

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

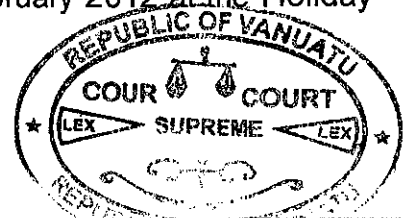
Criminal
Case No. 18/1362 SC/CRML

PUBLIC PROSECUTOR
v.
BESSIE LIGO

Coram: Justice D. V. Fatiaki
Counsel: Ms. L. Lunabek for the State
Mr H. Vira for the Defendant
Date of Sentence: 27 July 2018

SENTENCE

1. On 5th June 2018 the defendant was convicted after she pleaded guilty to an offence of Misappropriation of the sum of VT56,150. The particulars alleged that she had obtained that sum as four fees from guests of her employer HRM Holiday Inn Resort (formerly the "Le Meridien" Resort) which she converted to her own personal use instead of passing it on to the resort cashier for posting into the guests accounts maintained by the Resort.
2. Although the dates of the charge are, inexplicably, "... between January 2012 and March 2016", it is common ground that the defendant unilaterally stopped going to work in or about September 2012 after she had been confronted about the missing monies. Furthermore, the charge before the committing magistrate which is supported by the Resort's Sales Vouchers alleges that the offence occurred "*samtaem long July kasem September 2012*" (*ie.* between July and September 2012). Accordingly, for sentencing purposes, I shall adopt the latter dates that the offence was committed between July and September 2012.
3. The defendant is a 49 year old widow living at Bladinière Estate with her eldest son. She earns a small income selling cooked food at a road side night market near her home and receives a small payment from her married daughter for looking after and baby-sitting her child. She does some voluntary work with Women Against Crime and Corruption (WACC).
4. Although educated only up to class 6 level, the defendant gained employment in the tourism industry and worked her way up from front-desk receptionist to Guest Relations Officer and finally, Hub Attendant from February 2012 at the Holiday Inn Resort.



5. Although unclear as to when her late husband died, the defendant told the probation officer who prepared the pre-sentence report:

"... that during that time (of the offending), her husband had died already and that she was facing financial difficulties to support her family in their daily living, as she was the only bread winner in their home during that difficult time".

6. Furthermore, although not mentioned in the pre-sentence report or in the prosecution's statement of facts, the defendant's immediate supervisor (Jennifer Kausei) who lodged the police complaint clearly states in her police statement:

"... Total mani we Bessie i owen hem VT56,150 be mifala itekem aot VT8,024 long of annual leave mo (?) blong hem. Be remaining VT48,126 hem amount we mifala wantem Bessie imas pem bak".

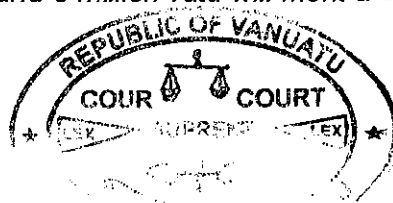
7. As to this latter amount, the defendant told the probation officer that *"... with the support of her daughter and a son working, she confirmed that she is able to repay an amount of VT10,000 on monthly basis"*.

8. Defence counsel highlighted several mitigating factors in the defendant's favour including *"the remorse and shame"* she expressed to the probation officer and her offer to repay the converted sum by the end of this year. Additionally, the defendant is a first offender and pleaded guilty at the earliest opportunity. She has remained out of trouble since 2012 and has had the case hanging over her since 2013.

9. Furthermore, the delay of 3 years in charging the defendant and a further 3 years delay in committing the defendant to the Supreme Court for trial remains unexplained and is certainly no fault of the defendant. Defence counsel submits *"... that a suspended sentence of 12 months would be practical and consistent in this matter and that the defendant makes repayments of the sum by December 2018."* (see: PP v Rapulpul [2017] VUSC 22; PP v Doriri [2010] VUSC 118 and PP v Batty [2003] VUSC 107).

10. Prosecuting counsel on the other hand, refers to PP v Mala [1996] VUSC 22 where the then Chief Justice approved the following sentencing guideline for inter alia cases of theft and fraud by an employee:

*"In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the Court should nevertheless pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered, but it may in many cases provided a useful guide. **Where the amount involved cannot be described as small but are less than 1 million vatu or thereabouts, terms of imprisonment ranging from the very short up to about 18 months are appropriate.** Cases involving sums of between about 1 million and 5 million vatu will merit a term of*



about two to three years' imprisonment. Where greater sums are involved, for example those over 10 million vatu, then a term of three and a half years to four and a half years would be justified.

The terms suggested are appropriate where the case is contested. In any case where a plea of guilty is entered however the Court should give the appropriate discount. It will not usually be appropriate in cases of serious breach of trust to suspend the sentence. As already indicated, the circumstances of cases will vary almost infinitely.

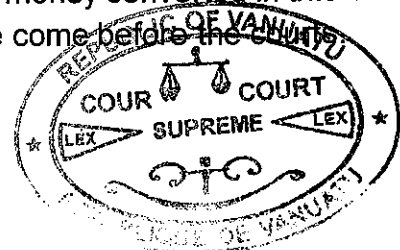
The following are matters to which the Court will no doubt wish to pay regard in determining what the proper level of sentence would be:

- (i) **The quality and degree of trust reposed in the offender including his rank;**
- (ii) **The period over which the fraud or the thefts have been perpetrated;**
- (iii) **The use to which the money or property dishonestly taken was put;**
- (iv) The effect upon the victim;
- (v) The impact of the offences on the public and public confidence;
- (vi) The effect on fellow employees and partners;
- (vii) The effect on the offender himself;
- (viii) His own history;
- (ix) Those matters of mitigation special to himself such as illness; **being placed under great strain by excessive responsibility or the like; where as sometimes happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and the start of his trial; finally, any help given by him to the police"** (emphasis added).

(my highlighting)

Counsel highlighted the aggravating breach of trust; the reputational loss caused to her employer; and the amount of money converted, and counsel submits that a starting point in the range of 5 to 8 months imprisonment is appropriate. An immediate term of imprisonment was called for to denounce the defendant's conduct and to recognise the need for deterrence.


11. I have carefully considered counsel's competing submissions and I accept that denunciation and deterrence are important, if not, primary considerations in the sentencing of dishonest employees. In the present case however, given the defendant's age, employment status and the inordinately lengthy delay in prosecuting the defendant, deterrence of the defendant must be considered of limited value. There is no doubt in my mind that had a full time prison sentence been imposed on the defendant when the matter first came to light in 2012/2013, she would have served it long before now and been able to put this unfortunate chapter in her life behind her.
12. I am satisfied that the defendant's desperate family circumstances led to her offending in an opportunistic naïve manner in that all converted sales vouchers were issued and signed by the defendant who did not attempt to falsify or conceal her offending as she might have done if she was intent on avoiding detection and prolonging her fraudulent activities. The amount of money converted in this case is small in comparison with similar cases that have come before the court.



13. In all the circumstances, I adopt a starting point of 9 months imprisonment and I deduct 3 months for the defendant's unblemished past and the inordinate delay in finalising the defendant's case giving a second stage sentence of 6 months imprisonment. I deduct a further 2 months in recognition of the defendant's early guilty plea to arrive at an end sentence of $(6 - 2) = \underline{4 \text{ months imprisonment}}$.
14. I turn finally to consider the question of suspension. In view of the defendant's offer to repay the converted money and the inordinate delay in finalising the case and considering, the opportunistic, naïve and desperate nature of the offending and the short duration and, mindful of the hitherto unblemished character of the defendant and the unlikelihood of the defendant ever re-offending, I am satisfied that this is not an appropriate case for an immediate imprisonment.
15. Accordingly, the sentence of 4 months imprisonment is suspended for a period of 12 months. The defendant is warned that although she will not go to prison today, if she should re-offend and be convicted of another offence within the next 12 months, then she will be required to immediately serve this sentence of 4 months imprisonment.
16. The defendant is informed of her right to appeal this sentence within 14 days if she does not agree with it.

DATED at Port Vila, this 27th day of July, 2018.

BY THE COURT


D. V. FATIAKI COURT OF APPEALS
Judge. SUPREME COURT

