

**PUBLIC PROSECUTOR -v- KAROLY HENRIK MAHINKO**

**Coram:** V. Lunabek CJ

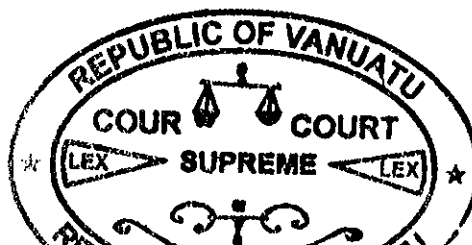
**Counsel:** Ms Kayleen Tavoia, Public Prosecutor  
Mr Robin Tom Kapapa for the Defendant

**SENTENCE**

Mr Mahinko, this is your sentence. You were charged with 1 count of False Pretences, contrary to section 125(c) of the Penal Code Act and 1 count of Misappropriation, contrary to section 125(b) of the Penal Code Act [CAP.135].

On 21 November 2011, the Court convicted you on both counts after a trial. There is no need to recount all facts. The summary of such facts are contained in the prosecution submissions as follows:

1. You became friendly with the victim-woman from March, April and May 2011 (the relevant period).
2. You soon befriend, her and your friendship grows as the affair grows.
3. The affair is no secret as it is known to her husband and her friend Serah and your adopted brother John.
4. Once the Affair grows there is a level of trust and the woman's personal history of marriage is given to you not only from the victim but also Serah and you show love, care and trust and pity's the victim.
5. Kadiatou, the victim no longer consults her husband in relation to her travel she now informs you and earns your trust.
6. You pick her up for Market each day and drop her off with her produce
7. You take her to Motel to spend time together.
8. Your attempts with your first test asking her to pay for your rent and saying



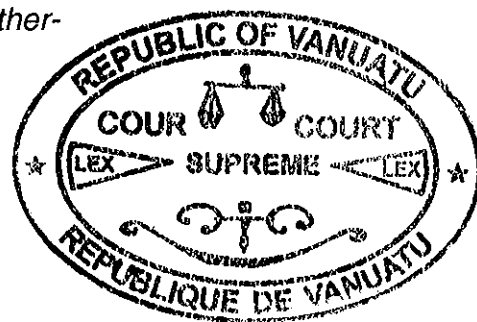
you will refund her in 3 days (you fail this agreement) withdrawal of money for your rent made on 4<sup>th</sup> of April.

9. You take her to Pango Blue Motel on the 4<sup>th</sup> April 2011. You paid the motel with the money she gave you.
10. On 6<sup>th</sup> of April she closes her term deposit as you told her to give you the money in her bank account so that you can keep the money safely from her husband. The money was for the purchase of air tickets to Africa for her and her 3 children.
11. 12 days after closing of the term deposit she withdraws the 400,000VT.
12. She gave VT400,000 to you.
13. You and the victim spent a night on the 19<sup>th</sup> of April at Kaiviti Motel.
14. Several days later you failed to contact her she called you and you abused her on the phone.
15. Then you call her to say that you and her will be leaving for the Solomon Islands on the 26th April 2011.
16. She is infuriated and angry believing that you spent her money to buy the tickets for Solomon Islands as she told you and asked that you refund her money.
17. You continued not talk nicely to her or abused her until she has had enough that she went to your home at Le Rendez-vous Restaurant.
18. It is there that the matter comes to light when the Police are called and the whole money issue becomes known not only for Police to investigate but her husband is also informed.
19. By your own false pretences, the victim gave you VT400,000 and you misappropriated that money as you failed to give her money back when she asked you to do so.

## RELEVANT LAWS

The relevant laws governing the above offences are Section 125 (b) of the Penal Code Act [CAP 135] for "Misappropriation" and Section 125 (c) of the Penal Code Act [CAP 135] for "*False Pretences*" which provide that:

*"125. No person shall cause loss to another-*



(b) *by misappropriation; or*

(c) *by false pretences.*

*Penalty: Imprisonment for 12 years."*

Each of the offences are punished for 12 years imprisonment on maximum penalty. They are both serious offences and any offence of fraud and offence of dishonest nature is a serious offence.

When considering your sentencing, I read the pre-sentence report, and submissions made by the Public Prosecutor and submissions made by your lawyer on your behalf.

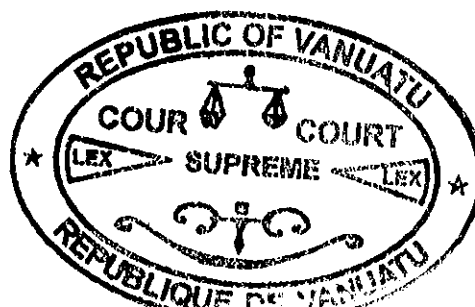
You are a citizen of Hungaria and residing in Vanuatu since you arrive in Vanuatu in 2008. Offence of False Pretences and Misappropriation are serious offences.

This Court denounces and condemns strongly your behaviour through this type of dishonest or fraud offending which is intolerable and unacceptable in this Republic. This type of offending warrants imprisonment sentence. Imprisonment sentence is justified to warn others not to commit this type of dishonest or fraud offending; also it serves as a protection to the people and society from this type of offending and finally it is the appropriate punishment for your offending.

The seriousness and circumstances of your offending are aggravated by three (3) factors: breach of trust, abuses by use of phone and assault on the body of the victim which attract a starting point of 2 years imprisonment.

I now balance your sentence starting point with the mitigating factors which show that:

- You are a first time offender
- You have health problems
- You have qualification in Auto-electronic
- You do not work now
- You have a child of 13 years of age living in Europe with her mother.



I reduce your sentence to 15 months imprisonment and I suspend it for a period of 2 years. During such suspension you must not re-offend. If you re-offend during the suspension period your sentence will be reactivated in addition to any new sentence.

You agree to compensate the victim complainant by repaying to her a total amount of VT400,000 you have taken from her.

The order of your sentence is as follows:

### **SENTENCE ORDER**

1. You are sentenced to 15 months imprisonment on one count of False Pretences, contrary to section 125(c) and 15 months imprisonment on one count of Misappropriation, contrary to section 125(b) which shall run concurrent to each other and is suspended for a period of 2 years.
2. Order to pay compensation of VT400,000 to the victim, Mrs Kadiatou by monthly installment commencing January 2012 until full amount of VT400,000 is paid. The monthly payment shall be made through the office of the Public Prosecutor.
3. You have 14 days right to appeal your sentence if you do not agree with it.

**DATED at Port-Vila this 10<sup>th</sup> day of December 2011**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**

