

**PUBLIC PROSECUTOR VS- NAMATAKU KALSARIA MAEPEZA
AND CHARLES SUMBE**

Coram: *Mr. Justice Oliver A. Saksak*

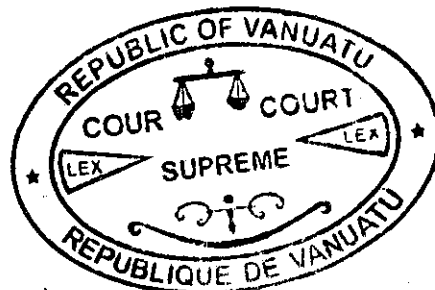
Counsel: *Lenry Young for the Public Prosecutor
Gregory Takau for Defendants*

Date of Plea : *26th March 2018*

Date of Sentence: *2nd August 2018*

SENTENCE

1. Charles Sumbe you are for sentence today for having pleaded guilty to 15 counts (1-15) of money laundering contrary to section 11 (3) (a) of the Proceeds of Crime Act 2005 (as amended) (the Act).
2. And you Maepeza Namataku Kalsaria you are for sentence also for having pleaded guilty to 4 Counts (16, 17, 18 and 19) of money laundering laid under the same section 11 (3) (a) of the Proceeds of Crime Act [CAP. 284].
3. The maximum penalty for an offence under section 11 (3) (a) is a fine of VT 10 million or imprisonment for 10 years, or both. This high fine and lengthy sentence indicate clearly that money laundering is a serious offence.
4. To understand the background facts of your offendings, I set out the following chronology of events as prepared by the prosecution attached to the Summary of Facts-



27th January 2016 Charles Sumbe (CS) started having facebook conversations with an overseas correspondence by name of Johnson Garrick.

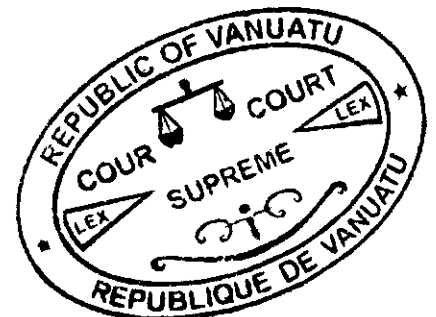
2nd February 2016 In Luganville, Santo CS received VT 80.000 in his ANZ Bank Account No. 1356081 being moneys transferred from ANZ Bank Account No. 1295174 belonging to a Ms Thi Thom Valentine N'Guyen. This is the charge in Count 1.

3rd February 2016 In Luganville, CS received another VT 80.000 in his ANZ Bank Account being moneys transferred from ANZ Bank Account belonging to the same Ms N'Guyen. This is the charge in Count 2.

3rd February 2016 In Luganville, CS withdrew VT 100.000 from his ANZ Bank Account No. 1356081. This is the charge in Count 4.

4th February 2016 Still in Luganville, CS received a further VT 80.000 into his account being transferred again from the account of Ms N'Guyen. This is the change in Count 5.

4th February 2016 In Luganville, CS opened a USD Account at ANZ Bank No. 1784607.



4th February 2016 Still in Luganville CS received a further USD 3.000.00 in his ANZ USD Account being moneys transferred from a Mathew Ercerg ANZ USD Account No. 1666424. This is the charge in Count 6.

4th February 2016 In Luganville CS received a further USD 3.000.000 in his ANZ USD Account transferred from Mathew Ercerg's ANZ Account No. 1666424. This is the charge in Count 7

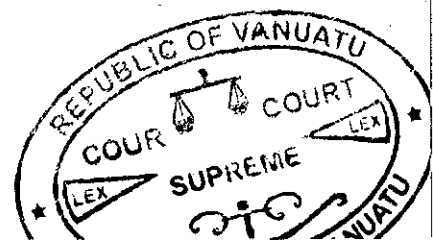
4th February 2016 CS received the final USD 3.000.000 in his ANZ USD Account being money transferred from Mathew Ercerg's ANZ USD Account No. 1666424. This is the charge in Count 8.

4th February 2016 CS withdrew from his ANZ Bank Account No. 1356081 the sum of VT 80.000 . This is the charge in Count 9.

4th February 2016 CS attempted to transfer VT 218, 184 via Western Union Money Transfer to Diallo Amadou in Malaysia. This is the charge in Count 10.

4th February 2016 CS attempted to transfer VT 218, 184 again via the Western Union to the same Diallo Amadou in Malaysia. This is the charge in Count 11.

5th February 2016 In Luganville, CS received VT 157.500 in his ANZ Bank



Account No. 1356081 being moneys transferred from Ms N'Guyen's ANZ Account. This is the charge in Count 12.

5th February 2016 Maepeza Namataku Kalsaria started having facebook conversations with an overseas correspondent by the name of Drake Stephen Keith.

5th February 2016 In Luganville, Santo CS withdrew USD 4,500,000 from his USD ANZ Bank Account No. 1784607. Thi is the charge in Count 14.

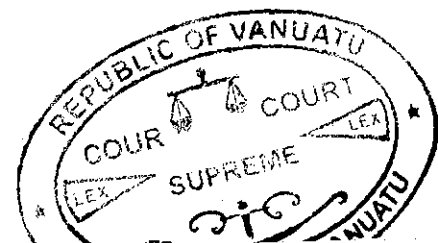
9th February 2016 In Luganville, CS transferred VT 500,000 to the Bred Bank Account No. 28.803010010 belonging to Maepeza Namataku Kalsaria. This is the charge in Count 15.

9-10 February 2016 In Port Vila Maepeza Namataku Kalsaria (MNK) received VT 500,000 from his Bred Bank Account being moneys sent by CS. This is the charge in Count 16.

Between 9-10th February 2016 In Port Vila MNK withdrew VT 500,000 from his Bred Bank Account. This is the charge in Count 17.

9-10th February 2016 In Port Vila MNK transferred VT 230,000 to one Kumar Ojha of Malaysia via Western Union Money Transfer. This is the charge in Count 18.

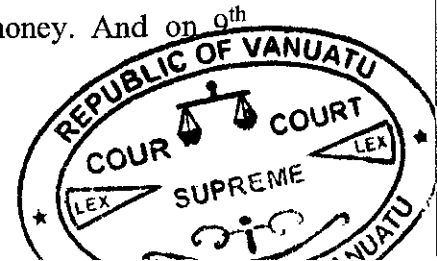
9-10th February 2016 In Port Vila MNK transferred another VT 230,000 to the same



Kumar Ojha in Malaysia via the Western Union. This is the charge in Count 19.

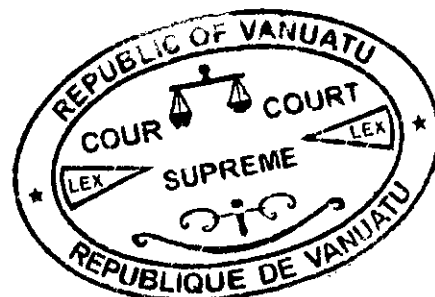
- 12th February 2016 Ms N'Nguyen lodged her complaint with the police.
- 16th February 2016 Mathew Ercerg lodged his complaint with the police.
- 23rd January 2017 Police officers Morris Seule and Eslie Marango cautioned and interviewed MNK.
- 27th January 2017 Police officers Paula Zebedee and Noelline Stephen cautioned and interviewed CS.

5. Both defendants have accepted those facts.
6. The offendings occurred in a relatively short period of time from 2nd February 2016 to 10th February 2016, a period of just 9 days. This shows the speed and urgency of the transactions.
7. Further, two of ANZ Bank's customer's accounts were hacked into. These were Ms N' Guyen and Mr Ercerg. Moneys were withdrawn and transferred dishonestly from Ms N' Guyen's account into CS's accounts four times, and three times from Mr Ercerg's USD Account. CS then withdrew those amounts and attempted to transfer VT 218,184 to Diallo Amadou in Malaysia twice via Western Union on 4th February 2016. It appeared he was not successful so he withdrew the money. And on 9th



February 2016 CS transferred VT 500.000 to MNK's Bred Bank Account. MNK withdrew the money on the same date and transferred VT 460.000 in two instalments to Kumar Ojha in Malaysia. Of the VT 500.000, VT 240.000 has not been accounted for. MNK was responsible for the loss of this money.

8. As a result of these engagements, Ms N'Guyen lost about Vt 240.000 of her savings and Mr Ercerg lost about USD9,000.00 of his savings. CS was responsible for the losses of these moneys. The ANZ Bank had to repay most of Mr Ercerg's money except some VT 90.000 which CS has agreed to refund by instalments.
9. From the reports it appears both defendants received some commissions for their engagements in these transactions for their own benefit. From the statements it appears both defendants willingly accepted to be involved in this financial exercise which was a joint enterprise with overseas persons. It was a dishonest exercise and it was a criminal exercise. It appears they knew exactly what they were doing although they both knew what they were doing or engaging in was wrong, they continued to do it anyway. There was a degree of planning on their part.
10. The above are the aggravating features of the defendants offendings which add seriousness to their offendings.
11. What therefore should be the appropriate punishment the Court should impose on these defendants? In considering these, I have been assisted by the prosecution submissions filed on 3rd May 2018 and on 1st June 2018, the defence submissions



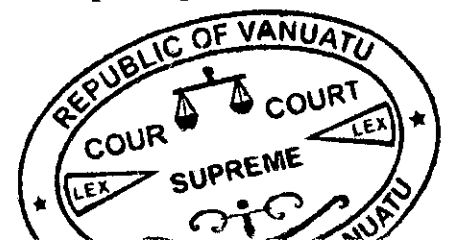
unfiled but received on 31st May 2018, and the pre-sentence reports of CS filed on 21st May 2018 and the unfiled report of MNK dated 6th April 2018.

12. The cases referred to me all indicate that the offences of money laundering are serious and they warrant sentences of imprisonment. The Fijian case of State .v. Preetika Aruwesh Lata Criminal Case No. HAC 118 of 2014 imposed a sentence of imprisonment of 5 years on the defendant for 1 Count of money laundering. The amount involved was \$285,680,96 of which only \$ 169,640.00 was recovered.

13. In Preetika's case Aruna J referred also to the case of State.v.Stephen HAC 088 of 2010 (12th April 2012) where Madigan J drew light from in the sentencing guidelines from the Hongkong Court of Appeal in the case of HKSAR.v. Javid Kamran (CACC 400/2004) where it was observed:

“ Money laundering is a very serious offence as it is an attempt to legitimize proceeds from criminal activities. Serious criminal offences are very often motivated by financial gains and those who assist criminals in laundering money indirectly encourage them in their criminal activities. Successful deterrents against money laundering could be effective measures against crimes”

It is not feasible to lay down guidelines for sentence of money laundering offences, as there is a very wide range of culpability factors arising include the nature of the offence that generated the laundered money, the extent to which the offence assisted the crime or hindered its detection, the degree of sophistication of the offence and perhaps the accused's participation



including the length of time the offence lasted and the benefit derived from the offence.”

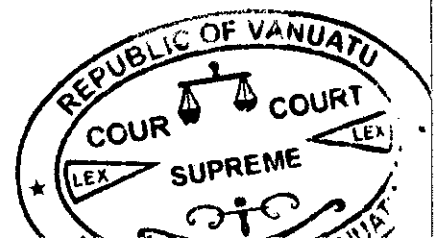
14. Aruna J also adopted the principles set out in the case of O’ Keefe.v. State [2007] FJCA 34, where the Court of Appeal said:

“ When sentencing in individual cases, the Court must strike a balance between the seriousness of the offence reflected in the maximum sentence available under the law and the serious offence. It can be, and is, used to disguise the true nature of money derived from criminal activity and so make it available for legitimate use. It is essential for large criminal organisations if they are to be able to maximize the proceeds of their unlawful activities of necessity, it is an international problem and undoubtedly smaller jurisdictions may be seen as useful and unsuspecting conduits. That is why Parliament imposed the heavy penalties and under the Proceeds of Crime Act.”

15. The Court of Appeal quashed the 5 years sentenced imposed on the defendant by the Magistrate Court and substituted a sentence of 3 ½ years. The value of proceeds in that case was \$ 90,930.78 of which only \$ 500.00 had been recovered.

16. In Vanuatu the 3 ½ years sentenced imposed in O’keefe’s case was not too far fetched with the 4 years and 4 months end sentenced imposed in Public Prosecutor.v. Natu [2018] VUSC 11, for 2 Counts for money laundering and 1 count of misappropriation. The amount involved in that case was VT 9.081.203.

17. In Public Prosecutor.v. Tusavaka Nishai [2018] Criminal Case No. 17/2595 the defendant was convicted of 16 counts of money laundering and was sentenced to a

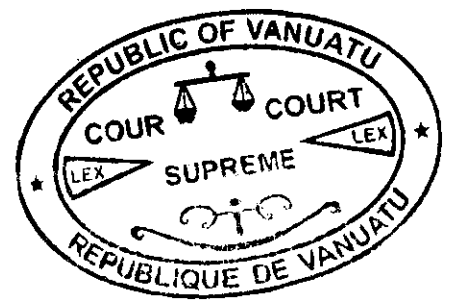


starting sentence of 3 years imprisonment, reduced by 12 months for mitigating factors, leaving an end sentence of 24 months (2 years imprisonment). The total amount laundered through unauthorised transfers were VT 720.000 but the actual amounts lost was VT 575.999. The Court applied the principle in Public Prosecutor.v. Garae [2017] VUCA 21 and declined to order a suspended sentence.

18. It is interesting to note from this case that the offence involved transfers to a Mr Drake of Interior Company, London who instructed the defendant to transfer moneys via Western Union Money Transfer to another person in Malaysia. In this case MNK started having facebook conversation with a Drake Stephen Keith in February 2016 the result of which MNK transferred VT 460.000 in two instalments on 9-10 February 2016 to one Kumar Ojha in Malaysia through Western Union Money Transfer. We see a very striking similarity here which may lead me to conclude by presumption that these were the same persons or entities involved in this money laundering scheme as in the case of PP.v. Tusavaka Nishai. This case is directly relevant and applicable to the present case.

19. Be that as it may, it is clear to me that from all the cases referred, the only appropriate sentence the Court will impose on the two defendants in this case is to be a custodial one. This is to reflect-

- a) The seriousness of the offendings,
- b) The Court's condemnation of those unlawful actions,
- c) A deterrence to the defendants and the general public,
- d) Adequate protection to Banks and financial institutions charged with custody of people's money held in trust.

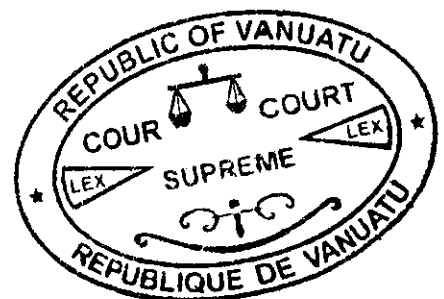


e) Appropriate punishments for the offenders.

20. The principle in Public Prosecutor.v. Mala [1996] VUSC 22 is that where the amount involved is less than 1 million vatu or thereabouts terms of imprisonment ranging from very short up to 18 months are appropriate. That case was of course a misappropriation case and not a money laundering case perhaps it is not directly relevant for application.

21. In light of the cases discussed above, I now convict and sentence Charles Sumbe as follows-

- a) For all the 15 counts of Money laundering, you are sentenced to a starting sentence of 5 years imprisonment on each count to be served concurrently. I have considered the seriousness of the offences together with its aggravating features, and standing back and looking at the totality of the case, I conclude that 5 years imprisonment as a concurrent sentence is most appropriate.
- b) For mitigating factors and matters personal to him such as good clean past, custom ceremony showing remorse and contrition, good cooperation with the police at investigations and admission during interview, I allow a reduction of 2 years leaving the balance of 3 years imprisonment.
- c) For early guilty pleas, I reduce the remaining sentence of 3 years by 1/3 which is 12 months or 1 year, leaving the final end sentence of 2 years imprisonment.



d) You are therefore sentenced to an end sentence of 2 years imprisonment with immediate effect. There will be no suspension of sentence.

22. (1) For you Maepeza Namataku Kalsaria for the 4 counts of money laundering, considering the seriousness of the offence together with its aggravating features and standing back and looking at the totality of the case, I convict you and sentence you to a starting sentence of 3 years imprisonment on each count to be served concurrently.

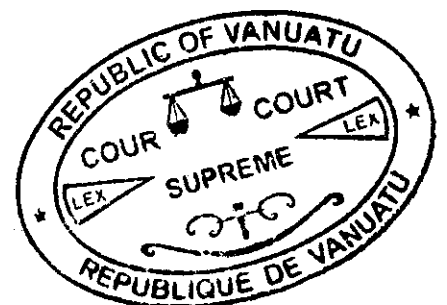
2) For your mitigating factors such as clean past record, good cooperation with the police at investigations and factors personal to you, I reduce your 3 years sentence by 12 months leaving the balance at 2 years.

3) For your early guilty plea, I reduce 2 years by $\frac{1}{3}$ leaving your end sentence to be 1 year and 4 months, or 16 months imprisonment in total.

4) You are therefore sentenced to an end sentence of 16 months (1 year 4 months) imprisonment with immediate effect. There is no suspension of sentence.

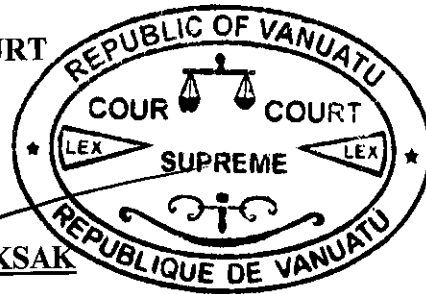
23. Your sentences are assessed and imposed based on the proportionality principle established in the case PP.v. Kalosil and others [2015] VUSC 149.


24. That is the sentence of the Court for each of you. Both of you have a right to appeal against your sentences within 14 days if you do not accept them. But you each must begin to serve your sentences immediately.



DATED at Port Vila this 2nd August 2018

BY THE COURT




OLIVER.A.SAKSAK

Judge