

**IN THE SUPREME COURT OF**  
**THE REPUBLIC OF VANUATU**  
**HELD AT LUGANVILLE/SANTO**  
**(Criminal Jurisdiction)**

**Criminal Case No.24 of 1998**

**PUBLIC PROSECUTOR**

**-v-**

**SIMON SIVEHI**

**Coram:** Justice Oliver A. Saksak  
Mr William Falau, Clerk of Court

**Counsel:** Mr Willie Daniel, for Public Prosecutor  
Mr Hillary Toa, for the Defendant

**Charges:** Count 1 - False Accounting contrary to section 130(a)(i) of the  
Penal Code Act [CAP 135] (PCA)  
Count 2 - Misappropriation contrary to section 125(b) PCA

**Pleas:** The Accused pleaded guilty to both counts on 21<sup>st</sup> April 1999.

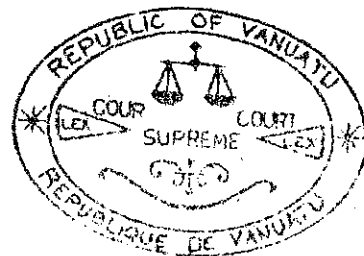
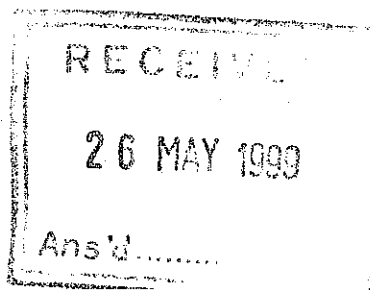
**Facts:**

The Accused was former Treasurer of the farmer Pentecost Local Government Council in 1994. It is charged that sometimes in or about 8<sup>th</sup> January 1995 he had defrauded the Rassa Development Trust by false accounting and misuse of the sum of VT1,200,000. This money was spent by the accused to build a rent house in Luganville, Santo; to pay his children's school fee and to meet funeral expenses of two relatives.

**Conviction:**

On his own plea of guilty the Court entered a conviction against the Accused. Sentence was reserved for 22<sup>nd</sup> April 1999 at 08.30 hours.

**SENTENCE**



After considering all that had been said on the Accused's behalf by Counsel I delivered the following judgment in sentencing the Accused-

“Clearly you intended to defraud or cause loss to the Rassa Development Trust Fund when you falsified Receipt No.21 under Chapter Head 238 to cash the sum of VT1,200,000 which you put to your own personal use.

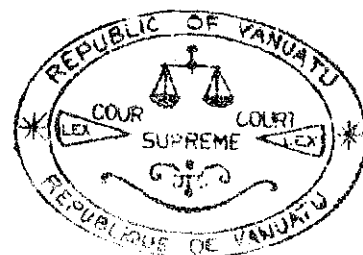
Clearly you have broken the law and you must face the consequences. I agree with the Prosecutor's submission that as a man of some 27 years in the service of government, the trust and confidence placed on you is higher than that on an ordinary person. You breached that trust and confidence yourself by your actions.

The reasons you have given for your actions are valid reasons but they did not justify you legally to take trust money and put it to your personal use. Many other government employees are or have been put in your situation. But many have been patient and although they have gone through hardships and sufferings, they have refused to engage in any actions to further those hardships and sufferings. I must however stress as a matter of grave concern that the failure or omission to pay terminal entitlements in time would not only be an oppressive action but may also be an illegal act. A government makes laws and rules and it is incumbent upon the government of the day to abide by or comply with those laws and rules at all times. This would ensure that trust and confidence by the people in their government is always there.

I have considered all that have been said in submissions by the Defence Counsel and by the Prosecutor. I have been referred to two cases of Public Prosecutor -v- Clarence Marae and Public Prosecutor -v- Keith Mala. Those cases are authoritative and persuasive but I am not bound to follow them in this case.

I consider that in the circumstances of this case the appropriate punishments the Court can impose on you are as follows:-

- (1) For False Accounting, you are sentenced to a term of 3 years imprisonment.
- (2) For Misappropriation, you are sentenced to a further term of 3 years imprisonment.




These terms will run concurrently. That means you will serve a total of only 3 years in jail. However, I order that these 3 years be suspended for a period of 2 years pursuant to the provisions of the Suspension of Sentences Act [CAP 67].

I further order that during those 3 years that your term of imprisonment is suspended, you will refund the Rassa Development Trust Fund the sum total of 1,200,000 plus interests calculated at a rate of seven (7) percent per annum commencing in 1995 until the whole amount outstanding is paid up in full. That means that from 1995 to date, the interest accumulated at the given rate is VT420,000. The total outstanding as at today's date is therefore VT1,620,000.

If by 22<sup>nd</sup> April 2003 you have not paid back the principal sum plus interests on any outstanding amounts, you will automatically serve the three year jail term imposed on you today.”

**DATED at LUGANVILLE, this 22<sup>nd</sup> DAY of APRIL 1999**  
**SEALED: 4<sup>th</sup> May, 1999**

**BY THE COURT**

  
.....  
**OLIVER A. SAKSAK**  
Judge

