

REGINA -v- ALICK SURA & OTHERS

High Court Sitting at Kira Kira

(Palmer J.)

Criminal Case No. 46 of 1993

Hearing: 3 August 1993

Judgment: 4 August 1993

J. Faga for Prosecution

C. Tagaraniana for the Defendants

PALMER J. The three accused in this case have been charged with the offence of demanding money with menaces contrary to section 288 of the Penal Code. The particulars of which read that on or about the 14th of April 1991 at Horoahia, Arosi II, Makira Province, the three accused's demanded the sum of \$200.00 from Michael Hisiani.

The facts briefly were that on the morning of the 14th April 1991, the three accused together with another person referred to as a Chairman of a village Committee, by the name of Waikiki, went to see Michael Hisiani. It seems that Waikiki was a prominent leader and that he acted as the three accused's spokesperson.

The evidence as adduced showed that the three accused and Waikiki went to see Michael Hisiani to ask him for compensation for a fight that they alleged had occurred between a certain group of boys from Michael Hisiani's village and their boys or relations, and in which one of their relations had been seriously injured.

There was no attempt to verify the truth of that fight and the persons involved. However, the Defendants felt obliged it seems in custom to go and see Michael Hisiani and make a demand of compensation.

On reaching Michael Hisiani, he was told by Waikiki what the purpose of their visit was.

In his evidence under oath, Michael Hisiani stated that Waikiki said to him that he must give \$200.00 compensation for the trouble caused by Moffat Maru's boys. If he did not pay compensation then something will happen. By this it was hinted that they will kill somebody in the village or cause trouble.

These words are not denied by the Defendants. In his evidence under oath the Defendant, Willie Tea did not deny that these words were used. He said that those words were used because they believed their relation had been seriously injured.

The crucial question therefore before this court is whether these words amounted to a demanding with menaces.

Did these words induce Michael Hisiani to part with the \$200.00?

In his evidence under Oath Michael Hisiani stated that he was frightened when he heard these words because the defendants looked cross. He gave the money therefore to protect his people and his family and because he believed that if he did not do so the Defendants will carry out their threat.

In the case of *R -v- Clear [1968] 1 All E.R.74, C.A.* quoted in *Archbold Criminal Pleading Evidence and Practice 43rd Edition* at para. 18-140 Seller L.J. said:

"Words or conduct which would not intimidate or influence anyone to respond to the demand would not be menaces..."

In *R-v- Tomlinsan [1895] 1.Q.B 706* at p.710 *per Wills J.* also quoted in *Archbold* at para. 18-141 he states that *"...the threat must not be one that ought to influence nobody"*. Also in *Thorne -v- Motor Trade Association [1937] A.C. 797, H.L.* at page 817, Lord Wright states that the word 'menace' is to be and I quote *"liberally construed and not as limited to threats of violence but as including threats of any action detrimental to or unpleasant to the person addressed. It may also include a warning that in certain events such action is intended."*

The facts in this case are quite clear. These Defendants made a demand for compensation accompanied by threats that if it was not paid forthwith that they will cause harm to someone in the village. The threat was made to a chief, who was a responsible leader in his community and although the threat was not addressed personally at him, it was proper and reasonable to expect him to be apprehensive and concerned for the people he had responsibility over. It is quite clear to me that he was intimidated by those words and by the fact that the Chairman, Waikiki was accompanied by about five people in total. I do note that these 3 Defendants and 2 others sat quietly whilst Waikiki spoke. But their presence and their appearance did contribute in my view to back up the threats that were made. These Defendants clearly meant business when they went. They intended to ask for compensation and that it must be given or else something will happen.

The evidence of the prosecution witnesses brings this out, although the Defendants denied that they looked cross. I accept the version of the prosecution witnesses.

It was wrong for Waikiki to threaten Michael Hisiani with harm to someone in his village. I am satisfied Michael Hisiani was induced to part with his money unwillingly.

I do note what the defendant, W. Tea said about Michael Hisiani's statement that if the allegation was true then the money should not be returned but if it was false then it should be returned. However, it needs to be borne in mind that this was said by a man who had already been threatened by these Defendants, was taken by surprise, was not aware of the truth of the allegation, but felt obliged in his position to do something about the threat made. Had no threat been made, then I doubt if he would readily part with his money.

The role of Waikiki needs to be commented on briefly. I do note that he may have been genuinely concerned about ensuring that no trouble occurred. In Michael Hisiani's own words he described Waikiki's role as a "person who was trying to sort things out. He was trying hard to solve the problem with his group so that no problem would occur between us." Unfortunately, his efforts did not go far enough. He had no right to make a demand with threats. If he was sincere, then he should simply have made the demand without any threats. He could also have gone alone. It was not necessary to have the Defendants accompany him. There was no possibility of any harm being done to him because he was going to see the Chief of that village, who would be expected to act responsibly. By having five young able bodied men accompany him surely any ordinary person's mind of normal stability and courage would construe the demand with graveness and respond accordingly to have that threat removed. I am satisfied Michael Hisiani was placed in a situation where any ordinary person would not wish to argue or remonstrate with these defendants. To do so may mean trouble. I am satisfied there was tension and not a free atmosphere for negotiation and settlement of the claim. In other words there was no option but to give the compensation demanded there and then.

The actions of the defendants clearly breached section 288. I am satisfied beyond reasonable doubt that the allegation has been made out. I convict these 'A's accordingly.

(A.R. Palmer)

JUDGE

SENTENCE

For Stephen Tangia I give credit as a first offender. I note in respect of Walter Diongitara and Willie Tea you both have previous convictions though not related to this. I will therefore treat you for purposes of this offence as first offenders.

The offence you have been charged with is classed as a serious one and could expect a custodial sentence. However the circumstances of each offence need to be considered separately to fix the appropriate sentence.

I take into count the lapse of time involved, which is not your fault but due to a shortage of magistrates. As a result of the delay, there have been a few changes of personal circumstances which must be weighed by the court.

I have said time and again that it is not wrong to ask for compensation. However, it must not be accompanied by threats of any kind whatsoever. In your case for instance you reacted to rumours that you heard rather than acting responsibly. This is typical of how customary demands were made for compensation. I note it takes time to be able to change lifelong habits or practices but people must learn to respond to situations rather than reacting. What eventually transpired in your case is that your claim was baseless. That is a big shame on yourselves.

I note \$200.00 taken has been repaid.

I also note that you did take a responsible person, an elder and a chairman of your village committee to accompany you. There was no shouting and dancing around and no presence of weapons.

In this particular case I am satisfied a fine is appropriate. You are convicted and each fined \$250.00 payable by 4.00 pm in default 125 days in prison.

(A.R. Palmer)

JUDGE