

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

Criminal Case No. 3353 of 2016

PUBLIC PROSECUTOR

-v-

ANN MARIE GARAE

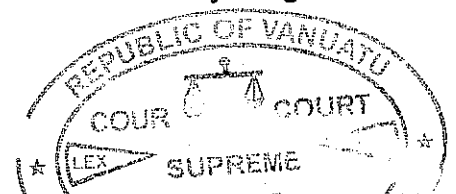
*Before Justice David Chetwynd
Hearing 16th March 2017 (Reasons published 20/3/17)
Mr Boe for the Public Prosecutor
Ms Tari for the Defendant*

Sentence

1. The defendant Ann Marie Garae has entered guilty pleas to charges of theft and money laundering.

2. I have indicated earlier in these proceedings that I was uncomfortable with the charges involving money laundering. It is probably correct to say the facts of the offences fit the definition of money laundering in the Proceeds of Crime Act [Cap 284] as amended, but overall, money laundering has connotations of a legal or quasi legal business or a person being used to receive proceeds of crime and then generating "clean" income with those funds. Be that as it may, the defendant has entered guilty pleas to 3 counts involving money laundering and I do not intend to interfere with those pleas. I will treat the three pleas relating to money laundering as "neutral" so far as any sentence is concerned and the main sentence will be in relation to theft because Ann Marie Garae acknowledges she has taken a huge sum of money from her employer and used it for her own purposes.

3. It is not entirely clear exactly how much money has been stolen. A figure in excess of 24 million Vatu has been mentioned. The sum was stolen over a period of 3 years. It is difficult to understand how it happened. It is easy enough to understand the mechanics of offending, the defendant was employed as a house-girl and part of her duties involved general house work. Whilst she was doing that work she found a bag under her employers bed which contained large sums of cash. She helped herself to some of that cash taking 50,000 to 100,000 Vatu at a time. She did this several times a week. That is a simple enough process to understand but what is difficult to grasp and understand is why the complainant did not realise so much money was being stolen. It is fundamentally wrong to place blame on a victim of crime but there was clearly a lack of security and accounting processes which allowed the defendants criminality to go undetected for so long



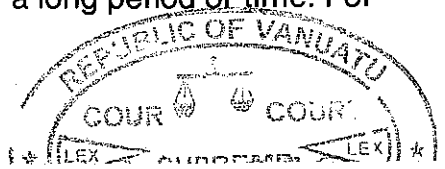
4. Having said that, there was clearly a breach of trust. There is no doubt Ann Marie Garae was treated as almost part of the employer's family and while she may not have carried out a complicated scam or been involved in a sophisticated theft her simple crimes of opportunity repeated many times over lengthy period must have felt like gross betrayal to her employer. It is however important to remember that Ann Marie Garae was not entrusted with the safekeeping of the money because if she had been that would involve an entirely different kind of breach of trust such as would be apparent in a situation where a professional person stole money entrusted to him or her as part of their job.

5. The defendant is 47 years of age and had been working for the complainant for 6 years or more. She has never been in trouble with the authorities before and it appears she took to stealing because of the pressures she felt from trying to provide for her family without any assistance from her errant husband or his family. It is quite possible that her now adult children should shoulder some of the blame for accepting what she gave them without enquiry. They must have realised that the sums involved were simply not possible on a house-girl's wages.

6. The defendant has not sought to pass the blame to either her employer or her own family and has entered guilty pleas. I accept that she did not do so at the earliest opportunity but I also understand the reasons why, namely the issue of money laundering and the amount of money involved. She has never denied that she stole from her employer and must be given credit for that. There does not appear to be any dispute that the defendant has re-paid a substantial amount of the money. There are other assets which might possibly be realised so that further sums can be re-paid. However, there is just as likely to be difficulties with realizing that property. There are two houses involved. I have no information about those houses but if they are built on customary land it is not entirely clear how the money used to build them could be recovered. If they are built on leased land recovery will be much easier. I have granted applications for restraining orders under the Proceeds of Crime Act so the defendant cannot dispose of those "assets". If the family want to keep those house, even if they are on customary land, then they should make efforts to assist the defendant repay what has been stolen.

7. It is difficult to be exactly sure about how much remains to be re-repaid. The defendant says she has repaid VT 11 million plus but that she still owes VT 3.26 million. I have not been made aware of any dispute about those sums. If there is a dispute then if insufficient is recovered by way of the orders made under the Proceeds of Crime Act there will be a need for civil action.

3. As I have mentioned in the case of *Rapulpul* when handing down the sentence earlier today, there are some helpful decisions available but specific guidelines are not easy to come by in cases such as this. There is no doubt that sentences of imprisonment are warranted but I will not make any sentences consecutive even though the offending must have involved many instances of theft over a long period of time. For



the offence of theft the defendant Ann Marie Garae will be sentenced to 4 years imprisonment. For the three offences of money laundering the sentence for each will be 18 months imprisonment to be served concurrently with each other and concurrently with the sentence for theft. In respect of the sentence for theft I will reduce it by 18 months to take account of the defendant's past good character and the repayment so far made. I will also take into account in that reduction the time the defendant has spent in custody pending trial. That leaves a sentence of 30 months or 2 ½ years. As indicated earlier, the defendant will be given full credit for her guilty pleas. The result of all this Ann Marie Garae is that you are sentenced to 20 months imprisonment. I will suspend that sentence for a period of 3 years. What that means is that if you do not commit any further offences within that three years you will not be required to spend any more time in prison. If however you are convicted of further offences within that 3 years you will likely be required to serve part or all of that 20 months sentence. Given that you have ~~no employment and no income~~ I shall not make a restitution order under section 58ZD of the Penal Code. That does not affect the ability of the prosecutor to pursue remedies under the Proceeds of Crime Act or the ability of the complainant to pursue a civil claim.

8. Finally, I will remind you of what I said in court, that if you are unhappy with the sentence passed upon you then you have the right to appeal. The time for appeal will start to run when your counsel receives a copy of these written reasons.

Dated at Luganville this 16th day of March 2017.

BY THE COURT


.....
D. CHETWYND
Judge

