

CC 43-1995

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

CRIMINAL CASE No 43 OF 1995

PUBLIC PROSECUTOR

-v-

CLARENCE MARAE

SENTENCE

Mr Clarence Marae comes before this Court, not for the first time, for acts of considerable dishonesty. In 1989 he received a 2 year suspended sentence of imprisonment coupled with a fine, for receiving what was then described as the largest bribe ever received by a Ni-Vanuatu. That bribe was received by him at a time when he was working as Second Secretary to one of the Ministries and in order for him to use his influence quite improperly. It was an act of considerable dishonesty for which he received an extremely lenient sentence at the time. He now comes before the Court for misappropriating a large sum of money in local terms, some 1,348,000 vatu over a reasonably lengthy period of time, about 12 months to be exact, from his employers at the Cultural Centre. At that time he was the Chief Executive Officer of that organisation, appointed to his post by the then Minister of Cultural Affairs, who no doubt, decided to give Mr Marae a second chance. He breached that trust almost from the outset, by repaying personal debts that he had incurred when unemployed with his employers' money. Mr Marae is a man of considerable charm and intelligence. He is a trained lawyer of considerable skill and resource. He is also a very intelligent man, who has shown in the past that he is capable of considerable work of great courage and skill. In short he is the sort of person that Vanuatu has a great deal of need for; if it was not for his dishonest streak. His loss to the working sector of Vanuatu, is a loss to Vanuatu as a whole. It pains me considerably to have to sentence a man of his ability as I must do to-day. In the recent case of PP v Keith Mala No 42 of 1995 of the 2nd January 1996, I set out with care the guidelines to be applied to these types of cases. I said then that an immediate custodial sentence was inevitable in such cases as these and there is nothing in the present case to dissuade me from that course. I propose to treat this case as one falling within the range of those in the lowest bracket for sentencing purposes, namely in the region of up to 1 million vatu. I said then that the appropriate term of imprisonment in such cases ranged from the very short up to 18 months' imprisonment in the event of course, of pleas of not guilty where defendants are found guilty. Appropriate discounts must of course be given for pleas of guilty. The monetary value is not the only factor to bear in mind, as I said. I must also consider the following factors:

- i) The quality and degree of trust reposed in the defendant. In the present case it was absolute. He had control over all the accounts of the organisation.
- ii) The period of the fraud. Here it was not inconsequential, being a relatively lengthy one of about 12 months. The fraud having begun almost immediately upon the defendant starting his employment.
- iii) The use to which the money was put. Here the defendant used it for the purely selfish reason of paying his past debts.
- iv) The effect upon the victim. Here I have been told that the financial restraints on the Cultural Centre were enormous and are to this date not yet entirely resolved.



v) - The impact of the offence on the public and the public confidence. Here it is likely to have dire consequences upon the Ni-Vanuatu and the country itself. The Cultural Centre draws its support to a great extent from foreign aid donors. The money that they give comes from their tax payers in order to assist the development of poorer nations. They have to account eventually to their tax payers for its proper disbursement. Unless they feel that their money is put to good use, more particularly to the use to which it was destined, and that in the event of abuse, the Courts of this country will regard such abuse with some degree of seriousness, it is unlikely that in future those funds would be made available to the country. The loss therefore is to Vanuatu as a whole and the consequences can be grave.

vi) The effect on fellow employers. Here I am told that it was considerable and direct, since they had to forgo a considerable portion of their salaries in order to retain their employment as there was no money to pay them.

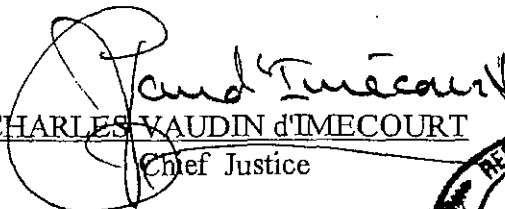
vii) The effect on the offender. Any sentence of imprisonment on an educated man such as Mr Marae is likely to have a considerable effect. I am told that his wife is ill with cancer. Therefore the separation is likely to be much more painful than would normally be the case.

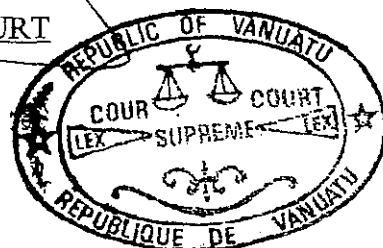
viii) Mr Marae's own history. He is not a man of good character. He plainly has not learnt from past experience. He is also a very intelligent man with considerable personal resource who should have known better.

Finally, I have to consider the deterrent effect of the sentence not only on Mr Marae himself but also on others minded to behave in this way. I must make it clear that the Courts will not accept such gross breaches of confidence especially when public funds are at stake. His greatest mitigation is as often the case, his own plea of guilty, and I will give him the full benefit of that plea. Normally as I have said, on a plea of not guilty after having been found guilty, Mr Marae could have expected a sentence of between 12 and 18 months imprisonment. In all the circumstances of this case the least sentence that I can impose on Mr Marae is one of 9 months' imprisonment. In addition, I have heard that Mr Marae has considerable financial means at his command. I therefore order that he should make full restitution to the Cultural Centre of the 1,128,000 vatu outstanding, as set out in the separate order that accompanies this sentence. In the alternative, Mr Marae will have to serve the sentence foreseen by the law in the alternative, which is one of 1 week for every 1000 vatu outstanding.

Exceptionally, and at Mr Marae's own request because of his wife's illness, his sentence will start on the 30th January at 12 midday.

Dated at Port Vila this 29 day of January 1996.

  
CHARLES VAUDIN d'IMECOURT  
Chief Justice



CR. NO. 43 /95

IN THE SUPREME COURT OF VANUATU  
REPUBLIC OF VANUATU  
(CENTRAL DISTRICT)

PUBLIC PROSECUTOR

v

CLARENCE MARAE

**ORDER FOR RESTITUTION**

IN THE MATTER OF SECTION 54 PENAL CODE ACT CAP 135

WHEREAS CLARENCE MARAE has this 29<sup>th</sup> day of January 1996 been convicted of the criminal offence of Misappropriation of 1,348,000vt the property of the Vanuatu Cultural Centre,

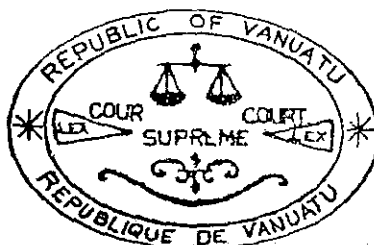
AND WHEREAS it is admitted between the parties that the sum of 220,000vt has already been paid by the said Clarence Marae to the Vanuatu Cultural Centre,

IT IS HEREBY ORDERED:-

That the said Clarence Marae do make restitution to the Vanuatu Cultural Centre in the sum of 1,128,000VT.

IT IS FURTHER ORDERED that Restitution be paid at the rate of 100,000vt per calendar month payable on the last working day (ie. Monday-Friday) of each calendar month, by the said Clarence Marae, and that payment be made into the bank account held at the National Bank of Vanuatu, Port Vila Branch in the name, "Cultural Centre, Operating Account"  
Ac. No. 50 - 18445801.

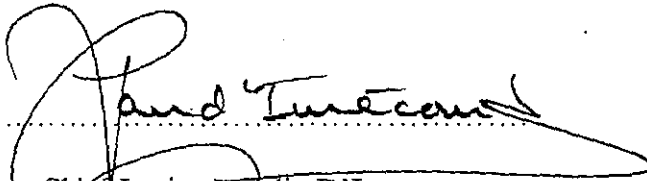
The first such payment to be made on Thursday 29<sup>th</sup> February 1996.



**AND IT IS FURTHER ORDERED** that in the event that the said Clarence Marae should default on the payment of any one instalment, the whole of the outstanding balance shall immediately become due, and that he shall, upon default be liable to imprisonment at the rate of one week's imprisonment for every 1,000vt then outstanding.

**AND IT IS FURTHER ORDERED** that the said Clarence Marae shall continue to be liable to make restitution of all outstanding sums to the Vanuatu Cultural Centre, notwithstanding the execution of the sentence of imprisonment.

Dated this... 29<sup>th</sup> ..... day of January 1996

  
Chief Justice Vaudin D'Imecourt.

