

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

FREDDY TARI

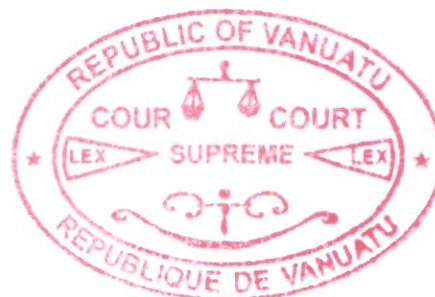
Mr Justice Oliver A. Saksak

Mr Parkinson Wirrick for Public Prosecutor
Miss Jane Tari for the Defendant.

Date of Hearing: 8th October 2012
Date of Sentence: 12th October 2012.

SENTENCE

1. The defendant was charged with 9 Counts of Fraudulent Evasion of Duties Contrary to Section 52 (e) of the Customs Act (Cap 257), and with 9 Counts of Forgery Contrary to Section 140 of the Penal Code Act Cap 135.
2. On his arraignment on 17th September 2012 the defendant pleaded guilty to all 18 charges laid against him. The Court therefore entered convictions against the defendant on all counts.



3. The maximum penalties for offences under Section 52 of the Customs Act is a fine not exceeding VT5.000.000 or imprisonment for not exceeding 10 years imprisonment or to both. And the maximum penalty for an offence of forgery is 10 years imprisonment.

4. The facts as presented by the Prosecution and which are conceded by the defendant are as follows :-
 - a. During January 2012 Customs extracted Data Reports from their automated system on the names of two companies; Windward Holdings Ltd. and Paradise Agriculture Ltd. A comparative analysis of these two companies' imports of the same volume of fuel over a given period of time revealed that the declared value for Windward Holdings Ltd. for imported fuel was suspiciously less than that of Paradise Agriculture Ltd.
 - b. On 8 June 2012 a formal complaint by Customs Santo was made to the Director of Customs, Port Vila. Customs then commenced their investigations and collected various witness statements and documents implicating the Defendant.
 - c. At all material times the Defendant was an authorized Customs Agent and was self employed and also employed by one Harold Vire. This position allowed the Defendant to lodge declarations to Customs on behalf of companies or persons importing goods into Vanuatu which were liable to tax and or duties.
 - d. Commencing on 30 March 2011 at his office in Luganville, Santo, the Defendant lodged falsified under-valued Declarations to Customs of bulk fuel which was being imported by Windward Holdings Ltd. into



Vanuatu. All under-valued Declarations were falsified and forged by the Defendant.

- e. The forgeries involved the Defendant cutting out the letter head or logo of the company Reef Bulk Fuels Ltd. and placing it on a Commercial Invoice the Defendant created himself. The Commercial Invoices the Defendant created reflected under-valued amounts of imported fuel by the company Windward Holdings Ltd. when compared with their corresponding original Commercial Invoices.
- f. With the logo or letterhead of Reef Bulk Fuels Ltd. placed at the top of the false Commercial Invoices the Defendant created, these forged and false Commercial Invoices were lodged with Customs. Customs relied on these false Commercial Invoices in their assessments of duties payable by Windward Holdings Ltd.
- g. At all material times Windward Holdings Ltd. received the original Commercial Invoices for fuel which was purchased by them from Reef Bulk Fuels Ltd. based in New Zealand. At all material times the original Commercial Invoices were forwarded by Windward Holdings Ltd. (through their Port Vila agents, Hawkes Law) to the Defendant to effect lodging at Customs.
- h. Windward Holdings Ltd. nor their agents nor the Defendant's former employer Harold Vire, at all material times, knew that the Defendant was falsifying and forging Commercial Invoices and lodging them with Customs with under-valued Customs Declarations.
- i. At each transaction and offending the Defendant received money from Windward Holdings Ltd. which was calculated by Windward Holdings



Ltd. based on original Commercial Invoices. This money was paid to Customs by the Defendant pursuant to instructions from Windward Holdings Ltd's agent (Hawkes Law). However, the amount of duties payable to Customs at each transaction was calculated by Customs based on the Defendant's false and forced Commercial Invoices and false Declarations. At each transaction the Defendant effected payment but, unbeknown to Windward Holdings Ltd., retained the differences in amounts between original Commercial Invoices and falsified Commercial Invoices for his own personal gain.

- j. The Defendant lodged nine (9) separate falsified Customs Declarations from 30 March 2011 to 6 February 2012. Each falsified Customs Declaration involved the forging of Commercial Invoices. All nine (9) Customs Declarations were relied upon by Customs who acted upon them in good faith. All nine (9) false Declarations involved the defrauding of amounts ranging from VT220,500 to VT291,050 and the total amount of money defrauded by the Defendant during the course of the offending is VT2,407,126.

5. These facts show the following aggravating features –

- (a) That a degree of trust existed between the defendant and his clients in particular Windward Holdings Ltd., Reef Bulk Fuels Ltd. and Hawkes Law, and the defendant breached that trust.
- (b) The period of offencings extended over 10 months and would not have stopped had Customs not discovered the offending. The Pre-Sentence Report indicates this.



- (c) The moneys defrauded by the defendant from the Government were used recklessly for Kava and alcohol with friends. See Pre-Sentence Report.
- (d) The offendings were committed on 9 separate transactions at a rate of one transaction per month.

These aggravating features add to the seriousness of the defendant's offendings and warrant an uplift to the starting point of his sentence.

6. In considering and assessing sentence the Court is assisted by two cases submitted by the Prosecutor which were Public Prosecutor v. Keith Mala Criminal Appeal Case No. 42 of 1995 and Public Prosecutor v. Lopez Adams & Others; Criminal Appeal Case No. 11, 12, 13 & 14 of 2008.

Defence Counsel submitted two other cases apart from the Mala case. These were Public Prosecutor v. Kalo [2001] VUSC 26 and Public Prosecutor v. Tureleo [1995] VUSC 16.

7. In the case of Mala the Court expressed the following sentencing guidelines -

" Cases involving sums of between about 1 million and 5 million vatu will merit a term of about two to three years' imprisonment. Where greater sums are involved, for example those over 10 million vatu, then a term of three and a half years to four and a half years would be justified.

The following are matters to which the Court will no doubt wish to pay regard in determining what the proper level of sentence would be:



- (i) *The quality and degree of trust reposed in the offender including his rank;*
- (ii) *The period over which the fraud or the thefts have been perpetrated;*
- (iii) *The use to which the money or property dishonestly taken was put;*
- (iv) *The effect upon the victim;*
- (v) *The impact of the offences on the public and public confidence;*
- (vi) *The effect on fellow employees and partners;*
- (vii) *The effect on the offender himself;*
- (viii) *His own history*
- (ix) *Those matters of mitigation special to himself such as illness; being placed under great strain by excessive responsibility or the like; where as sometimes happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and the start of his trial; finally, any help given by him to the police."*

8. In view of the above guidelines, the cases of Kalo and Tureleo were more serious in terms of the amounts involved being in excess of VT5.000.000 and VT10.000.000. However their sentences were 2 years and 3 years which were very much on the lower side of the scale set out in the Mala Case.

9. In Mala's Case the amount involved was VT1,770,000 and the defendant was sentenced to a meager sentence of 3 months imprisonment for each count to be served concurrently. In Lopez's case the amount involved



were VT4,950,000. The Court of Appeal increased the initial sentence of 12 months imprisonment to 2 years imprisonment.

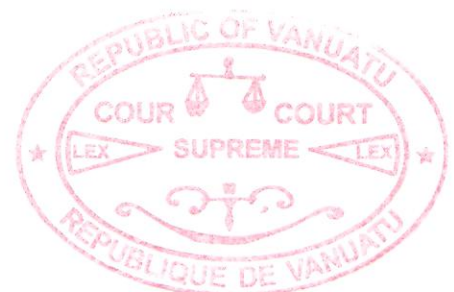
10. In the defendant's case the amount involved were the sums of VT2,400,000. It was more than the amount in the Mala case but definitely less than the amount in the Lopez's case. However by comparison this case is by and large more serious than Mala's and Lopez's cases. In my view 3 years imprisonment as the appropriate starting point is warranted.

11. Freddy Tari, the Court hereby sentences you to imprisonment for a term of 3 years on each of the 18 Counts laid against you. These will be served concurrently. I consider that an uplift of 2 years is necessary due to the aggravating features, bringing the total term of imprisonment up to 5 years.

12. I now consider your mitigating factors to allow some reductions. These factors are -

- (a) Being a first time offender with no previous convictions.
- (b) Good cooperation with the Police during investigations.
- (c) Early guilty pleas and accepting responsibilities.
- (d) Your young family

For these, there will be a general reduction of 1 year and 8 months from your 5 year term of imprisonment, leaving the balance of 3 years and 4 months imprisonment.



13. This sentence serves as –

- (a) A deterrence to you and to others.
- (b) A public disapproval of your actions.
- (c) To mark the gravity of your offendings.
- (d) To punish you adequately.

14. Your sentence of 3 years and 4 months imprisonment begins today 12th October 2012.

15. You will be eligible to apply for early release on parole after having served up to half of your 3 years and 4 months term.

16. You have a right of appeal within 14 days if you so choose.

DATED at Luganville, this 12th day of October 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge.

