

**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

Criminal Case No. 22 of 2002

**PUBLIC PROSECUTOR**

**-v-**

**ZHENG QUAN CAI**

*CRC 22-2002*

Prosecution: Mr. Collin ~~Li~~ Leo  
Defendant: Mr. Nigel Morrison

**JUDGMENT**

The defendant pleaded not guilty to the following offence:-

**"STATEMENT OF OFFENCE**

*BRIBING A CUSTOM OFFICER contrary to Section 59 (1) of the Custom Act No. 15 of 1999.*

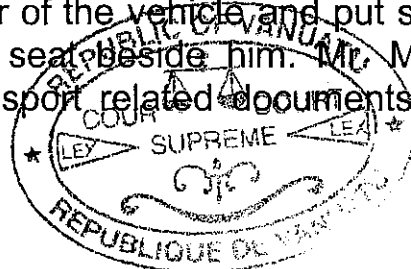
**PARTICULARS OF OFFENCE**

*ZHENG QUAN CAI yu blong China mo stap live long Port Vila olsem wan business man, samtaem long namba 5 march 2002 long Tebakor area long Vila yu bin givim wan envelop we insait igat wan amount of VT500,000 long Custom Officer ia BENJAMIN MALAS olsem wan reward sapos hemi returnem back ol passports blong yu mo family blong yu."*

The prosecution allegation is that the defendant was required or asked to give the passports of himself and his family to Benjamin Malas, a Customs officer, in the course of a VAT investigation. The names were required so a precise check could be made at banks.

At 10 a.m. on 5<sup>th</sup> March 2002 the defendant telephoned Mr. Malas and asked if he was coming to collect the passports. Mr. Malas said 'yes' and arrived at the defendant's house a short time later. He was invited in, but declined. Mr. Zheng begged Mr. Malas not to "spoil him", and asked Malas to "help him". Malas replied that he couldn't help as the audit report was not resolved.

He says Mr. Zheng then started to cry. He went to the house, returned, opened the passenger door of the vehicle and put some passports and an envelope on the seat beside him. Mr. Malas thought the envelope contained passport related documents. He



started to leave, but in his mirror saw the defendant chasing after the vehicle. He stopped.

Mr. Zheng came to the passenger door and said *"please don't tell anyone about what I have just offered you. This is only between you and me"*. The vehicle door was closed and Mr. Malas drove off. Mr. Malas realised the envelope must contain cash and drove straight to the home of the Director of Customs and Inland Revenue, Sumbae Antas.

The envelope was not sealed. It contained 100 x VT5,000 notes, a total of Vt 500,000.

On 7<sup>th</sup> March Mr. Zheng was interviewed. He accepted he gave the money but it was security so they could return the passports to him. There were 5 passports, a security VT100,000 for each passport.

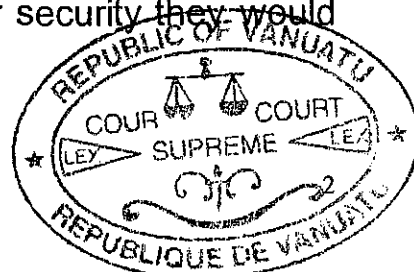
Mr. Zheng denied the offence. He said his son told him on 4<sup>th</sup> March the VAT office wanted all their passports. The son wrote the family names on a paper for them.

Mr. Zheng went to the office and saw Mr. Malas. George B. came in. Mr. Zheng was used to dealing with George B. He had the paper the son wrote the names on. Mr. Zheng checked and the spellings were all correct. However, Mr. Malas insisted the passports were brought in. He was puzzled. George said *"for you not to run away"*. Mr. Malas said he would come in the morning to collect the passports.

Mr. Zheng went home. He was worried about handing over the passports. Next morning he felt sick and didn't go to his store. About 10 a.m. his daughter – in-law arrived from the store with Mr. Malas. She returned to the store. He invited Mr. Malas in, but he declined. He felt very sad. He saw no reason why they should take the passports. They could just check the names on the list.

He asked *"can you help me get them back soon"*. Mr. Malas said *"yes after photocopying you can have them back"*.

Mr. Zheng went into his house. He went to collect the passports and thought if he gave money as a deposit or security they would return the passports.



There were six passports of him and his family in a box. He took out five passports and VT500,000 of his money. He put the money in an envelope. It was not sealed in any way. He did not hand over his own passport. Mr. Zheng went out and put the passports and envelope together on the seat of Mr. Malas car. The money was easily visible. Mr. Malas then said "What's this ?" Mr. Zheng replied "It's the security for the passport. I have business. I will not run away." Mr. Malas didn't say anything. He counted through the money for twenty seconds with one hand. Mr. Zheng asked "Can you give the passports tomorrow." Mr. Malas replied "soon, after photocopying". He then drove off.

Two days later he went to take in his own passport and was arrested and questioned. He said in February 2001, Mr. Malas and others had come to his house searching for passports. They were taken and returned after ten days by police.

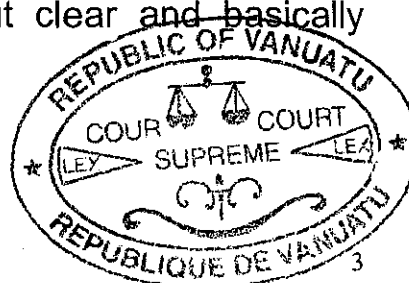
Mr. Zheng denied saying "Don't spoil me" and "This is between us." He has been in Vanuatu nine years and gave a brief description of his background.

That is the defence case.

This is a criminal charge. The defendant is innocent until proved guilty. I must be satisfied beyond reasonable doubt the charge has been proved before a conviction can be entered.

I accept the evidence of Sumbae Antas and Kalorib Sope. Their evidence was uncontentious. I also accept the evidence of Zheng Ying. He said that on 4<sup>th</sup> March George B. came from the VAT office and asked for the names of the family. He wrote them on a paper. George B. didn't say why he needed them. He went away. Later there was a telephone call from the VAT office saying they wanted the passports. Zheng Ying told his father, the defendant. He said his father looked worried and they talked about it. They were worried that if they needed to travel, they wouldn't have passports.

Zheng Ying's evidence was peripheral, but clear and basically uncontentious.



The principal conflict of evidence was between Benjamin Malas and Zheng Quen Cai, and mostly about what occurred at the house.

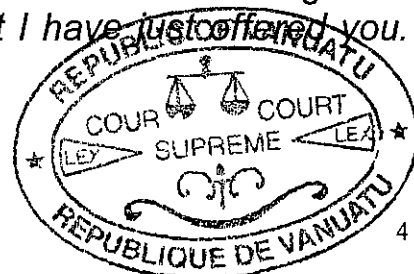
I accept the evidence of Benjamin Malas. I find his evidence to be truthful. He suddenly had in his possession a large sum of money. There was no-one and nothing to say he had the money, other than the defendant. There were no documents, no witnesses. When he realised what was happening he went immediately to the Director. There is no dispute about the handing over of the money by the defendant, nor the amount. I particularly found his description of Mr. Zheng's behaviour at the house convincing.

I do not accept the evidence of Mr. Zheng on the points in dispute. He did not inform Mr. Malas on the telephone he was at home and not at the shop. His daughter in law was sent away before anything happened.

He did not hand over his own passport, yet did so for the rest of the family. He happened to have VT500,000 at his house, available to hand over. He required no receipt for the money. This is extraordinary for a man in business like Mr. Zheng.

There was no document or writing to say what the money was for. He handed VT500,000 to a customs officer whom he didn't know or hardly knew. A dishonest officer could have kept the lot and done nothing for Mr. Zheng and he couldn't prove otherwise. When he brought his own passport in two days later, there is no evidence he brought in VT100,000 as security for that. He made an error in his evidence as to whether he had seen Benjamin Malas before the 4<sup>th</sup> March, his evidence to explain that was unconvincing.

I am satisfied beyond reasonable doubt that Benjamin Malas is a customs officer. The defendant begged Mr. Malas 'not to spoil him', 'to help him'. When Malas said he couldn't do that, Mr. Zheng got the passports and the money. It is not possible to say if the money had been brought specially to the house or was already there. He took the passports and the money and put them on the seat in Mr. Malas car. As he drove off he chased after the car. Mr. Malas stopped and asked what was the matter. Mr. Zheng then said "*Please don't tell anyone about what I have just offered you. This is only between you and me.*"



I am satisfied beyond reasonable doubt this was a dishonest passing of money. The question is what was it for? The charge alleges it was "*sapos hemi returnem back of passports blong yu mo family blong yu.*" Mr. Zheng had only handed over his family's passports, not his own. However, the VAT officers, (Malas and George) had said they would return the passports as soon as the names were checked and photocopies made.

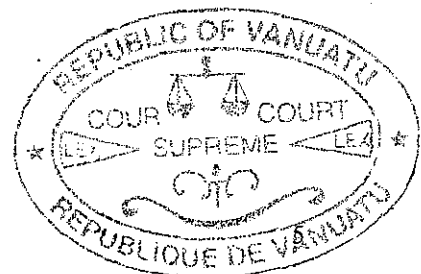
There was a VAT audit concerning the business affairs of Mr. Zheng. The VAT office wished to check for bank accounts held in the name of the defendant and his family. To that end they required the passports for photocopying. That is lawful under Section 57 (1) of the Value Added Tax Act. Mr. Zheng gave those passports (except his own) to Mr. Malas but then handed over a sum of money, quite a large sum. The exact purpose was not specified. It is clear from the evidence he did not wish to hand over possession of his passports. I am satisfied beyond reasonable doubt the money was paid so that Benjamin Malas would personally look after and return the passports sooner than would have happened and without regard for the purpose for which they were required. There might have been other purposes, I must disregard that. I find him guilty and convict as charged.

### SENTENCE

I give you credit for the fact you have no previous convictions. You came to Vanuatu 9 years ago. You have made Vanuatu your home. You have built up a business here. Your family is here and they also work. There can be no credit for a plea of guilty. You offered a bribe to a customs officer. It was substantial, VT500,000. He was honest and immediately saw his Director.

The charge says the bribe was offered for the return of your family's passports. I can understand your worries and concerns about handing them over and when you would get them back.

It does not appear to have been pre-planned and the money was handed over because of your worries.



Anyone who bribes or attempts to bribe a customs officer or public officer must expect prison. Bribery and corruption cannot be accepted in any shape or form.

This offence comes at the lower end of the scale. I find the correct sentence is one of 6 months imprisonment.

There will also be a fine of VT1.5 million. The VT500,000 will be forfeit to the Government. I must decide whether to suspend the sentence or not. That is a balance between deterrence and the personal circumstances of this defendant. I find the balance just tips in favour of suspending the sentence. I will do so for two years.

Defendant to pay Prosecution costs of VT130,000 by 31<sup>st</sup> January 2003.

Informed of right of appeal.

**DATED at PORT VILA this, 12<sup>th</sup> day of September 2002.**

