



3. On or about the 20<sup>th</sup> of January 2025, you were alleged to have driven a Land Cruiser Prado belonging to one Simon Tepuke, without a valid driver's license. On this same date, it was alleged that you drove into the property of one Andrew Abela, at Lungga Cross Road, resulting in significant damages that were said to have amounted to \$16,790.00.
4. I arraigned you on the 24<sup>th</sup> of March 2024 and sentencing submissions followed suit on the 7<sup>th</sup> of April 2025.
5. I have perused the agreed facts tendered by parties and therefore find that the facts are more than sufficient to justify a conviction on your part. I therefore enter conviction accordingly.
6. The maximum penalties for the offences involved are outlined below:
  - (i) Obtaining by false pretences: 1-year imprisonment;
  - (ii) False pretence: 5 years imprisonment;
  - (iii) Malicious damage: 2 years imprisonment; and
  - (iv) Driving without a valid driver's license: 5000 penalty units or 6 months imprisonment or both.
7. I must reiterate on the comments made by the Chief Justice, Sir Albert Rocky Palmer in the case of **Regina v Kemakeza**, that 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<sup>1</sup>.
8. It is also my view, that maximum penalties are put in place to balance the principles of justice and fairness and the need to protect societal norms. At the same time, they also provide strong warnings about the significance and importance of the laws they enforce.
9. There are three (3) victims involved in this matter, the first being Elisha Makasu, whom you obtained the amount of \$3,000.00 after you told him that you will sell him your Ray Boat, which costs around \$60,000.00 but will be discounted. The Ray Boat was never delivered. The second victim is Kateson Cheffers whom you took the amount of \$500.00 from on the 9<sup>th</sup> of November 2025. You promised to repay the money owed on the very next day, but instead of doing so, you formed another story, whereby you asked to use Kateson's Samsung A31 phone to contact your parents who are working in New Zealand regarding an aunt of yours who is admitted at the National Referral Hospital at that time.
10. This was in fact the last time this Samsung A31 was seen by its owner as it was never recovered.
11. On or about the 20<sup>th</sup> of January 2025, you tricked the third victim into thinking that you are a genuine buyer for his Land Cruiser Prado. Unfortunately, you took the vehicle for testing and ended up in an accident that costed about \$16,790.00. It is also noted, that at that material time, you did not possess a valid driver's license.
12. These incidents are clear examples of how people are being tricked into believing people with mindsets such as yours. While others are trying their best to survive in this time and economy, there are others who go around taking advantage of anyone that comes their way.
13. On the other hand, the public is also urged to firstly ensure that any arising arrangements such as those giving rise to this matter are genuine before falling in.

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<sup>1</sup> [2008] SBHC 41; HCSI-CRC 467 of 2007 (3 September 2008)

### Aggravating factors

14. The matters of aggravation involved in your string of criminal acts are as follows:
- (i) Your actions on all dates highlighted were carefully planned and calculated. You observed the victims and their characters before implementing your ideas;
  - (ii) The offences at hand are associated with a high level of seriousness, which can be seen from their maximum penalties;
  - (iii) Your actions have impacted financial loss on the lives of the victims involved;
  - (iv) You are not a first-time offender, since the court recently sentenced you on the 8<sup>th</sup> of April 2020 in relation to two counts of False Pretence. I note that you were sentenced to a 7 months' imprisonment term; and
  - (v) I note that you have breached the trust and confidence entrusted in you by the victims.

### Matters of mitigation

15. The only factors I find in this regard are:
- (i) Your early guilty plea; and
  - (ii) The period spent on remand.

### Comparative sentencing

16. In terms of comparative sentencing, previous courts have advocated on both the need to ensure consistency in imposing sentences, and the need for cases to be dealt with upon assessment of their own set of facts and circumstances.

17. In *Joel Likilua & Allen Kokolobu v R* [1988 – 89] SILR 148<sup>2</sup> Ward CJ commented at page 149:

*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.*

18. In *Sau v R* [1982] SILR 65<sup>3</sup> Daly CJ commented at page 69:

*I must add one further observation on the sentencing process and on appeals against sentence. There is an increasing practice of reference being made to specific previous cases in court. This was done by the learned magistrate in this case and the dissimilarities give counsel a ready – made ground for argument which they understandably take. Sentencing is not an exact mathematical process; if it were it could be done by a computer. The human element both in the person before the court and the sentencer remain a vital part of the process. Previous sentences demonstrate principles or parameters of sentence; but they should not be used as binding precedents to reach a sentence in a particular case. All the judiciary have access to each other's sentences and we must rely upon the good sense and experience of the judiciary to reach sentences which reflect not only their own views but also the views of the community.*

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<sup>2</sup> [1988 – 89] SILR 148

<sup>3</sup> [1982] SILR 65

19. In **R v Ben Tugale, Brown Beu, Nelson Oma, James Sala, Loius Lipa, Charles Meaio & John Teti (Unrep. Criminal Case No. 12 of 1997)**<sup>4</sup> Lungole – Awich J commented at page 21:

*Punishment in one case usually cannot be matched exactly with punishment in another. Circumstances usually differ even if only in details. Public view about how serious an offence is regarded also changes. Prevalence or otherwise of an offence during particular period also counts.*

#### **Analysis**

20. I have had the opportunity to access a copy of the court written sentence, when it dealt with you on the 8<sup>th</sup> of April 2020. I note that there were two separate cases filed against you in the year 2019 and were registered as Criminal Case Number 478 of 2019 and 792 of 2019. Both cases involved the offence of False Pretence (contrary to section 308 (a)). Moreover, I note that you were sentenced to a period of 7 months imprisonment for both cases. The court reached the period of 7 months after identifying 6 months imprisonment as the appropriate sentence for each of the charges or cases. The sentences were ordered to be served consecutively, meaning you were to serve a total of 12 months imprisonment, however, the court deducted 5 months to reflect the period you spent in custody, hence the term of 7 months imprisonment.
21. I am of the view, that instead of being rehabilitated from the 7 months imprisonment term previously served, you have turned out to be the total opposite. In fact, you have elevated your skills in this unacceptable and criminal behaviour.
22. People sharing similar mindsets such as yours must know that your actions will only bring shame and disrepute to yourselves and your families. Your children will bear the shame of being referred to as children of a conman. You possess a high level of selfishness and arrogance which you have allowed to take full control over your actions.
23. Your actions were committed between July 2024 to January 2025. In July 2024, you led Elisha Makasu into believing that you genuinely wanted to sell a Ray Boat, he was further tricked into believing your lies. Moreover, upon receiving the amount of \$3,000.00, you never delivered the Ray Boat, since the Ray Boat does not exist.
24. On or about the 9<sup>th</sup> of November 2024, you asked Kateson Cheffers to borrow \$200.00 which you promised to repay the next day. Moreover, you again asked for an additional \$300.00 which you also promised to repay the next day. This time around, it was Kateson Cheffers sister who gave you the \$300.00.
25. On the day you were supposed to repay the money taken the previous day, you went and asked kateson Cheffers to borrow her Samsung A31 phone to call your parents in New Zealand regarding an aunt of your admitted at the Hospital. To this date, the phone has never been recovered,
26. Ten days later, you elevated your cunning tricks and persuaded Simon Tepuke to use his vehicle. Unbeknownst to Mr Tepuke, his vehicle was released into the hands of a trickster who would later cause damages to the vehicle.

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<sup>4</sup> (Unrep. Criminal Case No. 12 of 1997)

27. It is therefore my view, that the most appropriate form of punishment that should reflect the level of seriousness involved in each of these offendings, is that of custodial sentences. With this, I will now outline each count and their appropriate starting points and custodial term.

**Count 1. Obtaining Credit by false Pretence, contrary to section 309 (a) of the Penal Code**

28. With the level of seriousness involved, I will pitch my starting point at 8 months imprisonment. I deduct 2 months (1/3) for the guilty plea entered, I further deduct 3 months for your cooperation with the Police, and 1 months for the time spent in custody.

29. I further add 2 months for your previous conviction, one month for the financial loss incurred by the victim and 1 month for the time spent in custody.

30. I therefore find that a term of 8 months imprisonment is appropriate in this regard.

**Count 2. Obtaining Credit by false Pretence, contrary to section 309 (a) of the Penal Code.**

31. With the level of seriousness involved, I will pitch my starting point at 8 months imprisonment. I deduct 2 months (1/3) for the guilty plea entered, I further deduct 1 months for your cooperation with the Police, and 1 months for the time spent in custody.

32. I further add 2 months for your previous conviction, 1 month for the financial loss incurred by the victim and 1 month for pre planning.

33. I therefore find that a term of 8 months imprisonment is appropriate in this regard.

**Count 3. False Pretences, contrary to section 308 (a) of the Penal Code**

34. With the level of seriousness involved, I will pitch my starting point at 10 months imprisonment. I deduct 3 months (1/3) for the guilty plea taken, and further deduct 1 month for your cooperation with the Police. Moreover, 1 month is also deducted for the time spent in custody.

35. Having reached 5 months, I add 2 months for your previous conviction, 3 months for financial loss, and 2 months for pre planning. Period reached is **12 months**.

**Count 4. False Pretence, contrary to section 308 (a) of the Penal Code**

36. I note, that the subject involved, is a land Cruiser Prado, which I understand is a very expensive type of vehicle. I pitch my starting point at 10 months imprisonment. I deduct 3 months (1/3) for the guilty plea taken, and further deduct 1 month for the cooperating with the Police. Moreover, 1 month is also deducted for the time spent in custody.

37. Having reached 5 months, I add 3 months for your previous conviction, 2 months for financial loss, and 2 months for pre planning. Period reached is **12 months**

**Count 5. Driver's to be licensed, contrary to section 20 (1) of the Road and Transport Act.**

38. In my view, the level in which this offending was committed and the consequences that followed suit warrant maximizing the alternative maximum penalty, that being a term of 6 months imprisonment.

**Count 6. Malicious Damage, contrary to section 326 (1) of the Penal Code.**

39. The maximum penalty for this offence is a term of 2 years imprisonment. As per the documents tendered with respect to the damages inflicted and the cost incurred, I am of the view that the appropriate starting point is 10 months imprisonment. I deduct 3 months for the guilty plea entered (1/3). I further deduct 1 month for your cooperation with the Police, bringing us to the term of 5 months.
40. I further add 2 months for your previous conviction, 2 months for financial loss and 1 month for pre planning, bringing us to 10 months imprisonment.

**Additional Charge: False Pretence, contrary to section 308 (a) of the Penal Code**

41. I note from the facts that you obtained \$3,000.00 as a form of consideration for a Ray Boat that never existed. I pitch my starting point at 10 months imprisonment. I deduct 3 months for the guilty plea entered, and further deduct 1 month for your cooperation with the Police. 1 month is also deducted for the time spent in custody.
42. Having reached 5 months, I add 3 months for your previous conviction, 2 months for financial loss, and 2 months for pre planning. Period reached is **12 months**
43. With a total of 7 counts, I must firstly determine whether or not, the sentence for each count should be served concurrently or consecutively.
44. In the case of **Bade v Reginam**<sup>5</sup>, the court stated the following:

*When considering sentence for a number of offences, the general rule must be that separate and consecutive sentences should be passed for the separate offences. It is trite to point out that a man who commits, say, five offences should receive a heavier sentence than a man who only commits one of them.*

*However, there are two situations where this rule must be modified. The first, that where a number of offences arise out of the same single transaction and cause harm to the same person there may be grounds for concurrent sentences, does not concern this appeal save to say that the learned magistrate correctly applied this principle in ordering a concurrent term for the malicious damage caused to Solo Lae's house during the burglary.*

*The second occasion for modifying the general rule arises where the aggregate of sentences would, if they are consecutive, amount to a total that is inappropriate in the particular case. Thus, once the court has decided what is the appropriate sentence for each offence, it should stand back and look at the total. If that is substantially over the normal level of sentence appropriate to the most serious offence for which the accused is being sentenced, the total should be reduced to a level that is "just and appropriate" to use the test suggested in *Smith v. R.* [1972] Crim.L.R. 124. Equally, if the total sentence, although not offending that test, would still in the particular circumstances of the person being sentenced, be a crushing penalty, the court should also consider a reduction of the total. Having decided the proper penalty for each individual offence but feeling the total is too high, it is better to achieve a reduction by making some or all concurrent rather than to reduce the length of the individual sentences whilst leaving them consecutive. The former course results in sentences that still reflect the gravity of each individual charge.*

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<sup>5</sup> [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988)

45. In this case, I am of the view that the second situation should be applied for counts 1, 2 and 3 involving Kateson Cheffers, as they are committed against the same person within the period of 2 days. Counts 5 and 6 will also fall under the second situation as they are related to the same victim, Simon Tepuke.

46. In conclusion, I now sentence you as follows:

**ORDER**

- (i) **Count 1: For the offence of Obtaining Credit by false Pretence, contrary to section 309 (a) of the Penal Code, I sentence you to 8 months imprisonment;**
- (ii) **Count 2: For the offence of Obtaining Credit by false Pretence, contrary to section 309 (a) of the Penal Code, I sentence you to 8 months imprisonment;**
- (iii) **Count 3: For the offence of False Pretences, contrary to section 308 (a) of the Penal Code, I sentence you to 12 months imprisonment;**
- (iv) **Count 4: For the offence of False Pretences, contrary to section 308 (a) of the Penal Code, I sentence you to 12 months imprisonment;**
- (v) **Count 5: For the offence of Driver's to be licensed, contrary to section 20 (1) of the Road and Transport Act, I sentence you to 6 months imprisonment;**
- (vi) **Count 6: For the offence of Malicious Damage, contrary to section 326 (1) of the Penal Code, I sentence you to 10 months imprisonment;**
- (vii) **Counts 1, 2 and 3 are to be served concurrently;**
- (viii) **Counts 5 and 6 are also to be served concurrently;**
- (ix) **Concurrent sentence for counts 1, 2, and 3 are to be served consecutively with count 4 and the current sentence for counts 5 and 6 and the sentence for the additional charge;**
- (x) **Total sentence to be served is a custodial sentence of 3 years 8 months;**
- (xi) **Right of appeal applies within 14 days.**

Dated this 14<sup>th</sup> of April 2015.

