

## YANOVA DAVID LEO

## Misappropriation (2 Counts)

Between January and October 1993, the accused was the manager of the Santo Branch of Vanuatu Agriculture Supply. The first count alleges a misappropriation of 525,000Vt between 1 January 1993 and 20 September 1993. The second alleges the misappropriation of 100,000vt between 22 September 1993 and October 1993.

During 1993, Mr Alan Sands of Vanuatu Agriculture Supply became aware that the accused had taken money from the business in SANTO. It was found to be slightly in excess of 500,000vt. On 20 September he confronted the accused about the matter who admitted that he had taken 525,000vt. At that time Mr Sands was prepared to give the accused a chance and he did not report the matter and retained the accused in his employment.

Almost immediately, the accused began to offend again. This time he used a more sophisticated method. He on several days, created a completely fictitious cash register roll to make the actual takings of the business appear to be less than they really were. By late October, Mr Sands became aware that money was being taken again and the defendant was dismissed and the matter reported to the police.

There has been regrettable delay in bringing this matter to court. It is neither the fault of Mr Sands nor the accused. None of the money taken has in the meantime been paid back, no doubt because the accused does not have the means to do so. The accused has a minor prior conviction of an entirely different nature and I treat him as a first offender for the purpose of determining sentence here.

Mr Joel, for the accused informed me that he had been employed in Vanuatu Agriculture Supply since 1984. Originally in Vila. He was then transferred to Santo, a move which caused him some concern. He had asked his employer to provide him with accommodation but this was not done. The accused was unable himself, to provide suitable accommodation for himself and his family. After 6 months in Santo, he returned to Vila. He was told to come straight back to Santo, but he did not want to do so. In order to save his employment, however, he brought his family here. He resented being sent back to Santo. He then asked for a motor vehicle to be made available to him, but this was not supplied. Because of his anger, I am told, he decided to take the money which he took. He expected that this would result in his detection and dismissal. When it was discovered he freely admitted his guilt. He was given another chance. He went straight into taking again. Again he made full admissions.

He is 27 years old and married with 3 children. 2 of the children attend school, for which fees are payable. He pays rent for the home occupied by the family. At the time of the offences his monthly salary was 31000vt. This meant that he had an annual income of 372,000vt. His expenses for rent and school fees alone amount to more

than 100,000vt per year. It is apparent that the amount of his salary is not great and yet he was given a position of trust and responsibility which involved the handling of large amounts of money. The community seems to think that the Courts and the law alone are responsible for trying to deal with the problem of misappropriation in this country. It is obvious that the community has a role to play too. It has long been recognized in developed countries that people placed in positions of responsibility and trust, must be paid sufficiently well that they will not be unduly tempted. This man was placed in a position of great temptation. He was paid little. I am not surprised that he stole. This does not provide him with an excuse but in my opinion it does mitigate his offence. He must have been well regarded as a worker by his employers, for them to have retained him after discovering his offending. Therefore he must have been of value to his employers. He was helping the business to profit and he was seeing that this was so.

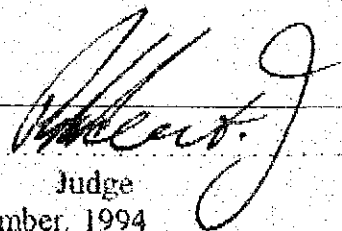
I urge people who are in business here, to play their part in seeing that this type of offence does not continue. Proper supervision, instruction and pay and conditions of work are probably more important in the prevention of crime of this type than the role of the court.

Perhaps the worst feature of the accused's offending here was the fact that he commenced immediately after being given a chance, to steal again. I think that I understand the accused's position here, but in sentencing, I must look at the general functions and purposes of the criminal law as well as at his own position. Whatever his grievances, he was not entitled to do what he did. He has pleaded guilty and admitted freely his offending. I give him full credit for this.

The sentence of the Court is that on the first count he is sentenced to be imprisoned for 9 months. On the second count he is sentenced to be imprisoned for 1 year. Both sentences to be served concurrently. Total sentence, imprisonment for 1 year.

I order that he pay the sum of 625,000Vt restitution to Vanuatu Agricultural Supply, recoverable as a civil debt.

You have the right to appeal against this sentence. If you wish to do so, you must do so in writing within 14 days.

  
Judge

4 November, 1994

