point

28. Thus, an immediate custodial sentence must be imposed for the defendant. The appropriate starting point in my view is 24 months' imprisonment.
29. I take into account the aggravating features present and add 4 months to the starting point which would give 28 months.

#### Mitigating Factors

30. I take note of all the mitigating features such as the early plea, remorse demonstrated, first-time offender, and the defendant's personal circumstances including his relatively young age and deduct 12 months from the 28 months.
31. Delay. I take note of the delay of around 2 to 3 years in this case and further deduct another 6 months.<sup>5</sup>
32. Therefore, the resulting sentence for counts 1 and 2 should be 10 months' imprisonment respectively.
33. Totality Principle. The incidents in both counts occurred in different times but they occurred on the same day and against the same victim, and noting the totality principle, I order that they run concurrently which means for counts 1 and 2, the defendant shall serve only 10 months' imprisonment.

#### Simple Larceny:

34. The maximum sentence for the offence of Simple Larceny is 5 years imprisonment.<sup>6</sup>

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<sup>3</sup> *Regina v Onumumu* [2016] SBMC 15; Criminal Case 181 of 2016 (13 June 2016);

<sup>4</sup> *Regina v Bade* [1988] SPLawRp 12; [1988] SPLR 348 (21 December 1988)

<sup>5</sup> The allegations in the Central Magistrates Criminal Case number 576 of 2024 arose from incidents in 2022 and the charges were laid in 2024, and this case is finalized in 2025.

<sup>6</sup> *Penal Code* [Cap 26], s 261(1)

35. The sentencing options for simple larceny range from custodial, suspended, penalty fine and even bound-over sentences. This, however, is determined by the different circumstances of each case.
36. One of the aggravating features in this case is the fact that the defendant did not voluntarily return the stolen property. The witness had to go to his place at Sorusitana to retrieve and recover the stolen guitar.
37. In this present case, a custodial sentence is appropriate because of the repeated offending shown in these two consolidated cases. I am of the view that a starting point of 12 months' imprisonment is appropriate. I add another 2 months to reflect the aggravating features in this case.
38. I also take into the account the mitigating circumstances of this case such as the early guilty plea, remorse demonstrated, first-time offender, recovery of the item, and the defendant's personal circumstances especially his young age and deduct 8 months.
39. Delay. I further deduct 2 months for the delay of around 1 year.
40. Therefore, the final sentence for the offence of simple larceny is 4 months' imprisonment. I refuse to invoke section 44(1) of the *Penal Code* [Cap 26] to suspend the sentence as requested by the defence counsel. This is because in *Eapa-v-Reginam* [2001] CC No. 248 of 2001<sup>7</sup>, the defendant had voluntarily returned the property, however, in this case, the defendant had concealed the property until it was recovered at the defendant's residential area.

#### Conclusion

41. After assessing and balancing the core principles of sentencing such as punishment, deterrence and rehabilitation, I hereby sentence the defendant to 10 months' imprisonment respectively for counts 1 and 2 contrary to section 300(a) of the *Penal Code* [Cap 26]. Moreover, I sentence the defendant to 4 months' imprisonment for one count of simple larceny contrary to section 261(1) of the *Penal Code* [Cap 26].
42. I further order that the sentences in counts 1 and 2 shall be served concurrently but consecutive to the third count. This means that the final sentence is 14 months' imprisonment (1 year and 2 months imprisonment).
43. It is disturbing to note that the defendant and his accomplices had the audacity to steal from an important organization or institution such as a church which is considered a sacred place in the religious context. Moreover, it is a breach of trust on his part when he entered his uncle's shop and stole the cartons of beers.
44. I hope these sentences will send a strong message of deterrence to the general public that breaking into other people's homes to commit a crime, and stealing another person's property have severe consequences.

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<sup>7</sup> *Eapa v Reginam* [2001] SBHC 77; HC-CRC 248 of 2001 (2 November 2001)

**Orders**

45. The orders of the Court are as follows:

- [1] Count 1: The defendant is sentenced to 10 months' imprisonment for one count of housebreaking and committing felony contrary to section 300(a) of the *Penal Code* [Cap 26].
- [2] Count 2: The defendant is sentenced to 10 months' imprisonment for one count of housebreaking and committing felony contrary to section 300(a) of the *Penal Code* [Cap 26].
- [3] Count 3: The defendant is sentenced to 4 months' imprisonment for one count of simple larceny contrary to section 261(1) of the *Penal Code* [Cap 26].
- [4] I note the totality principle and order that counts 1 and 2 shall be served concurrently but consecutive to the third count.
- [4] Final Sentence. The defendant shall serve a total of 14 months (1 year and 2 months) imprisonment for the three counts in both cases.
- [5] Pre-Sentence-Custody. Any pre-sentence-custody served by the defendant previously relating to these 3 charges shall be duly deducted.
- [6] Right of Appeal within 14 days.
- [7] The Court so orders.

PRINCIPAL MAGISTRATE  
THE SOLOMON ISLANDS

