

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Criminal Case No. 49 of 2012

Criminal Case No. 59 of 2012

(Criminal Jurisdiction)

PUBLIC PROSECUTOR vs. MARTHA METSAN

Coram: Judge Aru

Counsels: Mr. L. Malantugun for Public Prosecutor
Mr. H. Vira for the Defendant

SENTENCE

1. Martha Metsan you appear today for your sentence.
2. On 12 June 2012 you pleaded guilty in Criminal Case 49 of 2012 to 7 counts of obtaining money by deception contrary to section 130B of the Penal Code [CAP 135]. Similarly on the same date in Criminal Case 59 of 2012 you pleaded guilty to 15 counts of obtaining money by deception contrary to section 130B of the Penal Code.
3. Section 130B of the Penal Code sates as follows:

"130B. Obtaining money, etc., by deception

(1) 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.

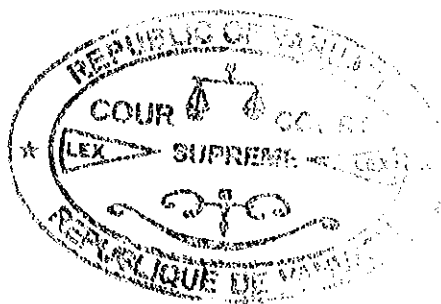
(2) In subsection (1) –

"deception" means deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including:

(a) a deception as to the present intentions of the person using the deception or of any other person; and

(b) an act or thing done or omitted to be done with the intention of causing –

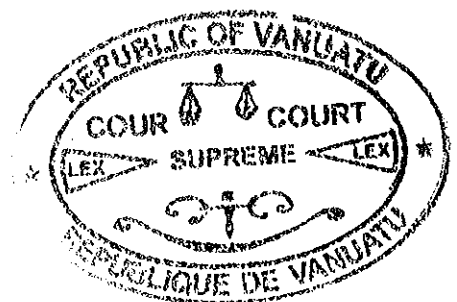
(i) a computer system; or



(ii) *a machine that is designed to operate by means of payment or identification,*

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.

4. In Criminal Case 49 of 2012 the facts are that in early January of 2012 you were a teller with the BRED Bank when you received a customer who submitted an application form for a new ATM card as her previous ATM card was captured and held by the Bank. The complainant's Application was then processed by the Bank tellers and she was issued with a new ATM card. Unfortunately the Bank tellers failed to delete the complainant's previous card after she was given a new one.
5. You then took the Complainant's previous ATM card changed its pin number and started withdrawing money from the Complainant's previous ATM account which is No. 0211 from various dates in January starting from 11 January 2012 to 20 January 2012. On various dates within that period, you withdrew a total amount of VT 215,000 without the complainant's authorization and you took the money for your personal use.
6. In Criminal Case No 59 of 2012 the brief facts are that on December 2011 behind the Nambawan Café in Port Vila, a certain late Timothy of Paama found and gave a BRED Bank ATM card to you that belonged to a certain Arivakisati Bovoro from Fiji working with the Agriculture Bank. Between that time and early January 2012 you as a teller with BRED Bank used the computer system and electronically changed the pin number of Mr. Bovoro's ATM card and used that ATM card to withdraw money from the account of Mr. Bovoro. You then withdrew a total sum of VT 372,000 from the ATM account number belonging to Mr. Bovoro on various dates ranging from 6 January 2012 to 2 February 2012.
7. In sentencing you today I have taken into account the submissions made by the Public Prosecutor and Defence Counsel on your behalf. I have also read the presentence report and a compensation report prepared by the probation officer.
8. Obtaining money by deception is a very serious offence. This is reflected in the penalty which Parliament has imposed under section 130B of the Act which is 12 years imprisonment to deter people from committing such acts. Your actions clearly indicate that you are not deterred and you were willing to take the risk.



9. Both Counsels submitted that this court should only impose an order for compensation or restitution. You pleaded guilty to 22 counts altogether of obtaining money by deception. That is a serious matter therefore a custodial sentence is warranted as a deterrent and to reflect the seriousness of your offending. The starting point for both cases will be 6 years imprisonment. Matters which aggravate your offending in both cases are :-

- You abused the trust and authority of BRED Bank as your employer;
- There was a repetition of offending involved;
- There was some degree of planning and sophistication involved in the way pin numbers were changed to give you access to the complainant's accounts;
- The loss sustained by BRED bank.

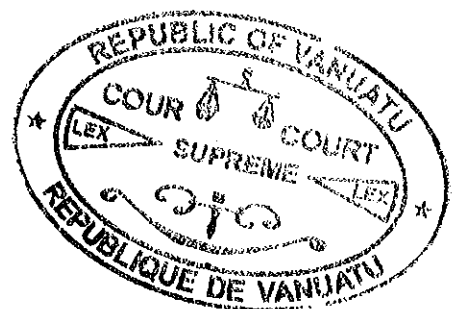
10. In mitigation defence counsel submits on your behalf the following –

- You are married with 4 children the youngest being 16 months;
- You are a first time offender;
- You have skills in finance and accounting;
- You are remorseful for your actions ;
- You pleaded guilty at the earliest opportunity;

11. In the compensation report you disclosed your assets and their value to show that you have the financial means to pay compensation and refund the funds you took from BRED bank and you agreed to pay compensation by making monthly installment payments of VT 20,000 to BRED bank until the amount taken is fully refunded. I am informed by Defence Counsel that BRED bank has agreed with your proposal for compensation.

12. Section 40 of the Penal Code allows the court to make a sentence of compensation where an offender by means of an offence for which he is convicted caused a person to suffer loss of property and subsection (12) states that –

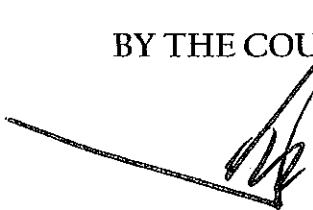
“(12) A sentence of compensation may be imposed in relation to any particular offence, on its own or in addition to any other sentence.”



13. I take into account your early guilty plea which entitles you to a 1/3 reduction of your sentence leaving you with a total sentence of 4 years imprisonment. In giving recognition to your cooperation and willingness to disclose your assets and agree to pay compensation your total sentence is reduced to 3 years which means that your end sentence in each case is 15 months imprisonment.
14. Given the submissions of both Counsels, I then have to consider whether or not the above sentence should be suspended. I take account of the fact that you have agreed with BRED bank to pay compensation of VT 20,000 by way of installments on a monthly basis and you have the financial means to do so. Secondly you have a young child of 16 months. If you were to be placed in custody, you will not be able to maintain your undertaking to the bank and also your child will suffer as a consequence. Given the circumstances, a suspension of your sentences is warranted.
15. Your end sentence is as follows :-
- (i) 15 months imprisonment for each case is suspended for a period of 2 years;
 - (ii) In addition to your suspended sentences, you are ordered to repay BRED bank a total sum of VT 1,099,273 by making monthly installment payments of VT 20,000 with immediate effect until the full amount is repaid.
 - (iii) You must not reoffend during the period of your suspended sentence. If you do commit another offence during this time, your suspended sentences will be reactivated and you will serve the full terms in custody. If this happens your sentences will run consecutively which means that at the end of serving the 15 months imprisonment ordered in Criminal Case 49 of 2012, you will then serve a further 15 months imprisonment ordered in Criminal Case 59 of 2012. This will not affect Order ii) above.
16. You have 14 days to appeal this decision if you are not happy with it.

DATED at Port Vila this 6th day of September, 2012.

BY THE COURT


D. ARU
Judge

