

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2016-044-002222
[2018] NZDC 2173**

NEW ZEALAND POLICE
Prosecutor

v

**3 KINGS FOOD DISTRIBUTORS LIMITED
VIRGIL BALAJADIA
LUISITO BALAJADIA**
Defendants

Hearing: 8 February 2018
Appearances: S Cossey for the Defendants
Judgment: 8 February 2018

NOTES OF JUDGE N R DAWSON ON SENTENCING

[1] Virgil Balajadia and Luisito Balajadia, you appear in Court today for sentencing along with the company, 3 Kings Food Distributors Limited. At trial 3 Kings Food Distributors Limited was found guilty of two charges of exploitation of a temporary worker, a charge that has a maximum sentence of a \$100,000 fine.

[2] Virgil Balajadia, you were found guilty of two charges of exploitation of a temporary worker, which has a maximum sentence of seven years' imprisonment, and also five charges of provision of false and misleading information to Immigration New Zealand.

[3] Luisito Balajadia, you were found guilty of two charges of exploitation of a temporary worker and two charges of providing false and misleading information to Immigration New Zealand.

[4] The charges of exploitation of a temporary worker relate to the failure to pay [the employee], the amounts due to him pursuant to the Minimum Wages Act 1983 and the Holidays Act 2003. These offences occurred in 2015 when the complainant was employed by you. The charges of providing false and misleading information to Immigration New Zealand all relate to your supplying individual employment agreements for persons coming to New Zealand from the Philippines to work as chefs in the 3 Kings Restaurant.

[5] I note that none of you have any previous convictions.

[6] I have read the submissions from the Crown and also from your lawyer as to the appropriate sentence. I have also seen the pre-sentence reports and victim impact statements that have been provided to the Court.

[7] When I sentence you I need to hold you accountable for the harm caused to the victims of your offending. I need to impose a sentence that will promote a sense of responsibility and that acknowledges the harm you caused to those victims and also denounce your conduct. A very clear message needs to be sent that this type of deception to a Government department and the flagrant abuse of workers' rights cannot be countenanced. A sentence needs to be imposed to deter you and others from offending in this way.

[8] There are a number of aggravating factors I need to take into account when I sentence you. The first is the extent of the harm of the offences. The victims worked very long hours, they were underpaid and at times some were not paid at all for significant periods. You also abused the trust of the New Zealand Immigration Service who are responsible to maintain the integrity of the New Zealand system of immigration.

[9] There is an abuse of trust in relation to the victims. They were strangers to this country. They had no network of friends or other support here, they had very little English language skills to rely upon and they were reliant upon you to take care of their best interests, which you failed to do.

[10] There is a very high level of premeditation involved in that it was deliberate and repetitive offending over a sustained period of time, exploiting vulnerable people to circumvent New Zealand's labour laws and for your own financial gain.

[11] In mitigation you have no previous convictions and you have offered to go to restorative justice.

[12] The pre-sentence report for Virgil Balajadia notes that she has not expressed any clear remorse for her offending and offered rationalisation for her actions. She described herself as a victim of tough financial circumstances.

[13] The pre-sentence report for Luisito Balajadia says that he is very sorry for any wrongdoing, although he denied elements of the offending which suggests that he was not taking full responsibility for his actions. He appeared tearful at the interview, but it was not clear whether that was due to remorse towards the victims or concern for his own situation.

[14] It was very clear from the evidence at the trial and the victim impact statements that Virgil Balajadia was the lead offender in this offending. You both manipulated the immigration system for your personal gain. Virgil Balajadia was also abusive to her employees and made them work for hours far in excess of the wages they were being paid for and at times withheld payments of wages and controlled their personal lives through requiring them to live in accommodation she provided and kept them isolated so they had difficulty in forming any friendships or support networks. Their working and living conditions quite frankly were not far removed from a modern day form of slavery.

[15] After taking into account the submissions that have been made to me I am of the view that the starting point for Virgil Balajadia, the principal offender, is a sentence of imprisonment of 30 months' imprisonment. Her previous good character would entitle her to a deduction of two months and the reparation that has been offered would entitle her to a further two months' deduction; resulting in a sentence of imprisonment of two years and two months. I am also ordering reparation of \$7200 at the rate of \$200 per week. The first payment by 1 April 2018.

[16] For Luisito Balajadia, who essentially went along with his wife's actions in this offending and he was not convicted of as many charges, the appropriate starting point for sentencing him would be a sentence of imprisonment of 20 months. The fact that he has no previous convictions and has expressed some remorse would entitle him to a deduction of four months to 16 months' imprisonment. I then need to consider whether home detention would be the appropriate outcome and I am satisfied it is given this is his first offending. He is therefore convicted and sentenced to eight months' home detention. The conditions will be those set out in the probation report:

- (a) To attend an assessment for any suitable rehabilitative programme as directed by a probation officer.
- (b) To attend and complete any counselling, treatment or programme as recommended by the assessment as directed by and to the satisfaction of a probation officer.
- (c) Not to possess, consume or use any alcohol or drugs not prescribed.
- (d) To travel directly to the proposed home detention address without deviation and await the connection there.
- (e) To reside at [address deleted], Auckland, for the duration of the home detention sentence.

[17] He is also ordered to pay reparation of \$7200 at the rate of \$200 per week, commencing 1 April 2018.

[18] The reparation will be for a total amount of \$14,400 and will be divided as follows between the victims: [victim 1] will get \$3312; [victim 2] \$3456; [victim 3] \$6624; [victim 4] \$720; [victim 5] \$288.

N R Dawson
District Court Judge