# SUSAN TAMANA -v- REGINAM

High Court of Solomon Islands
(Muria, CJ.)
Criminal Case No. 15 of 1995

Hearing: 27 June 1995
Judgment (on appeal): 27 June 1995

*M.B. Samuel for Appellant*
*J. Faga for Respondent*

**MURIA CJ:** The appellant, Susan Tamana, had been found guilty and convicted after a trial in the Magistrate's Court of three counts of forgery contrary to s.329(2)(a) of the Penal Code. She was acquitted of six counts of conversion. Following that conviction, she was sentenced to four months imprisonment on each of counts 1 & 2 which sentences were to run concurrently and two months imprisonment on count 3 which was to run consecutively to the sentences in Counts 1 & 2 making it a total of six months imprisonment.

The appellant filed this appeal against the sentence on the ground that it is too harsh in the circumstances as given to the Court below. Counsel for the appellant also intended to appeal against conviction but had decided not to pursue that after having perused the record. That decision by Counsel is properly taken as this Court would have no hesitation in dismissing such an appeal in view of the evidence before the Court below.

As I have said the appellant's main argument here is that the sentence was too severe. Counsel for the appellant repeated her argument as that made before the Court below and urged this Court to accept that the Court below paid less heed to the mitigating factors submitted to it. These factors include no prior conviction, loss of employment, delay, recovery of the proceeds in full and that the appellant is a mother with a ten months old baby who is still dependent on the appellant for breast-feeding.

Counsel conceded, and rightly so, that forgery is a serious offence and one that merits custodial sentence. The seriousness of this type of offence is reflected by what the law imposes as the punishment for committing such an offence.

There can be no doubt that the sentence of six months is not wrong in principle in this case. Counsel for the appellant rightly conceded so. I do not find it possible to criticise the Court below for the approach to sentencing in this case. The offence is a reprehensible and a serious one because, as Counsel for the respondent rightly pointed out, this is a

prevalent method of cheating. Thus the sentence of six months can hardly be said to be inappropriate in this case. It is warranted.

Had those factors been that straight forward, I would not have proceeded further to consider this matter. The situation in this case is complicated by special circumstances attaching, not so much to the appellant herself, but to the family conditions. She has two young children one of whom is only ten months old and still rely on the appellant for breast-feeding. That infant child very much relies on the appellant for care. There is the father who is a working father and the house girl who are said to be taking care of the child. However that can hardly be a desirable arrangement for the care of the a months old child who must still need the tender care of the appellant mother.

For these reasons, and not anything which palliates the offences committed by the appellant, I am prepared to exercise the Court's mercy on the appellant in this case, and to order the sentence to be varied by having it suspended so that she can go home to care for her ten months old child.

I allow the appeal and vary the sentence accordingly.

(Sir John Muria)
**CHIEF JUSTICE**