

**IN THE COURT OF APPEAL  
OF THE REPUBLIC OF VANUATU**  
*(Criminal Appellate Jurisdiction)*

**Criminal Appeal**  
**Case No. 17/07 CoA/CIVA**

**BETWEEN: PUBLIC PROSECUTOR**

Appellant

**AND: WILFRED WILLIE TAVDEY**

Respondent

**Coram:** *Hon. Chief Justice Vincent Lunabek*  
*Hon. Justice Ronald Young*  
*Hon. Justice Dudley Aru*  
*Hon Justice Mary Sey*  
*Hon Justice David Chetwynd*  
*Hon. Justice Paul Geoghegan*

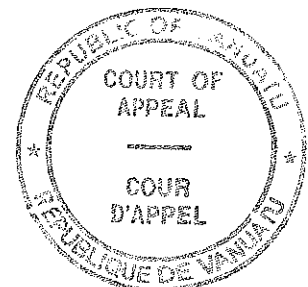
**Counsel:** *Mr. S. Blessing for the Appellant*  
*Mr. R. Tevi for the Respondent*

**Date of Hearing:** *28<sup>th</sup> March 2017*

**Date of Judgment:** *7<sup>th</sup> April 2017*

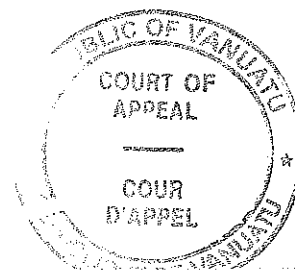
**JUDGMENT**

1. This is an appeal by the Prosecution against sentence in the Supreme Court on 22 December 2016. The respondent Wilfred Tavdey was charged with four counts of obtaining money by deception contrary to section 130 B of the Penal Code [CAP 135] and pleaded guilty to all four counts. The Judge's starting sentence was 3 years imprisonment with deductions of 12 months for a guilty plea and 10 months for remorse and cooperation. The respondent was sentenced to an end sentence of 14 months imprisonment to be served concurrently and



suspended for a period of two years with an order for 150 hours of community work to be performed within 12 months. He was also ordered to repay VT 2, 620, 300 within 12 months.

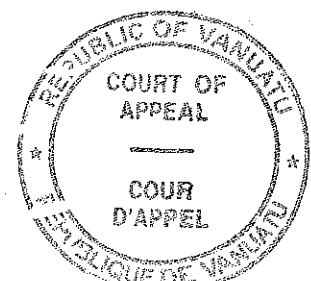
2. The incidents occurred over a period of time since 2008 where the respondent sought and obtained money from various individuals at different times and places under the pretext that he was the Pacific President of the Ahmadiyya Islamic Association of Vanuatu and that the money collected would be invested with huge returns for those who gave him money. None of the victims were ever repaid nor did they receive the promised returns.
3. The Prosecution appeals the sentence imposed by the primary Judge on four main grounds, namely, that the primary Judge:-
  - a) imposed a starting point that did not reflect the seriousness of the offending;
  - b) failed to increase the start sentence to reflect the respondent's convictions;
  - c) took into account mitigating factors which had no basis; and
  - d) suspended the sentence without any justification.
4. The facts before the Supreme Court were Katurine Leo met the respondent in Luganville, and gave him a total of VT503, 300 after he told her that he would be able to assist her pay for her children's school fees. She believed him and took the respondent to live with her family. He told her that a receipt would be issued after she paid him the money but he disappeared after receiving the money and no receipts were ever issued.



5. Josiane Tabiaga also met the respondent in Luganville and gave him a total of VT 200,000 following his assurances that he would be able to assist her with her children's school fees. The respondent also told her that he could assist her with funds to purchase land and to assist her with agricultural projects. She was also convinced and took the respondent into her home. Despite promises to issue a receipt, he disappeared after receiving the money.
6. Bob Lava met the respondent at Lenakel on Tanna and gave him a total of VT 500, 000 after the respondent assured him of a return on his investment of VT 20 million. The terms were recorded in an Agreement signed on 20 May 2015. No such payments were ever made.
7. Johnny Lava also met the respondent and gave him a total of VT1, 612, 000 with the assurance that it will be invested and the principal amount returned with interest. No payments were ever made by the respondent despite promises to do so.
8. Regarding the first ground of appeal the primary Judge said that:-

*"the circumstances of your repeated offending are such that the only appropriate sentence the Court will impose is to be a custodial sentence with a starting sentence of 3 years imprisonment for each 4 counts to be served concurrently .  
There will be no uplift."*

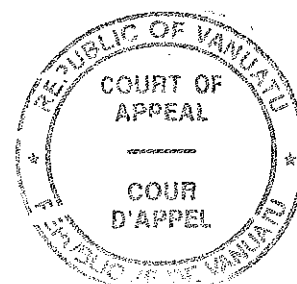
9. The maximum penalty for the offence of obtaining money by deception contrary to section 130B of the Penal Code [CAP 135] is 12 years imprisonment. When the respondent entered guilty pleas to all the charges, the evidence against him was that a total of VT 2,815,300 was obtained from a number of individuals whose trust had been gained over a period of time and who had been deceived. The respondent's offending continued over a period of approximately four years.



Once he had deceitfully obtained money from one victim he moved on to another. This was a well-planned deceit. It involved the respondent claiming to help needy children with scholarships. He drafted fake letters to convince his victims of the truth of his scheme. The victims believed that the monies they gave him would yield huge returns however, the respondent had no intention of ever repaying the money.

10. Any sentence imposed by the Court must reflect the seriousness of the offending. We are satisfied that the starting sentence of the Judge did not reflect the seriousness of the offending. It warrants a starting point of 4 years imprisonment.
11. The second ground of appeal is that the Judge failed to increase the starting sentence to reflect the respondent's long history of previous offending.
12. In his sentencing remarks the Judge in the Supreme Court did not specifically mention the respondent's previous convictions. As to the respondent's personal circumstances, the Judge said "*there will be no uplift*". In fact the respondent had a long list of dishonesty convictions, some 15 such convictions over 13 years. These previous convictions justified an uplift from the starting sentence of a further one year imprisonment. This increase meant the appropriate sentence was 5 years imprisonment before any personal mitigation.
13. In relation to the third ground it was submitted by the Prosecution that the primary Judge took into account mitigating factors which had no basis. In his sentencing remarks the primary Judge noted that no pre-sentence report was filed and the only written submissions filed was from Mr Tevi. The Prosecution had not filed submissions at the time of sentencing. The primary Judge said:-

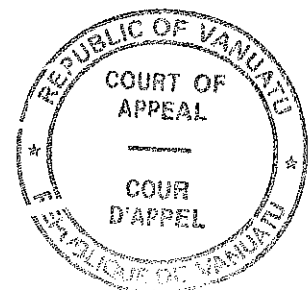
*"In my view you are entitled to reductions of sentence for the following mitigating factors-*



a) For guilty pleas – 1/3 reduction equivalent to 12 months is deducted from the initial sentence of 3 years leaving the balance of sentence to be 2 years imprisonment.

b) For clean past , good cooperation with the police and remorse , a further deduction of 10 months leaving the balance at 14 months or 1 year and 2 months.”

14. A guilty plea entitles a defendant to some discount on his sentence depending on when the guilty plea is entered. *“The greatest discount under this head will be a discount of one third where the guilty plea has been entered at the first reasonable opportunity. A later guilty plea will result in a smaller discount..”* (**Public Prosecutor v Andy [2011] VUCA 14**).
15. The primary Judge on 31 October 2016 noted in his orders that on that day the respondent had pleaded not guilty to 4 counts and the matter was then adjourned for trial on 25 November 2016. When the matter was called for mention again on 24 November in preparation for the trial the following day, the respondent sought leave to be re arraigned. His request was granted and he was then re arraigned on the date of the trial and entered guilty pleas to all 4 counts.
16. The respondent was re arraigned on the same charges for which he had earlier entered not guilty pleas therefore his guilty plea could not have been entered at the first reasonable opportunity. For that reason the respondent is not entitled to the full one third discount however, given significant time would have been saved by avoiding trial, we consider a 25 per cent (or 15 months) deduction for his guilty plea fairly reflects his late plea.
17. Given his record of previous convictions, the deduction of a further 10 months for a *“clean past, good cooperation with the police and remorse”* could not be justified. There is no evidence that the monies were repaid or of any remorse



shown by the respondent. In the circumstances no deduction should have been made for these factors.

18. We are therefore satisfied the Judge's sentence before considering suspension was manifestly inadequate. We consider a final sentence of 3 years 9 months imprisonment is appropriate.

19. The final ground of appeal relates to the suspension of the sentence where the Prosecution submits that the suspension of sentence was not justified. The Judge in suspending the sentence stated that:-

*"I have taken into account your other personal particulars such as medical condition, family circumstances and the offer assurances and pleas made on your behalf by Philimon Ishmael to repay all the monies you obtained, and come to the view that your end sentence of 14 months should be suspended for a period of 2 years under the provision of section 57 of the Act.."*

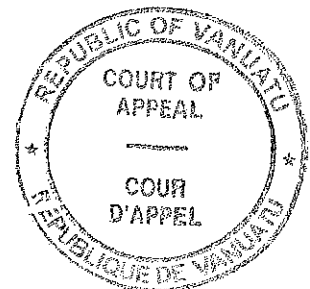
20. Section 57 1) (a) provides that:-

*"The execution of any sentence imposed for an offence against any Act , Regulation, Rule or Order may by decision of the Court having jurisdiction in the matter, be suspended subject to the following conditions:*

*If the court which has convicted a person of an offence considers that:*

- i) In view of the circumstances ;and*
- ii) In particular the nature of the crime ;and*
- iii) The character of the offender*

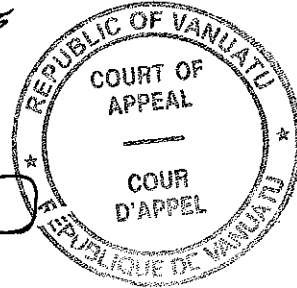
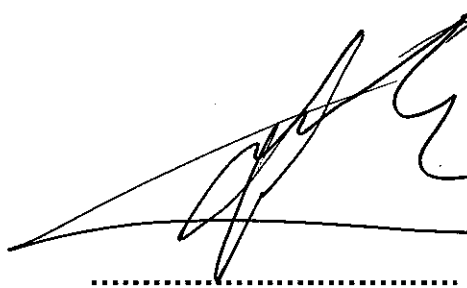
*It is not appropriate to make him or her suffer an immediate imprisonment it may in its discretion order the suspension of the execution of imprisonment sentence it has imposed upon him or her..."*



21. The criteria set out above requires the Court to consider three factors when considering the suspension of a sentence: the circumstances of the particular case, the nature of the crime and the character of the offender. Given what we have said, the suspension of the sentence in this particular case was clearly not justified. The respondent has a history of repeat offending for which imprisonment was served. In this particular instance, the respondent defrauded unsuspecting victims of their hard earned money for his own personal use. He gave no thought to the impact of his actions on the livelihood of the victims. No weight could be placed on a promise to pay reparation. If the promise was genuine it would have been paid.
22. The appeal is allowed. The suspended prison sentence is quashed as is the community work order. Instead, the respondent is sentenced to 3 years 9 months imprisonment. A warrant will be issued for his arrest so that he can begin his sentence of imprisonment.

**DATED at Port Vila this 7<sup>th</sup> day of April, 2017**

**BY THE COURT**



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**Hon. Vincent Lunabek**  
**Chief Justice**