

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

Criminal Case No. 3669 of 2016

PUBLIC PROSECUTOR

-v-

ALICE RAPULPUL

*Before Justice David Chetwynd
Hearing 16th March 2017 (Written reasons published 20th March 2017)
Mr Massing for the Public Prosecutor
Ms Tari for the Defendant*

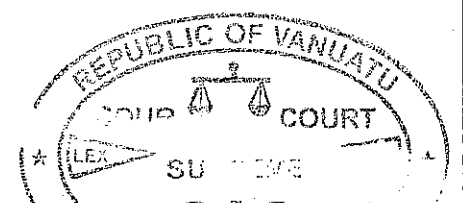
Sentence

1. The defendant Alice Rapulpul has entered a guilty plea to the charge of misappropriation. Misappropriation is theft by another name. There are sufficient authorities in this jurisdiction and other common law countries to show this type of offence is a species of theft.

2. The defendant is aged 27 years. She was working as the assistant manager of a hotel/resort in Luganville. Over a period of 6 months she stole VT 789,700 from her employer. The method was not very sophisticated, she simply asked her Manager to sign cheques for bogus supplies at the resort. The exact details are set out in the PI bundle but for one reason or another the bundle was not available to the court. Because she was in a position of trust her actions were not queried. There is no information as to what the stolen money was used for. In the very helpful pre-sentence report compiled by the Probation Officer there was a hint at the motive behind the offending and that was dissatisfaction with the salary being paid and resentment because the defendant had not been allowed to attend courses in Port Vila and Fiji. The defendant was dismissed immediately the offences were discovered. Ms Rapulpul now shows remorse and she accepts what she did was very wrong.

3. As is now well known in this jurisdiction, sentencing involves a three step process as set out in the case of *Andy*¹. The first step is to establish a starting point, "*The starting point can be defined as the sentence of imprisonment that reflects the seriousness of the offence and the culpability of the actual offending; that is, the specific actions of the offender and their effect in the context of the specific charge and its maximum sentence*". The next step "*is the assessment of the aggravating and mitigating factors relating to the offender personally. It is under this head that*

¹ *Public Prosecutor v Andy* [2011] VUCA 14; Criminal Appeal 09 of 2010 (8 April 2011)



aggravating matters such as the past history of the offender will be considered. If there are previous convictions, particularly for a similar type of offence, this may result in the starting point being increased. Under this head, mitigating factors such as a lack of previous relevant convictions, good character and remorse will be assessed and may result in a reduction of the starting point to reach a second stage end sentence". Following this the Judge will as a third step, "... consider what discount from the second stage end sentence should be applied for a guilty plea. The greatest discount allowed under this head will be a discount of one third where the guilty plea has been entered at the first reasonable opportunity. A later guilty plea will result in a smaller discount. No discount is available under this head if the charges have been defended through a trial".

3. I am grateful to counsel for producing details of previous sentences in cases where either theft or misappropriation is involved. I have to say that there is a huge disparity in the sentences imposed in those cases. I of course accept that sentences will differ because of different facts of offending and differences in offenders' personal circumstance but even so there does seem to be an unusual disparity in sentences. They seem to go from fines imposed on senior police officers who steal from prisoners to lengthy terms of imprisonment for bank officials who steal the banks' money. At the end of the day I am happy to have to rely on the principles of sentencing referred to by the prosecutor in his submissions and as set out in the New Zealand case of *Radich*² and the Australian case of *Veen*³. There have been some guideline sentences in this jurisdiction but because of their age, they date from the mid 1990's, when they refer to specific amounts of money involved in the offences they have to be treated with some caution as inflation and the value of the vatu have moved on in the last 20 years. However, when those guidelines refer to general considerations such as set out in the case of *Mala*⁴ they do offer significant assistance. In this case there was clearly a breach of trust. The defendant was in a managerial position. Whilst she was not a professional officer such as an accountant or lawyer her employer was entitled to treat her as someone who could be trusted and she betrayed that trust. Her employer also says that there have been financial repercussions over and above the loss of the money stolen. The period of offending was relatively short.

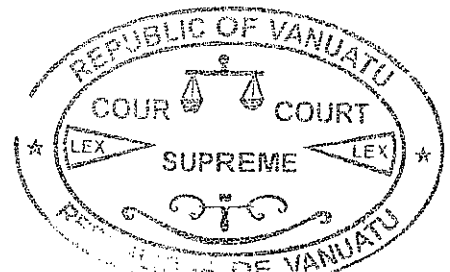
4. The starting point in this case is 18 months imprisonment. In mitigation it can be seen the defendant is of previous good character and has shown remorse for what she did. Unfortunately nothing has been repaid to date. In all the circumstance the sentence should be reduced by 2 months to 16 months. Ms Rapulpul has accepted her guilt at the earliest opportunity and should be given full credit for that. The end sentence is one of 10 months.

5. In the defendant's particular circumstances I will suspend the sentence for a period of 2 years. It has been explained to the defendant that if she commits no further offences within that two years she will not be required to service the 10 months imprisonment. One of my principal reasons for suspending the sentence is so that the

² R v. Radich [1954] NZLR 86

³ *Veen v The Queen (No.2)* [1988] HCA 14; (1988) 164 CLR 465

⁴ *Public Prosecutor v. Mala* [1996] VUSC 22 Criminal Case 042 of 1995

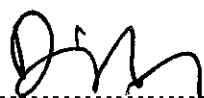


defendant can repay what she has stolen. I will therefore also make an order that the defendant Alice Rapulpul should, pursuant to section 58ZD of the Penal Code [Cap 135], make restitution of the sum of VT 789,700. In addition I make an order that the defendant should make restitution within a period of two years and in default shall be liable to be sentenced to imprisonment in accordance with subsection 2 and 3 for a term not exceeding 6 months. I understand the defendant is presently without employment but hopes soon to start a new career. It is possible the new work will take her out of the jurisdiction for periods of time. I will not order any other sentence such as community work because that would be difficult to arrange if the defendant is not in the jurisdiction. Lest it be thought she is escaping lightly she will be under some pressure to pay what she has stolen within two years. If she finds that she is unable to make full restitution within the two years she must inform the court and the complainant. She may well be able to ask for further time to pay. If she does nothing she is liable to arrest and detention without further ado even if the 2 years suspension of the sentence has ended.

6. Finally, I will remind the defendant of what I said in court that if she is unhappy with the sentence handed down today then she has the right to appeal. The time for appeal will start to run when her counsel receives a copy of these written reasons.

Dated at Luganville this 16th day of March 2017.

BY THE COURT



D. CHETWYND
Judge

