

**PUBLIC PROSECUTOR**

- v -

**GILLIO BAXTER**

**Coram:** V. LunabeK CJ

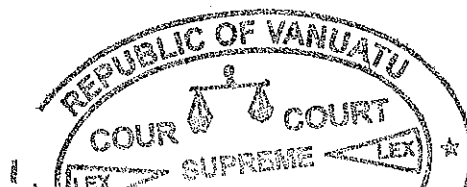
**Counsel:** Mr. Leon Malantugun for the Public Prosecutor  
Ms Jessica Palo for the Defendant

**SENTENCE**

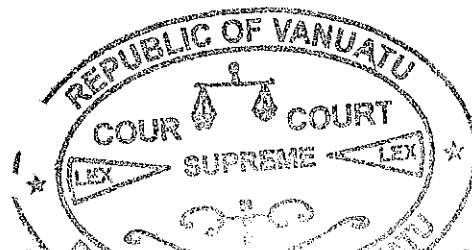
1. Gillio Baxter, this is your sentence. You are charged with one count of misappropriation contrary to section 125 (b) of the Penal Code Act.
2. On 5<sup>th</sup> November, you entered a not guilty plea to that offence. The matter was listed for a pre-trial conference on 3 December 2013. On that date, your lawyer informed the Court that you are asked to be re-arraigned.
3. On 3 December 2013, you were re-arraigned and you entered a guilty plea after the amount of the money Vatu said to be misappropriated by you are amended from VT952,360 to VT667,000.
4. The brief facts of your offending are that:

On different dates from the months of January, February, March and April 2013, you made some sales in Santo and Pentecost islands in regards to the laptops, modem and laptops bags belonging to the Digicel Company. The total revenue collected from those sales during the above mentioned period is computed at the rate of VT667,000. That amount was calculated or planned by you but they were never returned to the Digicel Company as you had diverted exclusively for your own personal use.

5. When I sentence you, I take into account of the prosecution submissions and the submissions made by your lawyer on your behalf. I also take into account of the information peculiar to you as provided by your lawyer in the absence of a pre-sentence report.
6. The offence of misappropriation carries a maximum penalty of 12 years imprisonment. It is a dishonest offence and indeed a serious offence as reflected in the maximum penalty imposed by law.



7. The type of offending warrants a custodial sentence for the following reasons:
- (a) You must be punished adequately for the wrongs you have committed;
  - (b) The Public disapproves of your offending;
  - (c) You must be deter from further repeating of your offending; and
  - (d) Your sentence must be used as a deterrence to others from this offending.
8. You are sentenced to 2 years imprisonment as a starting point.
9. In mitigation, I am informed that you are 26 years of age. You are a first time offender. On 5 November 2013 you entered a not guilty plea on the offence as you disagree with the total amount the prosecution alleged you have misappropriated. On 3 December 2013 when the matter was listed for pre-trial conference, you told your lawyer to inform the Court that you wanted to be re-arraigned after the prosecution has amended the charge laid against you. I treat this situation as if you have entered a guilty plea at a first opportunity given to you so that 1/3 of the starting point sentence is credited to you.
10. I am also informed by your lawyer that you cooperated well with the police. You are a very committed person. You have a high educational background and you are a multi-skilled professional in your careers. You are a part time student at USP Emalus Campus. Your aim to achieve a degree in management and social science. I have also perused the many references attached to your lawyer submissions. I am further informed by your lawyer that you have used the monies as your did not receive any allowances.
11. I take into account the fact submitted by your counsel that you have discovered 2 cheques of VT23,000 each which were paid to you during your trip in the islands.
12. The 2 cheques are now in the office of the Public Solicitor. The amount of VT667,000 to which you pleaded guilty should be reduced for repayment purposes as submitted by your lawyer. I accept that and take that into account as part of your sentencing in this case. You are remorseful for what you did.
13. You make an offer to repay the total amount of VT621,000 (exclusive of VT46,000 you did not use). Your repayment offer based on the following information:
- You have a monthly salary at Wan Smol Bag Theatre of VT40,000;
  - You offer to repay monthly VT15,000;
  - You propose to repay the amount of VT621,000 during a period of 3 years and 6 months;
14. I accept that on the facts of this case, a restitution or compensation order is appropriate to be made.




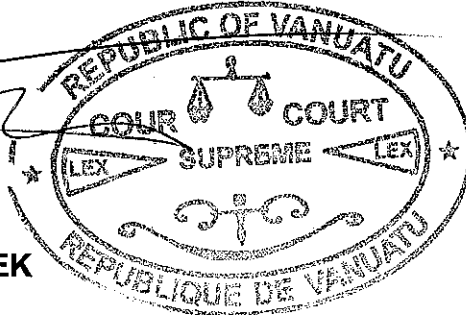
15. On the balance between the aggravating and mitigating factors, you are sentenced to 9 months imprisonment which is suspended for a period of 2 years during which you keep out of trouble failing which the 9 months imprisonment sentence will be re-activated. The final orders of the Court are as follows:

**SENTENCING ORDERS**

1. 9 months imprisonment suspended for a period of 2 years.
2. Defendant Gillio Baxter must repay the amount of VT621,000 to Digicel Company on following instalment payments:
  - (a) Monthly repayment of: VT15,000;
  - (b) Period of repayment: 3 years and 6 months;
  - (c) Starting date of repayment: 30 December 2013.
3. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Port-Vila, this 9<sup>th</sup> day of December, 2013**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**