

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

(Criminal Jurisdiction)

CRIMINAL CASE No.39 of 2002

PUBLIC PROSECUTOR -v- MARKE LOWEN

Coram: Chief Justice Vincent Lunabek

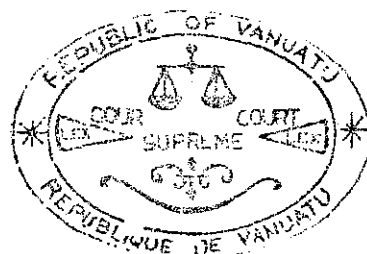
Counsels: Mr. Liam Shaw for the Public Prosecutor ✓
Mr. John Malcolm for the Defendant

SENTENCE

This is the sentence of the defendant, Mark Lowen. The defendant was initially charged with a total of some 270 counts contrary to the provisions of the Vanuatu National Provident Fund Act [CAP. 189]. He was then found guilty and convicted of 138 counts.

Those 138 counts relate to four (4) categories of offences:

- (a) Failing to register as an employer of the five employees (Akesha Litch, Rex Issachar, Winston Tarere, Jonas Cullwick, Antony Ligo) of Port Vila Presse, contrary to Section 22 of the V. N. P. F. Act [CAP. 189];
- (b) Failing to register those employees as employees under the Act, contrary to Section 23 of the Act;
- (c) Failing to pay VNPF contributions to the fund in favour of each of those employees to the fund, contrary to Section 26 (1) of the Act; and
- (d) Having failed to pay contributions, failing to pay the applicable surcharge in favour of each employee to the fund contrary to Section 26 (2) of the Act.



The offences are set out respectively below and in the following 138 accounts:-

- Count 1
- Counts 29 to 45;
- Counts 46 to 78;
- Counts 151 to 182;
- Counts 213 to 234.

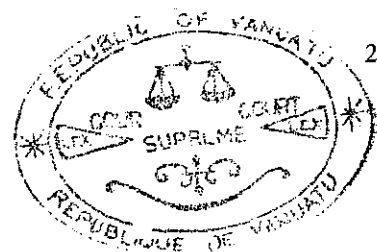
The 138 counts against the defendant reflect a period of criminal conduct extending from 2001 to June 2002. This represents some eighteen (18) months of failing to comply with the scheme in relation to five employees.

Under the VNPF Act the provisions referred to above mandate those requirements. In the event of failing to comply, then, Section 50 of the said Act provides in each case a maximum penalty to be imposed of a fine of VT100,000 or imprisonment for 6 months or to both such fine and imprisonment.

The following are the details of unpaid contributions and surcharges requested by the Prosecution for each of the relevant employees.

Name	Employee share contributions	Employer share contributions	Surcharge
Akesha Litch	33,600	33,600	10,080
Rex Issachar	73,800	73,800	50,580
Winston Tarere	72,000	72,000	50,500
Jonas Cullwick	70,800	70,800	44,040
Antony Ligo	49,800	49,800	21,780
Totals	300,000	300,000	176,980

The total amount owing and requested by the prosecution for the relevant employees for the period of time referred to in the charges in accordance with Sections 51 and 52 of the Act, is VT776,980.



The prosecution also applies for prosecution costs of VT300,000.

The defendant accepts to pay the recovery of unpaid contributions and surcharges of VT776,980.

However, it is said that the defendant doubles the salaries of the 5 employees on the understanding that each of them will get a business licence. He said he was wrong. He has now to pay an additional contribution of VT300,000 to the employees.

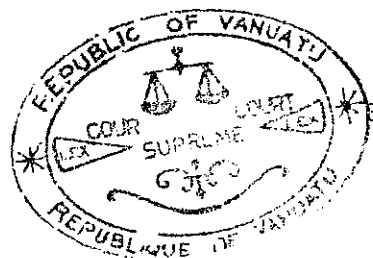
It was also urged upon the Court, that in imposing the penalties, the Court must consider that Port Vila Presse is the second Independent Newspaper in Vanuatu. It employs 10 Ni-Vanuatu and lots of young boys and girls who sell the newspapers on Saturdays.

The trade balance of the Presse shows that there is no benefit at the end of each month. It is said for the defendant that if a substantial amount of fine is imposed, then, the Port Vila Presse could be bankrupt. It is said for the defendant that the offences are identical and not isolated offences. The Court can then apply the totality amount of fines. The defendant offered to pay VT200,000 per month.

Offences in violation of the provisions of the VNPF Act [CAP. 189] are serious offences.

In the present case, failing to register as an employer of the five employees, failing to register the employees as employees and failing to pay VNPF contributions to the fund in favour of each of the said employees to the fund are not only serious but dishonest offences.

This has been going on for a period of some 18 months. In count 1, the defendant is to pay a fine of VT50,000 and 3 months imprisonment suspended for 2 years concurrent.



In counts 29 to 45, the defendant is to pay at the rate of VT20,000 fine per count which is totaling VT320,000 and 3 months imprisonment suspended for 2 years concurrent.

In counts 46 to 78, the defendant is to pay at the rate of 20,000 VT fine per count which is totaling VT640,000 and 3 months imprisonment suspended for 2 years concurrent .

In Count 151 to 182, the defendant is to pay at the rate of 10,000 Vatu fine per count which is totaling VT310,000 and 2 months imprisonment suspended for 2 years concurrent.

In counts 183 to 212, the defendant is to pay at a rate of 10,000 VT fine per count which is totaling VT290,000 and 2 months imprisonment suspended for 2 years concurrent.

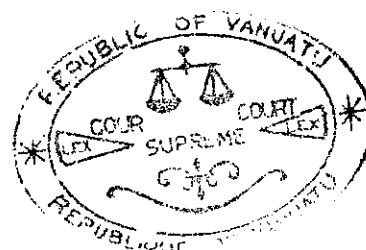
In counts 213 to 234, the defendant is to pay at the rate of 20,000 Vatu fine per count which is totaling VT420,000 and 3 months imprisonment suspended for 2 years concurrent.

The prosecution is entitled to the costs of VT250,000.

The defendant is to pay:

776,980 VT	for contributions and surcharges
2,030,000 VT	for the fines
250,000 VT	for prosecution costs
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3,056,980 VT	TOTALS
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The payment shall be made as follows:



1. VNPF contributions and surcharges of VT 776,980 as follows:
The defendant is to pay 76,980 Vatu for the surcharge to the VNPF within 7 days.
700,000 Vatu balance is to be paid at the rate of VT200,000 per month until final settlement of that sum.

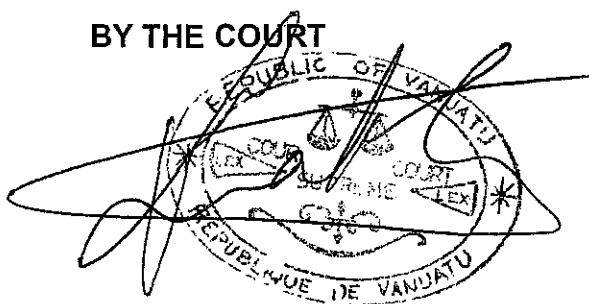
Fine and costs

The fines and costs are totaling VT2,280,000. The defendant is to pay VT200,000 per month to start after final settlement of the VNPF contributions until final settlement of the payment of fines and costs or 6 months imprisonment in default.

The defendant shall not leave Vanuatu until fines and costs are paid.

I order the passport of the defendant to be surrendered to this Court by the date of this Order until expiration of the defendant's sentence. No further application by the defendant for a new passport. Liberty to apply subject to sufficient notice to the other side.

DATED at Port-Vila this 5th day of August 2003



**Vincent LUNABEK
Chief Justice**