BETWEEN: ANTOINETTE COULON
(Appellant)

AND : PUBLIC PROSECUTOR
(Respondent)

JUDGMENT

Antoinette Coulon appeals against conviction and sentence. On 7th February 1989, she was found guilty on 11 counts of misappropriation contrary to Section 125 of the Penal Code Act 1981. She was sentenced to 4 years imprisonment, concurrent, on each count, and ordered to pay compensation of VT661,739 or in default of payment to a further 2 years imprisonment.

Background

The Appellant was the accountant for Vulcan, a body set up to administer land in Port Vila for the benefit of its custom owners. She was responsible for keeping its books and for making all payments on its behalf including salaries. She was not inexperienced – she had previously worked 21 years as "Accountant" at the French Residency.

There were 2 authorised cheque signatories, the Chairman Mr Bogiri and the General Manager Mr Kalo. They used to sign bunches of blank cheques and give them to the Appellant. Between August 1987 and March 1988 she wrote out 11 cheques for sums far exceeding her salary, payable to herself. She completed the cheque stubs to show a figure much lower than that actually paid. Money allocated for salaries having been exhausted, she used money set aside for specific projects.

She admits that she drew the money and spent it on herself and her family. Her defence was that she did not act dishonestly. In support of this she says that she was given permission to do this by the General Manager, Mr Kalo; and that she always intended to pay the money back. She said that the amount shown on the cheque stub represented the salary due to her; and that she kept a separate record showing the total balance which she owed. (Mr Gee in argument seemed to suggest that a genuine intention to repay would be a defence to a charge of misappropriation. It is not. If money is misappropriated today with the intention and ability to repay it tomorrow, the offence is still committed

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as soon as the money is taken. The intention to repay is only relevant as to sentence.)

At the trial the Appellant admitted that the Board had a general policy to limit advances of salary to 3 months salary (corresponding with the period of notice) and that she advanced herself for more than that. But she said that Mr Kalo knew how much she had, and gave consent on each occasion. Mr Kalo said that he never refused a request by her for an advance of salary, but he did not know how much had been advanced; nor that the limit of 3 months' pay had been exceeded; nor that the money was taken from money voted for special projects. He said that if he had known any of these things he would have refused. If true, it is disgraceful that a public body was operated with so little control.

Fresh Evidence

Mr Gee for the Appellant sought to introduce evidence which he said was only drawn to his attention last week. This related to a Board meeting in September 1987 when it was allegedly recommended that the General Manager, Mr Kalo be dismissed for authorising advances of salary in excess of the limits laid down by the Board. We refused this application for 2 reasons:

(i) If it was common practice to allow such advances, the Appellant being in charge of the financial records would know of it. The matter could and should have been put to Mr Kalo at the trial. There is no reasonable explanation for failure to do so. It is too late to raise it now.

(ii) Evidence of the opinion of the Board is of no probative value. Their belief that excessive advances had been made does not prove that this had in fact occurred.

Mr Gee also suggested that this evidence would show that Mr Kalo had lied in evidence by saying that he himself had not received advances in excess of 3 months' pay when in fact he had done so. Perusal of the transcript reveals no record of such evidence having been given by him.

Grounds of Appeal against Conviction

The Appellant raises 2 grounds:

1. That the Court erred in accepting the evidence of Mr Kalo and giving too little weight to that of the Appellant.

This was essentially a matter for the trial judge and the assessors. They saw and heard the witnesses. They were in a much better position than us to decide what weight to give to what evidence. An appeal court should not interfere with a finding of fact unless it is manifestly wrong. In the absence of any credible explanation for the difference between the amounts shown on the cheques

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and the counterfoils it is not difficult to see why her evidence was not believed. There is no merit in this ground of appeal.

2. That the judge failed to direct the assessors, and himself failed to sufficiently consider, the defence that the Appellant sought and obtained consent for each payment as an advance of salary.

A full record of the summing up is not available. Mr Gee stated that this part of her defence was not referred to at all. Mr Baxter-Wright for the Prosecution was unable to help. There is no specific reference to it in the judgement. We have therefore to consider the possibility that it may have been inadvertently overlooked.

Even if it was, we do not consider that any injustice was done. It is clear that the court below believed the evidence of Mr Kalo and disbelieved that of the Appellant. There was substantial other evidence pointing to her guilt:

(i) As an experienced book keeper, she wrote different figures on the cheques and their stubs.

(ii) As an experienced book keeper, she took money for her own "advance" from a vote which she must have known must not be used for this purpose.

(iii) The total amount of her borrowing reached figures which she had no prospect of repaying. She must have known when she drew these sums that she could never hope to repay them in full.

Having carefully considered all the evidence, we are left in no doubt that the Appellant acted dishonestly. There is no sufficient ground for interfering with the decision of the learned Chief Justice. The appeal against conviction is dismissed.

Appeal against Sentence

The Appellant was in a position of trust. She was dealing with public money. There may have been no proper system of financial control but if not, it was her duty to impose one. Instead she abused her position to take advantage of the lack of control for her personal benefit. It was a serious breach of trust by a public servant. Of course she must go to prison. There is nothing wrong in principle with a sentence of 4 years on each count. The compensation order is justified and saves duplication of proceedings by avoiding the necessity for a further civil action.

We are more concerned about the further order that the Appellant should serve a further 2 years in prison is she fails to pay the compensation order. In prison she will have no means of making this payment. So in effect she will have been sentenced to a total of 6 years.

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The last step when sentencing is to stand back and consider whether the total of separate sentences is appropriate for the offences committed. Applying this test, the total of 6 years is excessive. We therefore set aside the order for imprisonment in default of payment. The appeal against sentence is allowed to that extent only.

Dated at Port Vila this 4th day of April, 1989.

Mr Justice A. Amet
Court of Appeal Judge

Mr Justice G. Martin
Court of Appeal Judge

Mr Justice E. Goldsbrough
Court of Appeal Judge