

PUBLIC PROSECUTOR -v- ROSE NIRAHAMBAT

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr Tristan Karae for the Public Prosecutor
Mr Collin Leo for the Defendant*

SENTENCE

This is the sentence of the Defendant, Rose Nirahambat. Mrs Rose Nirahambat, on 4 May 2010, you entered a guilty plea for one count of Obtaining Money by Deception, contrary to section 130B(I) of the Penal Code Act [CAP.135]. Section 130B(I) prohibits the offence of obtaining money by deception in this way:

"130(I). A person must not by any deception dishonestly obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever.

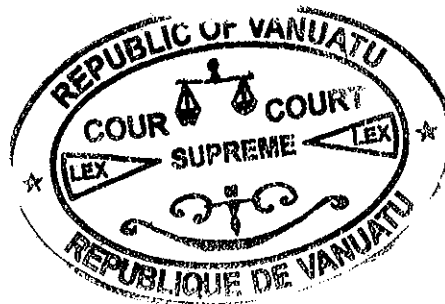
Penalty:

Imprisonment for 12 years."

The maximum penalty imposed by law for this offence reflects its seriousness.

You are 30 years of age and you have a child of 10 years old. You originate from Tenmaru village, North West Malekul Island. You now live in Port-Vila and make your living by selling second hand clothes and also through the earnings of the taxi business you own. The facts relating to your offending are this.

The complainant in this matter is one Mr Joel Maxuel. On or about the 18th of January 2008, the complainant's father Mr Maxuel Kai and the complainant's uncle Kipson Josiah sent money in the sum of VT1,200,000 to the complainant's sister Serah Maxuel to use to buy a new truck and send it over to Malkula Island.



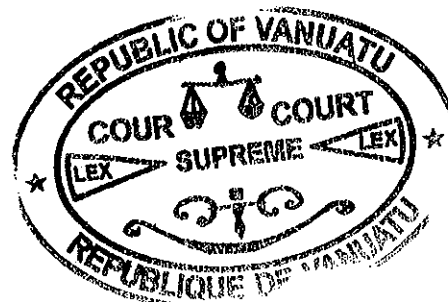
You were at that time living with Serah Maxuel and heard about the complainant's father wanting to buy a new truck, when the complainant's father came over to Vila. You then told the complainant's father that you could arrange to have a new truck bought and brought by the Havana ship because the banks trusted you as you have been faithful in completing you loan repayments.

Sometime between the months of May and June 2009 you received VT1,200,000 from Serah Maxuel after she had withdrawn the money her father Mr Maxuel Kai sent to her through the National Bank of Vanuatu. Serah Maxuel gave you the money and you then went to Credit Cooperation Office and pretended to deposit the money for a new truck while Serah Maxuel was waiting at the reception area. You told Serah Maxuel that the money was deposited but failed to show a receipt to Serah Maxuel, despite Serah Maxuel not asking for one as she trusted you at that time.

You lied to the complainant's father that the truck was in the process of arriving to Vila and asked the complainant's father to send more money for other expenses. The complainant stated that over several months they have been sending money through the National Bank transfer and Western Union directly to you with the intention that the money would be used for expenses in relation to the new truck.

Several months have passed and the complainant approached you on several occasions concerning the arrival of the new truck, but you would always make up excuses. On or about the 29th of January 2010 the complainant went to see you about the truck and why it was taking too long. You stated that you will come to the complainant's house and explain. You came over but you did not explain until the 3rd of February 2010, the complainant suspected that you must have deceived them into believing that you spent the money on arrangement for the new truck but you did not.

The complainant then reported the matter to the police on the 5th of February 2010 and stated that the total amount of money taken by you was VT1,945,000. On or about the 23rd of February 2010 you were then arrested and cautioned by the police.



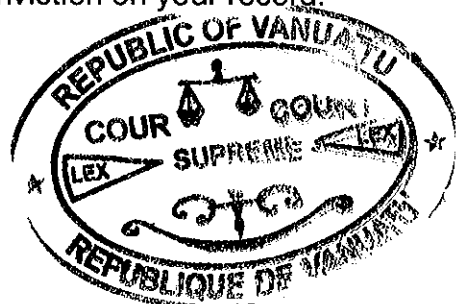
I note that when the allegations of your fraudulent activities were put to you at the police station, you did not acknowledge them to the police officers during your interview. However, you acknowledged them and entered a guilty plea on 4 May 2010 at the first opportunity given to you by the Court. You have no previous convictions on your record. I have read the submissions of the prosecution and the submissions of your defence counsel. I have also seen and read the probation report that has been prepared on your behalf.

In your sentencing, it is necessary for the Court to denounce your behaviour. You behaved very badly with the lady you were living with who trusted you by giving you the amount of VT1,200,000 for the purchase of a truck for her family back on the Island of Malekula. You continued with your bad behaviour by asking more money to her father and uncle from the Island of Malekula. The total money you have stolen from them was VT1,945,000 when the matter was reported to the police on February 2010.

When I sentence you, I must make it quite clear to you that this kind of offending cannot be tolerated. The sentence I am going to impose must reflect the seriousness of your offending and also it must be a deterrent to other people that they cannot behave in this way. No one assisted you in your offending. You did it yourself. You are entirely responsible for your offending.

In this case, the aggravating features include the abuse of trust you show by taking advantage of the money given to you on behalf of the others for the purchase of their truck. There was some degree of premeditation and planning in your offending. There was a lengthy period over which your fraudulent activities have been perpetrated between January 2009 to December 2009 which was about 12 months. There was no repayment made by you to the Claimant and there is some impact of your offending on the complainant and his family.

In mitigation, you pleaded guilty at an early stage given to you by the Court. You are a first time offender and you have no previous conviction on your record.



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Your pre-sentence report shows that you used the money you took from the victim to sort out your outstanding loans at the credit cooperation. However, a representative of the Credit Cooperation informed the probation officer that you do not have any loan account with the Credit Cooperation. You inform the probation officer you are willing to repay the money you have stolen by installments. Your business overall turnover for the sale of second hand clothes and taxi were around 100,000 Vatu per month.

I have considered the prosecution and the defence submissions. The appropriate sentence must be a custodial one. The appropriate starting point for your offending after taking into account the aggravating factors is a term of 3 years. I have taken into account the mitigating factors referred to above and on balance, you are convicted and sentenced to 1 year imprisonment. I consider whether or not the circumstance of your offending, justify a suspension of your sentence. In this case, you are a first time offender and you have no previous convictions; you pleaded guilty at the first opportunity given; you are the only breadwinner of yourself and your 10 years old son. Your imprisonment sentence of 1 year term is suspended for a period of 2 years under section 58G of the Penal Code (Amendment) Act. In addition, you are sentenced to 200 hours community work and you are ordered to repay the total amount of VT1,945,000 to the complainant by installment payments of VT40,000 per month until the total amount of VT1,945,000 is fully paid. The installments shall be paid at the end of each month and to begin 30 July 2010.

You have 14 days to appeal this sentence if you are unhappy with it.

DATED at Port-Vila this 16th day of June 2010

BY THE COURT

Vincent LUNABEK
Chief Justice

