

**PUBLIC PROSECUTOR**

**- v -**

**KESSAYA HARRISON KALMET**

*Coram:* V. Lunabek CJ  
*Counsel:* Ms Tabisa Harrison for the Public Prosecutor  
Mr Francis Tasso for the Defendant

*Date:* 29 October 2014

**SENTENCE**

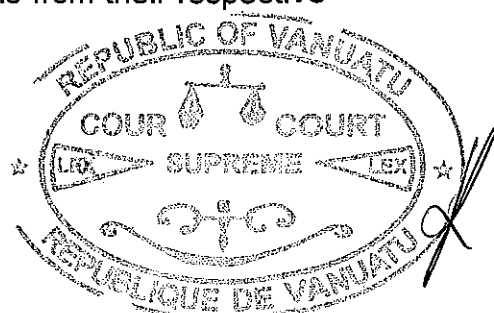
Kessaya Harrison Kalmet, you appear today for sentence. You are charged and pleaded guilty to one count of misappropriation, contrary to section 125 (b) of Penal Code Act on 29 September 2014. The brief fact of your case is:-

The complainant of this case against you is one Silop Tesei who worked at the Mystery Island near the Island of Aneityum. The complainant lodged the complaint against you on or about 18 of January 2013 for misappropriation of Vatu 110,000. The complainant is your aunt. She worked at the Mystery Island and wanted to send money to Port Vila for duty free products to be sent over in time for arrival of the next cruise ship visit on the Island of Mistery.

On the 29<sup>th</sup> of December 2012, you were travelling by plane to Port Vila for Holiday. On that date, the complainant gave you two envelopes containing cash monies for duty free products. The first envelop contains the following amount of cash monies: AUS \$400.00 and US 50.00; the complainant also put in that same envelop the amount of \$450.00 and \$300.000 given to her by one Mr Kami Tesei and Teresa Nitia respectively.

The complainant further gave you a second envelope containing an amount of cash Vatu 16,000 which belonged to one Jonathan Nijinwacu. Before you departed from Mystery Island, the complainant told you to take these envelopes and drop them off at a specified Duty Free Shop in town, Port Vila. The complainant gave you VT600 for your bus fares.

Since 29 December 2012, the complainant and the others who gave their monies to you, have not received any duty free products or any information as to what you did with their monies as they did not receive duty free items from their respective mentioned Duty Free Shop.



On the 14<sup>th</sup> of March 2013, you were cautioned and interviewed by the police. You made admissions during the interview that you did receive the two envelopes from the complainant. You did arrive with the two envelopes in Port Vila on 29 December 2012. You knew that the two contained cash monies. You did open the envelopes and you saw that there a lot of cash monies inside the two envelopes. You then took out cash monies and changed some of the overseas currencies to Vatu. You then took some of your brothers and a sister and you went clubbing on the night of 29 December 2012 spending the complainant's and others' monies which were entrusted to you. You spent the other part of the monies on another day.

The offence of misappropriation is a serious offence. It carries a maximum penalty of 12 years imprisonment.

In the present case, your offending is aggravated by the breach of trust your aunt (complainant) and others placed on you and the amount of Vatu 110,000 which is a substantial amount based on the local costs of living scale of things. This type of offending deserves a custodial sentence.

A sentence of 18 months imprisonment is an appropriate starting point in this case taking into account of the seriousness and aggravating features of your offending.

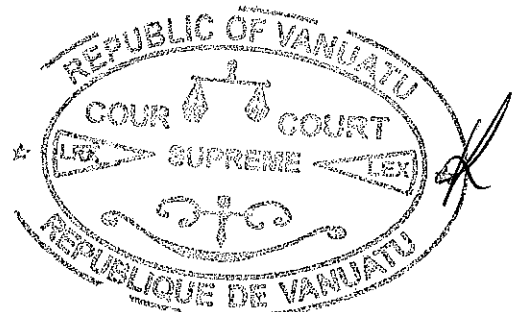
In mitigation, I note that you are 24 years of age; you live in a de facto relationship. You have a private tourist market business and so you are a self-employed person. You are a first time offender. You plead guilty at the First opportunity given to you by the court and also you make admissions to the Police Officers when interviewed.

It is reported that your father, Mr Harrison Kalmet, has made a refund payment of Vatu 40,000 to the complainant Silop Tesei through the National Bank of Vanuatu (NBV). A NBV's receipt for cash transfer dated 14 May 2014 in the Account name of Sole Tesei of Vatu 40,000 is attached to the pre-sentence report. It is stated that your father made that payment on your behalf. It is also reported that your father stated to the writer of the report that arrangements are in place for a full refund before the end of the year 2014 with your father's assistance.

You also state that you are willing to repay back the money to your families so that you can then reconcile with them. You have expressed insight and remorse into your offending. You are motivated to change and lead a positive life now onwards.

On balancing between the aggravating and mitigating factors, I give you an allowance of 1/3 for your early guilty plea and another one (1) month for other mitigating factors.

Your end sentence is 11 months imprisonment. I consider also whether I should suspend your imprisonment term of 11 months.



I accept that your father has repaid back to the victim the amount of VT40,000. I note and consider that you and your father and families will make full repayment of 110,000 Vatu before the end of 2014. I am satisfied that you have the financial capacity to do so with the assistance of your father.


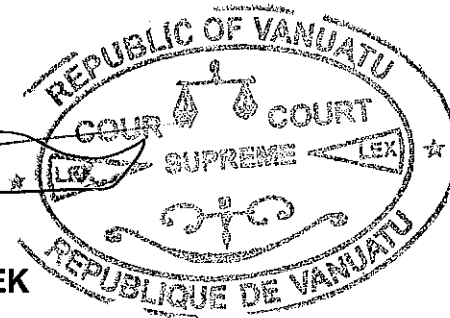
I decide and I suspend your term of 11 months imprisonment for a period of 2 years. In addition, you are ordered to perform 100 hours of community works in addition to your suspended terms of imprisonment.

You are also ordered to repay the outstanding balance owing of Vatu 50,000 by 15 December 2014.

You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Port-Vila this 29<sup>th</sup> day of October 2014**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**