

IN THE DISTRICT COURT OF NAURU
CRIMINAL JURISDICTION

Criminal Case No. 30/2016

THE REPUBLIC

-v-

LIU RONG ZHAO

WENJIAN WU,

KAM CHUEN WONG

XIAOHE SU

ZIQUAN CHEN

Before: RM Penijamini R. Lomaloma
Republic: Mr. Filimoni Lacanivalu
Defendant: Mr. Vinci Clodumar
Date of Hearing: 19, 20, 22, 23 October, 3 November 2018
Submissions completed: Friday 23 November 2018
Judgment: Monday 26 November 2018

JUDGMENT

Catchwords: Unlawful gambling, Section 19 Gaming Act; Mahjong; is mahjong an exempt private game? Purpose of Gaming Act to regulate gambling and make income for the state; Interpretation of statutes; Sections 49,50,51& 52 of Interpretation Act 2011 applied; Extrinsic evidence used to determine purpose of Gaming Act.

Introduction

1. The defendants stand charged with the following offences:-

FIRST COUNT

Statement of Offence

Conducting Unlawful Gaming or Betting: Contrary to Section 18(a) of the Gaming Act 2011

Particulars of Offence

Liu Rong Zhao on the 10th of February 2015 at Nauru, did conduct an unlawful game

SECOND COUNT

Statement of Offence

Person in charge of place used for unlawful gaming or betting: Contrary to Section 19(1)(a)(b) of the Gaming Act 2011

Particulars of Offence

Liu Rong Zhao on the 10th of February 2015 at Nauru being in charge of place used for unlawful game knew the place is being used for the conduct of an unlawful game

THIRD COUNT

Statement Of Offence

Participating in unlawful gaming or betting: Contrary to Section 21(1)(a)(b) of the Gaming Act 2011

Particulars of Offence

Liu Rong Zhao, Wenjian Wu, Kam Chuen Wong, Xiaohe Su and Ziquan Chen on the 10th day of February 2015 at Nauru participated in an unlawful game knowing that the game is an unlawful game

2. Several people including the current defendants were charged on 15th July 2016, 17 months after the offending. The charges were amended on 13th July 2017. A total of \$47,449.00 was seized at the scene of the alleged offence and on 28th July 2017, the then DPP and Mr. Clodumar for the defendants agreed that there was no legal basis for holding onto \$36,575.00 seized and they applied to the Court for the money to be returned to the owners pursuant to the provisions of section 128 of the Criminal Procedure Act 1972. The monies seized were stored in the Registrar's safe as there were no safes in the Police Station. This application was granted by the Court and the monies were released to the owners, leaving \$11,204.00.
3. The trial commenced on the 19th of October and the Court was told that counsels had discussed the matter and wanted to prepare agreed facts and reduce the issues to be tried. In the afternoon, parties told the Court that they had reached agreement and would draft the agreed facts to be tendered on Saturday 20th October at 10:00 am when it resumed. At the time appointed, the agreed facts were not ready and we adjourned again to have it ready. The agreed facts were not ready on Saturday and were in fact not submitted into Court until Monday 22nd October. Meanwhile, the trial started on Friday with only 2 of the defendants present. The offending allegedly took place on 10th February 2015 and the defendants were not charged till 17 months had passed, by which time, some of the defendants had already left the island permanently. Xiaohe Su and Ziquan Chen never appeared in Court.
4. Kam Chuen Wong pleaded guilty to the offence.

5. The parties filed agreed facts to which was attached the unsworn statements of Police Officer Valdon Dageago . The prosecution called three witnesses, Police officer Jayjay Bop, Sgt Iwo Adam and Sgt Rory Detagouwa.
6. At the close of the prosecution case on Tuesday 23rd October, Mr. Clodumar asked to file written submission on no case to answer as they involved complex issues of law. Having received submissions from both sides, I delivered a written ruling on 2 November 2018 finding that the defendants had a case to answer and I put the defendants to their defence.

The Agreed Facts

7. The agreed facts constituted 4 pages with 35 paragraphs which I have summarised below. On the night of the 10th of February 2015, the Police raided the house of Liu Rong Zhao at Block 52 Room 4 in Location Compound, Denig District. The Police officers involved were Sgt Rory Detagouwa, Senior Constables Valdon Dageago; the late Senior Constable Bryvennia Dageago and Constable Jayjay Bop. The officers were tasked by the Commissioner of Police to raid the abandoned school but they found no one there. Senior Constable Bryvennia was passing a building when she heard Chinese language being spoken and she peeped in and saw a Chinese man. She reported this to the other officers and they came to investigate. Constable Jayjay got on top of a water tank and peeped inside. He saw a group of Chinese men surrounding a table. He also observed cash on the table and the Chinese men playing with blocks. Constable Jayjay recorded on video what he saw through the exhaust fan and this was tendered as an exhibit. Constable Jayjay observed a Chinese female who had left for a while come back to the men and with her fingers to her lips signaled for them to keep quiet.
8. A Chinese lady came out of the house and Sgt Rory saw her and told her to open the door but she went inside and closed the door. Two Chinese males came out of the side door and they were stopped by the Police and asked to tell the others inside to open the door. The door was finally opened after about 2 minutes and the Police asked the two men to accompany them inside. The Police asked the owner of the premises for a gaming licence but he could not produce one. No licence was visible on the premises.

Testimonial Evidence

9. Constable Jayjay testified during the trial and said that he could see some men sitting down around the table and others standing behind them. "They were playing blocks and money on the table. They were giving money to the person in the middle, Mr. Liu Rong Zhao. I recognize him and I can identify him." He then identified the defendant Liu Rong Zhao in Court. Constable Jayjay then asked for his touch phone and recorded a video of the men inside the room. This was tendered as evidence.
10. The video he took showed Kam Chuen Wong with a bundle of what appeared to be Australian \$50 notes and a white rectangular block with a greenish blue top placed on top of the pile of money. The video showed that there was very good lighting in the room.
11. In his testimony, Constable Jayjay said that the video he took did not show everything. He said he leaned forward and looked downwards and saw the defendant Liu Rong Zhao standing below where he was looking in. Liu Rong Zhao had his back to Constable Jayjay but he turned his face

to the left and the right when he was collecting the money and Constable Jayjay could clearly see his face.

12. In cross-examination, Constable Jayjay was not shaken from his testimony and he clarified that his view to the left was restricted somewhat by the protruding extractor fan but that he could see Liu Rong Zhao. I take note that the video camera is not as flexible as the human eye which can swivel from left to right and top to bottom and see things which the camera phone cannot see.
13. Constable Jayjay Bop in his testimony said that when they went inside the house, *Wen Jian Wu* approached him and offered him cash and asked him in Nauruan-Chinese pidgin to take the money and not call the other Police Officers. Constable Jayjay refused. This was not challenged in cross-examination.

PROSECUTION WITNESS 2(PW2)—SGT IWO ADAM

14. Sgt Iwo Adam testified next. He has been in the Police force for 9 years and he is currently with the Criminal Investigation Unit. On 10th February 2015, he was tasked with the others by the Commissioner of Police to investigate an allegation that Chinese Nationals were gambling at the abandoned school in Location Compound, Denig District. They went to investigate but there was no gambling taking place at the place even though there were tables set up. Sgt Iwo was at the Police station and the raid was led on the ground by Sgt Rory Detagouwa. There was no search warrant for the raid because it was night time and they could not get a search warrant in time from the Court. He said that if they waited for the search warrant, the gamblers would have left the place with the obvious consequences. He went to Block 52 Room 4 later that morning whilst his Police team were still there. He described the tables he found—covered in green material similar to gambling tables and places where they could put the dice; drawers on the four sides of the table and coloured blocks on the tables. The Police found cash on the drawers of the tables; Constable Valdez came out of the kitchen with 2 cooking pots full of cash—10 to 15 bundles of \$100, \$50, \$20, \$10 and \$5 notes.
15. Sgt Iwo Adams spoke to the owner of Block 52 Room 4, the defendant Liu Rong Zhao whom he identified in court. Liu Rong Zhao did not have a licence to gamble and no licence was displayed on the premises. Mr. Liu Rong Zhao was there with him when the cash was counted and seized by the Police.
16. In cross-examination, Sgt Iwo agreed that there was no search warrant for the raid but that they were authorized by the Gaming Act to conduct the raid. The defendants were arrested and they were searched before they were taken into the Police cells. They were later charged.

Prosecution Witness 3(PW3)—Inspector Rory Detagouwa

17. Inspector Detagouwa has been in the Police force for 24 years. He was in charge of the Traffic Branch at the time of the raid and was a sergeant at the time. He is now the ADC to HE the President. On 10th February 2015, he was on duty and went with the party that raided Block 52 Room 4. He said that after Constable Jayjay Bop recorded the video of what was happening inside, he asked Sgt Iwo Adam what to do. He was told to knock on the door and ask to be let in. He said it was after 2:00 am and they could not get a warrant until the court opened at 9:00 am the next day.
18. A Chinese woman came out of the building after that and he asked her to open the door. The door was finally opened after a while and they walked in. He said he spoke to the owner of the

house, whom he identified in Court as Liu Rong Zhao. Liu Rong Zhao did not have any licence to gamble.

Facts not in Dispute

19. In the Agreed Facts and from the testimony of witnesses, the following material facts are not disputed:-
- a. There was no gaming licence;
 - b. Monies were found in several parts of the building including dressing tables, in cooking pots, boxes of water hidden between water bottles, a yellow purse, a small plastic container and a small can which the owner said was for his personal use.
 - c. Police searched the Chinese nationals in the building and found various items like mobile phones and watches and some cash. Only monies found on the Chinese nationals were confiscated;
 - d. Twenty four Chinese nationals were arrested from the premises, Block 52/Room 4 and they were taken to the Police station for further investigations.
 - e. The total money recovered in the search of the premises and individuals was \$47,449.00. Out of this amount, some monies have been returned to their respective owners following an agreement between the then DPP and Defence Counsel, Mr. Vinci Clodumar dated 17 July 2017.
 - f. Only \$11,204.00 remain and is currently in the Registry.
20. At the end of the prosecution case, Mr. Clodumar made an application that there was no case to answer but I delivered a written ruling that there was a case to answer on the 2nd of November 2018. After his rights under section 201(b) of the Criminal Procedure Act 1972 was read to him, the defendant Liu Rong Zhao elected to give an unsworn statement from the dock.

DEFENCE EVIDENCE

The Unsworn Statement of the Defendant Liu Rong Zhao

21. After his rights under section 201 (b) of the Criminal Procedure Act were explained to the defendants, Mr. Clodumar advised that Liu Rong Zhao would make an unsworn statement on behalf of the defendants.
22. Liu Rong Zhao said he lives at Block 52 Room 4, Location Compound, Denig District where the alleged offence took place. He is 48 years old and works at RONPHOS as a cook and has lived in Nauru for 27 years. He is a national of the Peoples Republic of China. He explained that mahjong is played by 4 players. After work, friends sit down and play. Mostly for party time. Mahjong is mostly for fun and requires skill. 4 people play for passing time, talk, not for gambling. If somebody wants to leave, it can be stopped. Mahjong is a block game with 4 people. Each player gets 13 blocks. A tile decides who starts. Mostly by brain work by skill and by chance. All blocks are in the middle, each player picks a block in turn until each have 13 blocks. After each player has 13 blocks, the starter puts a block in the middle and takes one from the other blocks in the middle. Each player takes turns doing this. The idea is to put together a combination of tiles to compose a winning combination. There are several winning combinations, each with a different value.

23. When someone declares a winning combination, they determine who the loser is and he gives money to the winner to buy drinks or food. Liu Rong Zhao says that it is not betting but a prize to continue partying and playing. The amount to be forfeited by the loser is determined before the start of each game. He said the prize in their game was \$5.
24. He said there was no charge to come and play at his place. He added that he caters to people who come and play and that the play was for fun.

Circumstantial evidence

25. A total of \$47,449.00 was seized at the scene of the alleged offence and on 28th July 2017, the then DPP and Mr. Clodumar for the defendants agreed that there was no legal basis for holding onto \$36,575.00 seized and they applied to the Court for the money to be returned to the owners pursuant to the provisions of section 128 of the Criminal Procedure Act 1972. The monies seized were stored in the Registrar's safe as there were no safes in the Police Station. This application was granted by the Court and the monies were released to the owners, leaving \$11,204.00.
26. Mr. Liu Rong Zhao is a cook at RONPHOS. The moneys returned on 28th July belonged to some of the defendants which were identified by them. No explanation was given of why these moneys were found in the premises. The huge amount of money found, and the places they were kept indicates that they were quickly hidden. Some of the moneys (\$36,575) were given back to the defendants in July 2017 after the then DPP and Mr. Clodumar agreed that they be returned. The Police raid was not expected. From these facts, the lack of an explanation of how or why the defendants left their moneys in the places where they were found in Mr. Liu Rong Zhao's home leads to the inference that the moneys were for gambling on a huge scale and that the defendants quickly hid their moneys when they discovered the Police outside the building trying to get in. The Court can draw an inference that the moneys were quickly divested and hidden as they were evidence of illegal gambling. From the large amount of moneys found, the Court can infer that the gambling was on a large scale and illegal.

The submissions

27. Mr. Clodumar filed written submissions on 12 November 2018 and Mr. Lacanivalu finally filed written submissions on Friday 23 November 2018. I thank both counsels for their submissions.
28. Mr. Clodumar submitted that the game of mahjong was not an illegal game under the Gaming Act because it was an exempt private game as defined in section 4 of the Act.

Was the gambling illegal?

29. An unlawful game is defined in section 3 of the Gaming Act 2011 thus: -

"Unlawful game" means a game:

(a) of chance, or of mixed chance and skill, in which money or any other valuable thing is offered as a prize or is staked or risked (by a participant or someone else) on an event or contingency; and

(b) that is not an exempt game.

"unlawful betting" means betting on an unlawful game;

30. The starting point in analyzing this issue is that all games where a bet of money or other valuable thing is made is illegal in Nauru unless a licence is issued for the game, or it is authorized by another Act or unless it is an exempt game.
31. The games for which a licence can be issued are those in Section 5 and Schedule 1 and mahjong is not listed in either. Section 5 (1)(e) however authorizes a licence to be issued for one or two table games. A table game is not defined in the Act. Guidance however may be given by definitions in jurisdictions where gambling is more common. In Queensland, a table game is a game which requires one or two persons to be dealers as opposed to gaming machines. Schedule 1 of the Act lists table games as *Baccarat, Blackjack, Casino war, Fan-Tan, Faro, Poker, Teen Patti, Two-up, Penny-up, Craps, Pai Gow, Sic bo, Big Six Wheel and Roulette*. Mahjong is not played on a gaming machine and since it is not an authorized table game, betting with money or any other valuable thing on mahjong would be unlawful unless it were an exempt game.

Is Mahjong played for money an exempt game?

32. Mr. Clodumar submits that mahjong is a exempt private game which is permitted by Section 4 of the Act:-

4 (2) An 'exempt private game' is a game that is conducted:

(a) otherwise than for a commercial purpose; and

(b) so that:

(i) the only way a participant in the game can make a profit or gain any other benefit as a result of the conduct of the game is by winning a bet; and

(ii) the rules of the game provide the same chance of winning a bet for all participants; and

(c) in accordance with any prescribed conditions.

(3) For subsection (2)(a), a game is taken to be conducted for a commercial purpose if:

(a) a fee is charged to participate in the game or to enter the place where the game is conducted (other than a fee intended to cover the reasonable cost of food or beverages provided at the place); or

(b) a charge, commission or fee is deducted from any amount bet or won by a participant in the game.

33. Mr. Clodumar submitted that the prosecution have not proved that the game was for a commercial purpose because there was no admission fee for the players and the money won by the players, was according to the evidence of Liu Rong Zhao, only to pay for drinks and food.
34. A literal reading of section 4(3)(a) and (b) of the Gaming Act would make betting on mahjong an exempt private game. The Gaming Regulations 2011 sets the prescribed amount for exempt games for karti and raffles at \$250, that is the total value of the prizes offered should be less than

\$250 for a game to be an exempt private game for which no licence is required. For any gambling where the prize is above \$250.00, a Gaming licence is required.

35. We therefore need to look at the purpose of the Gaming Act by applying the provisions of sections 49, 50, 51 & 52 of the Interpretation Act 2011 and the common law rules of interpretation of statutes.

What is the Purpose of the Gaming Act?

36. The rules of interpretation of statutes are in the Interpretation Act 2011, sections 49-50 of which state: -

49 Interpretation to achieve purpose of law

(1) In interpreting a written law, the interpretation that would best achieve the purpose of the written law must be preferred to any other interpretation.

(2) This section applies whether or not the purpose of the written law is expressly stated in the written law.

50 Legislative context

In interpreting a written law, the provisions of the law must be read in the context of the law as a whole.

37. The Gaming Act starts with the provision that it is "An Act to regulate gambling and other related purposes." A study of the provisions of the Act and the Regulations as required by section 50 of the Interpretation Act reveals the following: -
- a. All betting with money or other valuables without a licence is illegal;
 - b. Only those games permitted in Section 5 can be licensed;
 - c. Private exempt games include raffles and karti are permitted provided the prize does not exceed \$250¹;
 - d. Certain qualifications must be met before one can get a licence;
 - e. Inspectors under the licence have extensive powers including the power to search residence without a licence;
 - f. There are rigorous conditions to qualify for and operate a licence;
 - g. Licence fees are high. For example, \$250 per single event for a Table Game and \$2,500 per annum per premises; \$250 single event for Sports or other events and \$5,000 per year per premises.²
 - h. 15% of the money generated in a Bingo game is required to be paid to the Republic under a licence which can only be issued for a single event.

¹ Regulation 5 of the Gaming Regulations, 2011 & Section 4(1)(c) of the Gaming Act

² Schedule 1 of Gaming (Amendment) Regulations 2016.

- i. Offences for illegal gambling and related offences carry severe penalties (\$10,000 and six months; \$20,000 and 12 months; and \$50,000 and 2 years).
38. I conclude from looking at the matters in the foregoing paragraph that one of the purposes of the Gaming Act is to control gaming in Nauru and to generate income for the Republic from licensing fees.
39. The character of the game in which the defendants were participating on 5th February 2015 as suggested by the evidence is overwhelming that it was a large-scale gambling operation without paying the Republic any money to do so. This, I find is contrary to the purpose of the Gaming Act and I would prefer an interpretation to achieve the purpose of the Gaming Act than the literal meaning of the section 4 (2) and 4(3)(a) &(b). The end result of applying the purpose of the Gaming Act as I have is that the game of mahjong that was played by the defendants on the night of 17th February 2018 was not an exempt private game and therefore unlawful.

Extrinsic Evidence to Displace a Provision in the Act

40. Section 51(1)(b) and (c) of the Interpretation Act permits the Court to consider extrinsic material to confirm or displace the apparent meaning of the law or to find the meaning of the law when its apparent meaning leads to a result that is clearly absurd or is unreasonable:-

51 Non-legislative context – when extrinsic material may be considered

(1) In interpreting a written law, material not forming part of the written law may be considered in order to:

(a) resolve an ambiguous or obscure provision of the law; or

(b) confirm or displace the apparent meaning of the law; or

(c) find the meaning of the law when its apparent meaning leads to a result that is clearly absurd or is unreasonable.

(Emphasis mine)

52 Non-legislative context – extrinsic material that may be considered

(1) For section 51, the following material may be considered in interpreting an Act:

(a).....

(d) the explanatory memorandum for the Bill that became the Act, or any other relevant document, that was tabled in Parliament before the Bill was passed;

41. The explanatory memorandum of the Gaming Bill³ states:-

An “exempt private game” is a game that is conducted otherwise than for a commercial purpose. The exemption for raffles or games of karti for which the total value of the prize is below a prescribed amount allows for the conduct of games for which revenue will be minimal due to the prizes on offer.

³ Republic of Nauruo—20th Parliament, Gaming Bill 2011 Explanatory Memorandum, page 1.

42. The Gaming Regulations 2011 then set the prescribed amount for exempt games for karti and raffles at \$250, that is the total value of the prizes offered should be less than \$250 for a game to be an exempt private game for which no licence is required. The use of the words *for which revenue will be minimal* in the above quotation clearly and conclusively shows that the purpose of the Gaming Act was to collect revenue for the Republic from gaming activities. This leads me to the conclusion that the indicia of commercialism in section 4(3)(a)& (b) is not exhaustive and can be displaced or added to if the activity can be characterized as commercial in nature.

Conclusion on whether mahjong as played on the day was an exempt private game

43. I find, for the reasons given that: -

- a. The purpose of the Gaming Act is to control gaming and to generate revenue for the Republic;
- b. The defendants were playing mahjong on the 5th February 2015 without a Gaming Licence;
- c. The scale and character of the gambling was large and it can be inferred that the total prizes to be won exceeded \$250;
- d. The game was not an "exempt private game" and therefore it was illegal;

Was the Search Illegal?

44. The next issue to consider is whether the search was illegal as there was no search warrant.

45. In this case, Mr. Clodumar has raised a bar to the admission of the evidence on the grounds that it was obtained illegally because the Police did not have a search warrant when they entered the premises where the gambling was allegedly taking place.

46. . Article 9 of the Constitution provides: -

Protection of person and property

9.-(1.) No person shall without his consent be subject to the search of his person or property or the entry on his premises by other persons.

(2.) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of clause (1.) of this Article to the extent that that law makes provision-

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, the development or utilisation of natural resources or the development or utilisation of any property for a purpose beneficial to the community;

47. The Gaming Act 2011 is an Act of Parliament and Article 9(2)(a) of the Constitution has given Parliament the power to make a law for public order and public morality to regulate gambling. I am satisfied that the Gaming Act is not contrary to the provisions of the constitution.

48. Section 28 and 27 (b) of the Gaming Act 2011 authorizes the Police to enter and search any premises as follows: -

28 Powers of entry and investigation – police officers

A police officer may enter any place, including residential premises, and do anything mentioned in section 27(b), if the police officer reasonably believes doing so may disclose evidence of, or otherwise relates to, an offence against this Act.

49. Section 27(b) lists the things the police may: -

(b) do any of the following:

(i) inspect the place or anything found at the place;

(ii) open a container, receptacle or package found at the place;

(iii) seize and remove anything found at the place;

(iv) require a person at the place to answer questions, produce a document or thing under the person's control or give any other assistance the officer requires to carry out his or her functions;

(v) examine, copy or take extracts from a document found at the place;

(vi) take photographs, films or audio, video or other recordings.

50. This Court does not have the power to interpret the Constitution. What the Court is doing here is merely establishing that Parliament has the power to make laws to regulate gambling. It is trite law that Parliament has the power to make laws and it has done so under the Constitution. To remove any doubts, I will examine the common law position.

51. Under the common law, the Lord Camden, LCJ said in *Entick v Carrington* (1765) 19 St Tr 1029 at p 1066:-

By the Laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, although the damage be nothing.. if he admits the fact, he is bound to shew by way of justification, that some positive law has empowered or excused him.

52. By virtue of section 4 of the Customs and Adopted Laws Act, this became the law of Nauru and I can find no statute that has taken away this power.

53. In *Halliday v Neville*(1984)⁴ Gibbs, CJ, Mason, Wilson and Deane JJ of the High Court of Australia said that the foregoing statement is still true and that the principle applied to "officers of the government and to private persons. Their honours added that:-

"A police officer who enters or remains on private property without leave and licence of the person in possession or entitled to possession commits a trespass and acts outside the course of his duty unless his entering or remaining on the premises is authorised or excused by law."

54. The Police had the power under section 28 and 27(b) of the Gaming Act to enter and search the property "if the police officer reasonably believes doing so may disclose evidence of, or otherwise relates to, an offence against this Act."

⁴ (1984) HCA 80; (1984) 155 CLR 1 (6 December 1984)

55. Section 27 & 28 of the Gaming Act does not allow the Police to search the person of someone caught gambling. However, sections 15 and 16 of the Criminal Procedure Act 1972, give the police powers to search any arrested person and the evidence shows that the search was conducted under this power.
56. In any case, even if the evidence was obtained illegally, the Court has a discretion to admit it: *King v the Queen*[1968] 1 AC 304 . This is a decision of the Privy Council from Jamaica.
57. The evidence from the search is prima facie admissible because it is relevant and was obtained pursuant to a law.

The Charges

Count 1: Conducting Unlawful gaming or betting

58. Section 18(a)(b) of the Gaming Act 2011 provides:-

18 Conducting unlawful gaming or betting

A person commits an offence if the person conducts:

(a) an unlawful game; or

(b) unlawful betting.

Maximum penalty: \$50,000 and 2 years imprisonment

59. The elements of the offence of the first count therefore are that:-

- a. The defendant
- b. On the 9th of February 2015
- c. Conducted an unlawful gaming or betting

60. I accept the evidence of Constable Jayjay Bop that he saw the defendant Liu Rong Zhao taking part in the gambling. The gambling took place in Liu Rong Zhao's home and we can infer that he permitted this to take place. The tables were gaming tables for mahjong and the gambling could not have taken place without his consent.

61. For the reasons given, I find that the prosecution has proved the elements of the first count against the defendant, Liu Rong Zhao beyond reasonable doubt and I find him guilty as charged.

Count 2: Person in charge of place used for unlawful gaming or betting:

62. Section 19(1)(a)(b) of the Gaming Act 2011 provides:-

19 Person in charge of place used for unlawful gaming or betting

(1) A person commits an offence if the person:

(a) is in charge of a place being used for the conduct of an unlawful game; and

(b) knows the place is being used for the conduct of an unlawful game.

Maximum penalty: \$10,000 and 6 months imprisonment

63. The elements of the offence for Count 2 are:

- a. The Defendant Liu Rong Zhao;
 - b. On the 9th of February 2015;
 - c. Was in charge of the premises known as Block 52 Room 4, Location Compound, Denig District
 - d. The said premises was being used for the conduct of an unlawful game; and
 - e. The defendant knew that the place was being used for the conduct of an unlawful game.
64. From the analysis of the evidence above for Count 1, I find that the prosecution has proved each element of this offence beyond reasonable doubt and I therefore find the defendant Liu Rong Zhao guilty as charged.

Count 3: Participating in unlawful gaming or betting: Contrary to Section 21(1)(a)(b) of the Gaming Act 2011

65. Section 21(a)(b) of the Gaming Act provides:-

21 Participating in unlawful gaming or betting

(1) A person commits an offence if the person:

(a) participates in an unlawful game; and

(b) knows the game is an unlawful game.

Maximum penalty: \$10,000 and 6 months imprisonment


66. The elements of the offence are:-

- a. That the defendant, Liu Rong Zhao,
- b. on the 10th day of February 2015;
- c. participated in an unlawful game;
- d. knowing that the game is an unlawful game.

67. For the reasons given, I find therefore that prosecution has proved the elements of the offence beyond reasonable doubt that the defendant Liu Rong Zhao is guilty of the offence charged in Count 3.

Conclusions

68. I find Liu Rong Zhao guilty of all three counts in the charge.
69. The maximum sentence for the first count is a fine of \$50,000 or imprisonment for 2 years or both. For counts 2 & 3, the maximum is a fine of \$10,000.00 and imprisonment for 6 months. The maximum fines are way above my maximum of \$3,000 and I therefore transfer this case to the Supreme Court for sentencing.


.....
Penijamini R. Lomaloma
Resident Magistrate

