

PUBLIC PROSECUTOR VS- NORMAN TORE

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Lenry Young for Public Prosecutor
Brian Livo for the Defendant*

Date of Plea: *13th April 2017*
Date of Sentence: *11th August 2017*

SENTENCE

1. Norman Tore, on 13th April 2017 you entered guilty pleas through your lawyer Mr Livo to 16 Counts of misappropriation contrary to section 125 (b) of the Penal Code Act CAP. 135 (the Act). These charges were laid in Counts 11,12,13,14,15,16,17,18,19,20,21,22,,23,24,25, and 26. The 10 charges of forgery in counts 1,2,3,4,5,6,7,8,9 and 10 the Public Prosecutor entered nolle prosequi in respect of them on 7th June 2017. You are now here for sentence only in respect of the 16 counts of misappropriation.

2. The offence of misappropriation is prohibited under section 125 (b) of the Act as follows-

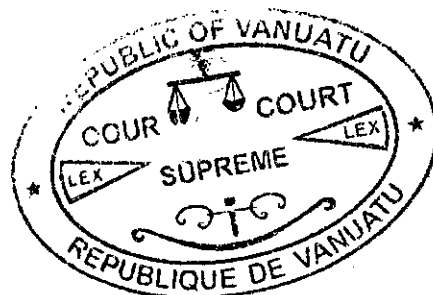
" No person shall cause loss to another-

a).....;

b) by misappropriation..... or;

c)

Penalty: Imprisonment for 12 years.



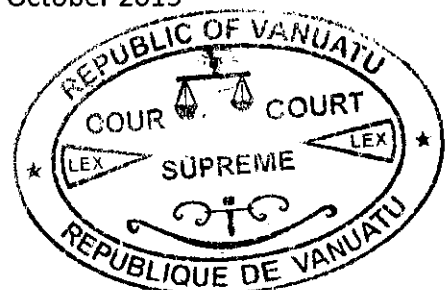
3. The offence of misappropriation is defined under section 123 of the Act as follows-

"A person commits misappropriation of property who destroys, wastes, or converts any property capable of being taken which has been entrusted to him for custody, return, accounting or any particular manner of dealing (not being a loan of money or of monies for consumption)".

4. Since 2011 you worked as a principal accountant at Law Partners Chartered Accountants and Business Advisors in Port Vila. Law Partners administered 2 Insurance Schemes namely Insurance Company Family Holdings Limited (FHL) and Family Assurance Limited (FAL). FAL had 10 policy holders namely Pascal Malasi, Paul Haitong Morris, Vuke Gray (deceased), Karina Smith, Gambetta Pierre, Reve Ileanton, Ansen Veremaito, Jean Louise Tabilebo Bouleuru Molgos, Akinas Mayaru and Lesly Mera.

5. Between April 2014 and January 2015 you caused losses through misappropriation to monies of the 10 policy holders paid into FAL as administered by Law Partners as follows-

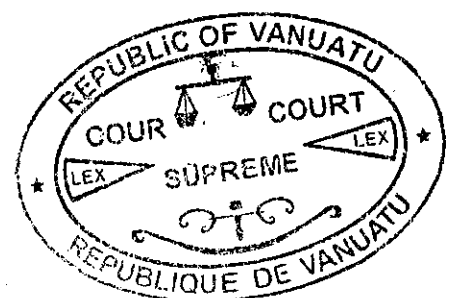
- a) Pascal Malasi – VT 700.000 on 16th April 2014, VT 336.360 on 2nd June 2014 and VT 610.811 on 22nd December 2014.
- b) Paul Haitong- VT 250.000, complained of on 25th September 2015
- c) Vuke Gray – VT 614.184, complained of on 9th November 2015
- d) Karina Smith – VT 468.545, complained of on 28th October 2015



- e) Gambetta Pierre – VT 914.820 on 15th October 2014, VT 320.000 on 2nd December 2014 and VT 1.006.448 on 10th December, 2014.
- f) Reve Ileanton – VT 905.795 on 25th July 2014, VT 600.000 on 21st October 2014 and VT 305.795 on 26th November 2014.
- g) Ansen Veremaito- VT 47.000 on 3rd July 2014.
- h) Jean Louise Tabilebo B.Molgos- VT 551.595 on 24th June 2014.
- i) Akinas Mayaru – VT 559.740 on 25th July 2014.
- j) Lesly Mera- VT 311.004- complained of on 26th October 2015.

Altogether you misappropriated the sum of VT 8.502.097.

6. In Mr Malasi's case you deceived him by asking him if he wanted to surrender his policy and having agreed, you wrote out for him his surrender letter which he signed. You then withdrew his money on April, June and December 2014 but never transferred them into his bank accounts. The total money you misappropriated from him was VT 1.647.171.
7. In Mr Morris' case you deceived him by asking to borrow VT 250.000 from his insurance policy to which he agreed and that you prepared his letter of surrender. You withdrew that money and never paid it back.
8. In all the remaining 8 cases you simply and somehow withdrew their money without their letters of surrender without their knowledge and caused loss to them.

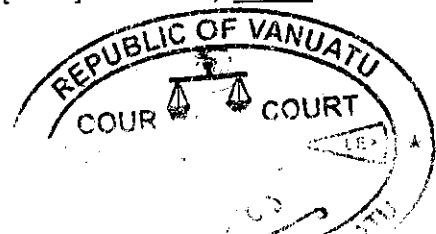


9. In relation to the FHL money you cashed 3 cheques number 000307, 000308 and 000309 for the sum of VT 1.182.229 to make up for the shortfall from FAL. You attempted to pay back FHL by a personal cheque but it bounced, not having sufficient funds in your account to do so.

The overall total you have misappropriated is the sum of VT 9.684.326.

10. This is a huge amount of money that belonged to FAL and to 10 policy holders of FAL. And you took all these money without authorisations over a period of 12 months from January 2014 to January 2015. And it happened repetitively. You were in a position of trust and you abused that trust. There was a degree of planning on your part in most cases, deceptive and dishonest. You not only caused losses to huge amounts of insurance money held on trust, but you benefitted personally from them. Your Pre-sentence report indicates you operate and own 2 retail shops, on East Ambae and the other in Luganville. Further, you have caused much stress, mental and physical on your principal partner and harm to the reputation of Law Partners. Further you have caused stress to the 10 policy holders, one now deceased and unable to enjoy any of their hard earned money and savings.

11. Considering the culpability of your offending together with the aggravating features as stated in the preceding paragraph, your offending calls for an immediate custodial sentence. The prosecution recommends a starting sentence of 5 years imprisonment but in my opinion that is too low. The starting point shall be 7 years imprisonment. The principles in support of imposing sentences of imprisonment are well established in the cases of Boesaleana.v. Public Prosecutor [2011] VUCA 33, Public



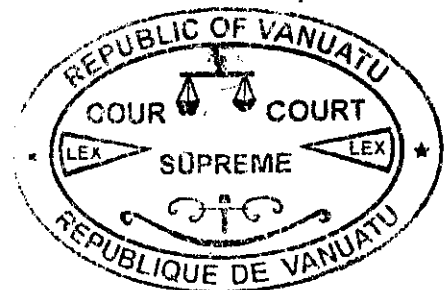
Prosecutor .v. Gama [2005] VUSC 60 Public Prosecutor. Batty [2003] VUSC 107 and
Public Prosecutor .v. Sine [2014] VUSC 179.

12. A custodial sentence is necessary to-

- a) Mark the seriousness of your offendings and the great impact on the victims of your offendings.
- b) Mark the Court's disapproval and condemnation of your unlawful actions.
- c) Deter you and other likeminded people from such offendings.
- d) Protect banks and financial institutions and innocent customers from this sort of offendings.
- e) Punish you adequately.

13. I therefore convict you on all 16 counts of misappropriation and sentence you to 7 years imprisonment on each count (Counts 11 to 26 inclusive). However the sentences of 7 years are made to run concurrently. In effect you will serve a total concurrent sentence of 7 years imprisonment. The sentence will not be suspended.

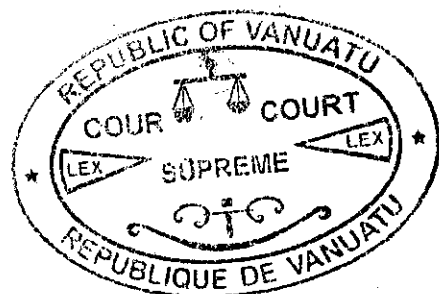
14. In mitigation I accept that you are entitled to 1/3 reduction for guilty pleas. Your sentence is reduced by 2 years and 4 months. The balance is 4 years and 8 months imprisonment. For other mitigating factors such as clean past record, good cooperation with the police during investigation and your remorse and willingness to make restitution, 8 months are deducted, leaving your end sentence to be 4 years imprisonment.



15. In addition I make a restitution order that you repay the sum of VT 8.502.097 to FAL and VT 1.182.229 to FHL. You will begin by making VT 100.000 per month from the earnings of your retail shops. This will begin from end of August 2017 and will continue until the whole sum of VT 9.684.326 are fully paid back.


16. That is the sentence of the Court. You have a right to appeal against this sentence within 14 days if you do not agree with it. But you must commence your imprisonment term with immediate effect as from today.

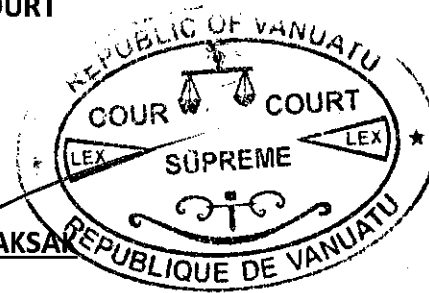
17. Defence Counsel filed late written submissions on 9th August 2017. The starting point proposed at 3 ½ years is rejected as being too low due to the circumstances of the case. And the submission for a suspended sentence is rejected for reasons given and the case authorities referred. The case of Public Prosecutor. Garae [2017] VUCA 21 was an appeal against the suspension of sentence only and not against the inadequacy of sentence. On that basis that case is clearly distinguished from this case. And the amount involved was VT 15 million not VT 44.133.810 as stated by defence counsel. The remaining submissions have been taken into consideration by the Court in the imposition of the final sentence by the Court.



DATED at Port Vila this 11th day of August 2017

BY THE COURT


OLIVER.A.SAKSAK
Judge



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom, separated by two small stars. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scales, the word "SUPREME" is written in a larger font. On either side of "SUPREME", the word "LEX" is written in smaller letters. At the bottom of the inner circle, there is a decorative flourish.