

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

Criminal Case No. 142 of 2011

PUBLIC PROSECUTOR

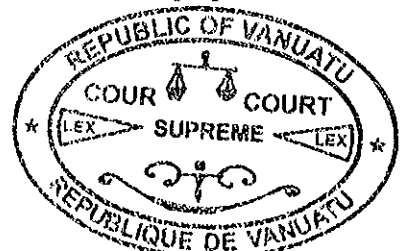
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SOLOMON BAE

Hearing: *8 March 2012*
Before: *Justice R. L. B. SPEAR*
Counsel: *Mr Blessing for the Public Prosecutor*
Mr Andrew Bal for Accused

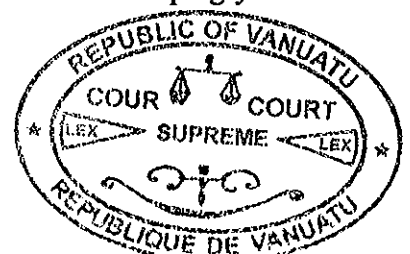
SENTENCE

1. Solomon Bae you are for sentence on two charges; count 1 – Obtaining Credit by Fraud and count 2 – Obtaining Money by Deception. Count 1 carries a maximum term of imprisonment of 1 year and count 2 carries 12 years.
2. You originally faced trial on an indictment containing some 11 counts. On 6 December 2011, you pleaded guilty to counts 1 and 2 in that indictment (as above) and not guilty to the other counts. On 14 February 2012, the Public Prosecutor informed the Court that no evidence was offered on counts 3-11 and accordingly a *nolle prosequi* was entered in respect of those counts.
3. You are for sentence today only on counts 1 and 2 which relate to two transactions, the first of Vt 200,000 and the second of Vt 70,000. You were operating with another man by the name of John Kalo. The two of you had devised a scheme to defraud a retired public servant of his hard earned superannuation monies. This scheme was not just a simple one. It had a level of sophistication to it. Indeed, documentation was prepared



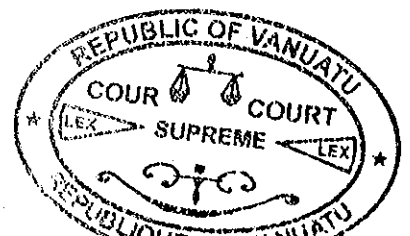
for the so called loan to give the transaction the appearance of legitimacy. In short, however, what was told to the complainant was completely untrue. You deceived him into thinking that you were entitled to receive an amount of some Vt 19 million from a particular entity when you were entitled to no such thing.

4. Kalo pleaded guilty to 10 counts relating to this fraud. He was sentenced by me on 9 September 2011 to a term of 2 years imprisonment and ordered to pay compensation in the sum of Vt 1,035,000.
5. Because of the way in which this case has reached me today, you cannot be sentenced on the same basis and at the same level as John Kalo. For reasons unknown to me, the Public Prosecutor declined to take up the opportunity to present a case against you on counts 3-11 which, of course, covers the extra offending on which Kalo has been dealt with by this Court; that is, further moneys extracted from the complainant through the fraud and totaling Vt760,000.
6. So you are to be sentenced on the basis that you are essentially a bit player in this matter albeit one who made the direct approach and told the lies to the complainant. However, that is only in respect of and confined to those two transactions totaling Vt 270,000.
7. As I mentioned in my sentencing comments on Kalo, this was despicable offending because you preyed on a person who was clearly unsophisticated in monetary matters. You targeted his superannuation payout from his long years of work as a public servant. I said in the Kalo case, and I repeat here, this was clearly planned, deceitful conduct on the part of Kalo and you. Furthermore, you targeted a relatively unsophisticated and unsuspecting member of the public, someone whom you know had worked hard to achieve a nestegg that would be relied on to support him in his retirement.
8. The pre-sentence report identifies that you are just about to turn 57 years of age(next week) and that you reside in Port Vila with your wife and your grand-children. You have claimed to the probation officer that you are actively involved with helping your



community on your home island in Ambrym. Currently, you are financially dependent on your children.

9. You claim that Kalo was the person who received all the money and that you did not receive any of it. Whether that is true or not is, however, somewhat irrelevant. It is clear that this was a scheme that was devised by Kalo and you. I recall Kalo is being a much younger man than you, probably around 30 or 35 years of age. It is obvious here that you saw the opportunity to make some very easy money by defrauding another person and, no matter who had the idea first between Kalo and you, it is also obvious that you willingly went along with this fraudulent plan. Whether you were the brains behind it is not the point. The fact is that you went into this with your eyes open and there is someone out there now who has suffered greatly as a result of your dishonest activities.
10. In so far as compensation is concerned, you have offered to pay back that amount of Vt 270,000 at Vt 10,000 per month. However, you do not have any means to do that yourself and it is clear that this Court would need to obtain the undertaking from your children for a repayment arrangement of that nature. There has been plenty of time for that to be organised. So, at the present time, you are someone who presents as being totally without the personal and direct means to pay any reparation at all. Indeed, it would not matter whether you are in prison or not in so far as compensation is concerned as your children would still be able to make reparation to pay the amount off and they could have started that long before today. This Court often hears offers to pay reparation which are unrealistic and this is another one of those occasions.
11. I note that you are a first offender and that you pleaded guilty to these charges at an earlier time. You are entitled for distinct credit for that.
12. Having regard to all these matters, I consider that the starting point (or what might be termed the offending end point) before looking at your personal circumstances is one of 12 months' imprisonment. It is offending that is sufficiently serious for a sentence of imprisonment to be the first consideration to denounce the offending and warn others as



to the consequences of such appalling dishonest conduct. You are entitled to credit for the fact that you pleaded guilty at such an early time and that you are prepared to accept a compensation order in the sum of Vt 270,000 although it is doubtful if you will be able to pay that off. In my view, that results in a sentence of 6 months' imprisonment as being the least restrictive outcome for you.

13. The question then is whether that sentence should be suspended. Mr Bal has made a forceful submission that you should have your imprisonment suspended. I am not prepared to do so. This was deliberate, planned and relatively sophisticated offending that targeted a person who was seen as vulnerable to your advances. You need to spend time in prison contemplating the error of your ways. I am not prepared to suspend that term of imprisonment.
14. So the sentence of this Court is that you serve a sentence of 6 months' imprisonment which commences today and you are also ordered to pay compensation at the sum of Vt 270,000 at a rate to be organised by your probation officer with you on your release from prison.
15. You have 14 days to appeal this sentence if do not accept it.

BY THE COURT

