

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Criminal Jurisdiction)*

**Criminal Case No. 57 of 2011**

**MICHAEL JESSOP (Private Prosecutor)**

**-V-**

**LINO SANIEL**

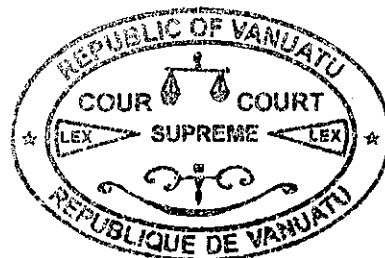
**Hearing:** *16 December 2011*  
**Before:** *Justice Robert Spear*  
**Counsel:** *Robert Sugden for Private Prosecutor*  
*Eric Csiba for Accused*

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**SENTENCE**  
**Spear J (16 DECEMBER 2011)**

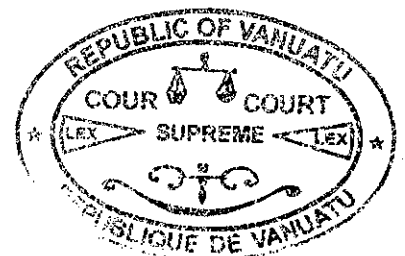
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1. Lino Saniel, you are for sentence having pleaded guilty to 3 charges:  
Count 1: Attempting to obtain money by deception  
Count 2: Obtaining money by deception  
Count 3: Fraudulently issuing or procuring the issue of a registered transfer of registered leasehold title
2. You went on trial on those 3 charges with one Harry Natnaur who was charged jointly with you in each respect. At the conclusion of the prosecution case, you changed your plea to guilty in respect of each of the 3 counts. Harry Natnaur maintained his pleas of not guilty and he was eventually found not guilty of them. That is set out in the decision given on 29 September 2011.
3. I can appreciate that you feel as if you made a mistake changing your plea to guilty at the conclusion of the prosecution case given the outcome of the case in respect of Harry Natnaur. However, a closer reading of that decision will reveal that the case



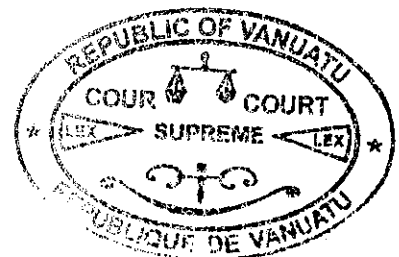
against you was capable of being dealt with separately to that of Harry Natnaur. The case against you was not confined to you assisting your co-accused

4. The unchallenged evidence clearly established by the conclusion of the prosecution case that you had misused your position as a senior lands officer, a senior public servant, to obtain funds that you were simply not entitled to. What occurred was that Eric Kerres, the person who wanted to buy Natnaur's property, came to the Lands Department and spoke to you. It is clear that he was referred through to you because you had at least some significant involvement, if not controlling involvement, in respect of this particular property. At that time, a transfer for registration had been sitting with the Lands Department for about 5 months ostensibly making its way towards registration. That was the transfer from Natnaur to EBEL.
5. Mr Kerres I found to be a convincing and truthful witness. He explained that he went to the Lands Department and was quickly referred to you. Mr Kerres told you that he was interested in purchasing Natnaur's property but he was hesitant because of unsatisfactory previous dealings with land. He specifically did not want to find himself in the position of having his transfer take months to be registered. He wanted his transfer to be registered within just a few days and he inquired whether that could happen. Mr Kerres stated that you told him that you could guarantee that registration would take place within 2 to 3 days. The following day, you met with Mr Kerres and you presented him with an invoice addressed to him identifying an amount of Vt 25,000 owing by Mr Kerres to *Saniel Real Estate* for consultancy work. While that fee was not paid (hence the count 1 charge being for an attempt) it is without question evidence of an attempt by a senior public servant to obtain a payment simply for doing his job and by enabling the registration process to be accelerated beyond the standard.
6. Your real estate company did nothing in respect of Eric Kerres - nothing to justify a charge for Vt 25,000.
7. As it happened, the evidence that emerged during the defence case of Harry Natnaur indicated that you had obtained some Vt 35,000 from Magna Ltd; the company



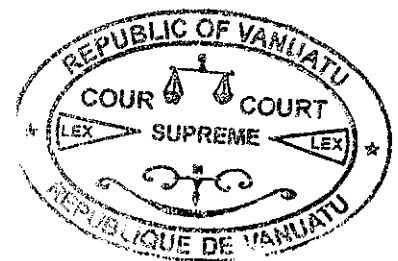
central to counts 2 and 3. That at least provides an explanation as to why you might have realized, at the conclusion of the prosecution case, that the case against you would be difficult to defend and there might be advantages to changing your pleas.

8. Curiously, you now claim that you did nothing wrong and that you want to change your plea. I have already heard and declined that application. Mr Csiba on your behalf presented submissions to the effect that you were wearing two hats at that time; that is, when you first dealt with Mr Kerres you were wearing the hat of a Senior Public Servant in the Lands Department but when you presented your invoice you were wearing the hat of a private individual with his own business. It was simply disingenuous of you to attempt to justify your actions in that way. The reality is (as characterized by Mr Sugden in his submissions) that what you attempted to sell to Mr Keres was your ability to interfere with this standard processing of land registration. In short, your actions amounted to graft and corruption by a public official. There can be no other categorization of it.
9. Furthermore, I am in no doubt at all that you knew that you had done nothing through your real estate company to deserve a payment of Vt 25,000 from Mr Kerres or Vt 35,000 or whatever it was from Magna Ltd.
10. Your actions bring discredit on the public service of Vanuatu and particularly those who work in the Lands Registry. Your offending was clearly corrupt and requires a firm response from the Court.
11. You pleaded guilty, of course, not just to count 1 but also to counts 2 and 3. Certainly, at the end of the prosecution case there appeared to be insufficient evidence in my view to have found you guilty at that point although you would have stayed on trial. I accepted your pleas of guilty because it appeared that you recognized that what you had done was wrong and that you wanted to own up for it. It needs to be said again that the fact that Harry Natnaur was found not guilty of these 3 charges does not necessarily diminish your guilt. Simply put, Harry Natnaur was found not guilty because there was insufficient evidence to bring to the Court to the high



criminal standard required to prove a criminal charge; that is, proof beyond reasonable doubt. It does not mean that Harry Natnaur was innocent.

12. Count 2 is a charge that you assisted Harry Natnaur to obtain a sale of Vt 10 million with Magna Ltd. Count 3 is a charge brought under the Land Leases act that you acted fraudulently to deprive EBEL of the benefits of its Natnaur / EBEL transfer which, of course, was indeed the prosecution case against you and explained as such from the outset.
13. It is important that the sentence that is imposed upon you emphasises exactly how serious this offending is. A senior public official misusing his office for his own personal benefit is an instance of corruption. There is no other way to describe it.
14. The sentence must mark the seriousness of the offending and it must hold you fully accountable for what you have done. It must also do its best to deter others from offending in this way.
15. Offending of this nature, at this level, in my view requires the Court to adopt a starting point of between 3 and 5 years imprisonment. Counts 1 and 2 each attract a maximum penalty of 12 years and count 3 attracts a maximum penalty of 3 years. In your case, I take a starting point with aggravating features, the offending end point, of 3 years imprisonment.
16. I now consider matters of relating to you as the offender. There are only mitigating factors of which to take account. However, and regrettably, matters of mitigation have been diminished somewhat from what they could have been because of your attempt to go back on your earlier acceptance of your guilt. So, the Court cannot be sure that you are fully and genuinely remorseful in the complete way that normally would follow the entry of a plea of guilty. I recognise, however, that you come before the Court having spent some 29 years as a public servant and without any apparent stain on your character or your work performance. Clearly, you have ability as you were able to work up through the ranks to the position of being a senior public servant and you are entitled credit for that.



17. This case should, in my view, accordingly be treated as a *one off* attempt by you to corruptly benefit yourself through your work as a public servant; simply put, by doing what you were paid by the Government to do. I suspect that you will not find yourself back in a position of responsibility such as this again. However, it is important that the sentence deters others from attempting to act in this way.
18. For matters of mitigation, I am going to allow you 1 year against the sentence that would otherwise have been imposed on you.
19. Having regard to your otherwise good character and the fact that you did plead guilty, notwithstanding that you attempted to go back on it, I am prepared to suspend that term of imprisonment. However, it will be coupled with community work.
20. So, in respect of all 3 charges, you are sentenced to 2 years imprisonment which I suspend for a period of 2 years. This means that if you are convicted of an offence within the next 2 years then you can be called up to serve this particular sentence of imprisonment.
21. You will carry out as well 200 hours community work. You are to report to the Court office at 3 o'clock today for service of the orders.
22. You have 14 days to appeal this sentence if you are not accepting of it.

**BY THE COURT**

