

PUBLIC PROSECUTOR VS- FLOYD NATU

Coram: *Mr. Justice Oliver A. Saksak*

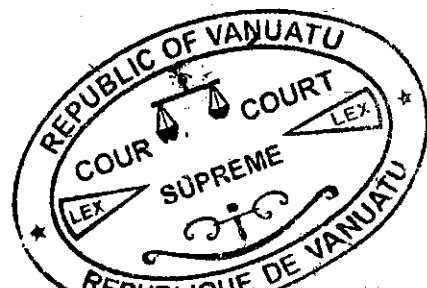
Counsel: *Lenry Young for the Public Prosecutor
Henzler Vira for the Defendant*

Date of Plea : *13th December 2017*

Date of Sentence: *13th February 2018*

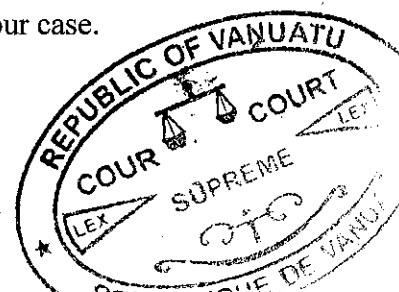
SENTENCE

1. Floyd Natu, you are called for Sentence today for having pleaded guilty on re-arraignment on 13th December 2017 to money laundering. Initially on 13th September 2017 you had pleaded guilty to one charge of misappropriation.
2. Misappropriation is a serious offence under section 125 (b) of the Penal Code Act [CAP 135] and carries a maximum penalty of 12 years imprisonment.
3. Money Laundering is also an offence contrary to section 11 (3) (b) of the Proceeds of Crime Act No. 13 of 2002 (amended). This offence carries a maximum of a fine of VT 10 million or imprisonment of 10 years.
4. You committed these offences in your position as National Trade Finance Officer at the National Bank of Vanuatu. Over a period of one year from 30th October 2014 to 9th November 2015 you took money from customers accounts and misappropriated them causing a total loss of VT 9,081,203. You did all these by unlawfully transferring amounts of money from the general ledger accounts numbers 09/2230515 and numbered 0119576002, 0072779003 and 0072779001. Then after making the transfers you withdrew from ATMs large amounts of cash which you put to your own use. This includes hiring of cars in October 2015 when you spent VT 237,500 for hiring of a car for AVIS for 19 days. In July 2015 you spent VT 95,490 hiring a car for 9 days. Your other victims were Virataoni Takaro and Silas Rungwa who accounts



you used and accessed without their knowledge and authorisation. They had entrusted to you their ATM Cards and Pin numbers while they were away in New Zealand.

5. You knew you were doing something unlawful but you just continued doing it until your suspicious actions were discovered in November 2015, about a year later. By that time VT 9.081.203 were transferred, withdrawn and misappropriated by you.
6. Your actions of unlawful transfers of moneys from the Bank's general ledger accounts to customers personal accounts is called money laundering and it is an offence under section 11 (3) (a) of the Proceeds of Crime Act. And your withdrawing the moneys, converting them to your own use and misappropriating them causing permanent loss amounted to misappropriation under sections 122, 123, and 125 (b) of the Penal Code Act Cap. 135.
7. In one transaction made, you committed two separate offences, one a statutory offence, the other a criminal offence. You stood in a position of responsibility and trust to the Bank and to the customers. You breached both. Your actions were repeated over a period of more than 12 months. Your actions were unlawful, deliberate and intentional. The total amount of money lost is huge. The use of the money was wasteful amounting to greed. The restitution of the money would be a lengthy and difficult exercise. These are factors the Court must take into account in considering sentence. See Buleva.v. The State [1988-89] PNG LR 496.
8. Those factors warrant the imposition of a custodial sentence. Your actions must be denounced by the Court to be a deterrence for you and other like-minded bank officer. Banks and financial institutions ought to be protected by imposition of a custodial sentence in your case. You could not be adequately punished except by a sentence of imprisonment.
9. The cases of Public Prosecutor.v. Gama [2005] VUSC 60, Public Prosecutor.v. Garae [2017] VUCA 21, Public Prosecutor .v. Simon [2012] VUSC 246, Public Prosecutor.v Bathy [2003] VUSC 107, and Public Prosecutor.v. Sine [2014] VUSC 179 all lend support to the Court imposing a custodial sentence in your case.



10. I therefore sentence you as follows-

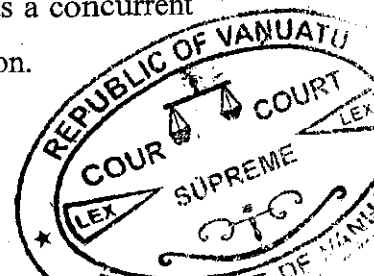
- a) For Misappropriation- Count 1- 8 years imprisonment.
- b) For Money Laundering- Count 2- 8 years imprisonment concurrent with 8 years imprisonment for misappropriation in Count 1.

You are therefore sentenced to a starting point of 8 years imprisonment as a concurrent sentence. I do not accept your Counsel's submission that your starting point should be 2 years imprisonment. That is far too low in view of the circumstances of the case.

11. I now consider your mitigating factors in order to reduce your sentence. First I accept that you are entitled to 1/3 reduction for having pleaded guilty at first opportunity to the charge of misappropriation. I reject the prosecution submission that you should not be entitled to the 1/3 reduction on the basis of your not guilty plea for the charge of money laundering. Eventually you decided to change your plea on re-arraignment saving trial time. That was after Prosecutions had amended the charge. For that you are entitled to the full 1/3 reduction. That being so, your concurrent sentence is reduced by 2 years and 8 months leaving the balance of 5 years and 4 months.

12. From your pre-sentence report I note you are a first time offender with no previous criminal record. You have a good working relationship with your village chief. You are skilled in computer networking and IT works with an ambition in life. You are a young man of 32 years old with a family. You have performed a customary reconciliation showing remorse. You cooperated well with the police during investigations and admitting to committing the offences. For these I allow a further reduction of 8 months from the 5 years and 4 months. That leaves the balance at 4 years 4 months.

13. You are therefore to serve an end sentence of 4 years and 4 months as a concurrent sentence with immediate effect as of today, as there will be no suspension.




14. In the circumstances of the case I make no restitution order.

15. That is the sentence of the Court. You may wish to appeal against the sentence, in which case you have 14 days to do so. But you must begin to serve your sentence immediately.

DATED at Port Vila this 13th day of February 2018

BY THE COURT


OLIVER A. SAKSAK
Judge

