

**PUBLIC PROSECUTOR**

- v -

**TARI KALTERIKIA**

**Coram:** Vincent Lunabek - CJ

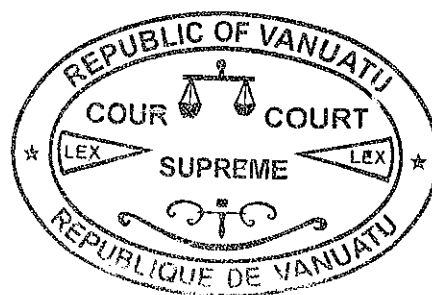
**Counsel:** Mr. Lenry Young for Public Prosecutor  
Mrs. Kylie B. Karu for the Defendant

Date of Sentence: 17<sup>th</sup> October 2018

## **SENTENCE**

### **Introduction**

1. Mr. Kalterikia this is your sentence. You are charged with five (5) counts of misappropriation occurring between 2012 and 2014. The total amount you had misappropriated was VT1, 900, 000.
2. You are called before the Court on 3 July 2018 for pleas. On that date, you entered guilty pleas to counts 3, 4 and 5. You entered not guilty pleas to counts 1 and 2.
3. Before a trial date is set on counts 1 and 2, a pre-trial conference was scheduled on the next date 04 July 2018.
4. On 4<sup>th</sup> July 2018, your counsel informed the Court that you wished to be re-arraigned on counts 1 and 2 of the offences.
5. The matter was listed again on 11 September 2018. Your counsel informed the Court that you wish to change your "not guilty pleas" on counts 1 and 2.
6. The matter was listed again on 12 September 2018 for pleas on counts 1 and 2. On that date, you pleaded guilty to counts 1 and 2.



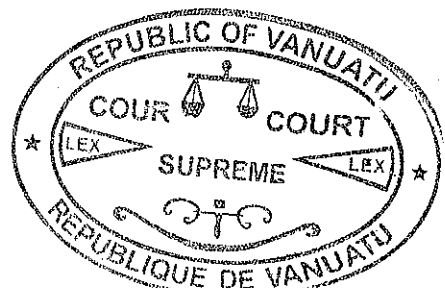
## **Background**

### **A. Overview and related case occurring same period – 2012 and 2014**

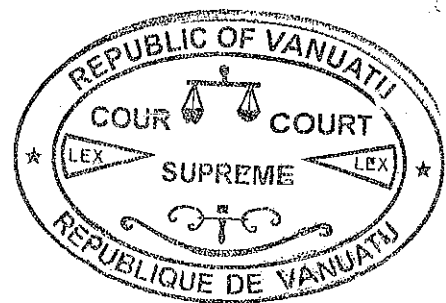
7. Those are similar series of offences of misappropriation committed by you during the same period between 2012 and 2014. The background to these offences appear to be the same and they were referred to in **PP –v- Tari Kalterekia [2018], Criminal Case No. 17/2547 SC/CRML (29 March 2018)**.
8. You were working for the company as a Land Manager and that work involved you collecting money from various people in respect of transactions concerning land. Ifira Trustees Limited is the parent company of Ifira Land Corporation (ILC). You had been working for Ifira Trustees since 2001.
9. You are a detainee in the correctional services centre in Port Vila. You were convicted after you entered guilty pleas early this year on similar charges of misappropriation. You were working as Land Manager for Ifira Trustees Limited when you misused VT3 million belong to Ifira Trustees Limited. The offences occurred from period 2012 and 2014. The complainant in that case was Kalpoi Mangawai. Justice Chetwynd sentenced you to 24 months imprisonment. Part of that sentence (i.e. 12 months) of imprisonment was suspended for 3 years. In that case, you were not ordered to repay the stolen money back to the people of Ifira through their trustee company.

### **B. Facts of the present case**

10. The complainant of this case is one Charley Ayong and the Executive Director of the Ifira Land Corporation (“the ILC”). He filed a report against you (as the former Land Manager of ILC) on allegations of misappropriation on 13<sup>th</sup> February 2015.
11. On 17 July 2013, an agreement was signed for the purchase of Land Title 12/064/002 between the ILC and John Kalorus, the owner of the title. (John Kalorus at the time authorised his son Seule Kalorus to sign on his behalf). The purchase price of the land being VT15, 000,000.



12. The terms and conditions of the agreement included in the transfer of 3.5% of the selling price upon the signing of the agreement and following after a monthly instalment of VT500, 000 for a period of 30 months.
13. Upon signing of the agreement the amount of VT500, 000 being the 3.5% was paid to John Kalorus by cheque no. 182013 on 20th July 2013. The process for the following payments now fell on the finance section of the ILC to continue the rest of the payment.
14. The procedure agreed upon in which to process the rest of the payments involved a payment voucher prepared by the accounts payable officer, the supervisor checks the voucher for calculation and accounts coding; the payment voucher is then forwarded to the finance controller for approval. Once approved the voucher is sent back to the accounts payable officer for issuing of cheques and forwarded to the bank account signatories for signing. The bank signatories may also approve the voucher. The account supervisor keeps the signed cheque and payment voucher until it is collected by the suppliers or cheque payees. Having received a cheque or cash, the supplier or cheque payee must sign on the payment voucher to confirm receipt of payment.
15. John Kalorus in his statement confirms receiving payments from the ILC for the months of July 2013- September 2013 and March 2014, however he further wrote a letter to inquire about the payments he had not receive.
16. It is alleged that there are total of 8 cheques issued and made payable to John Kalorus between October 2013 to June 2014, each in the amount VT500, 000 that have been misappropriated by you, Mr. Kalterikia.
17. You were at the time responsible for collecting the voucher payments on behalf of Mr. John Kalorus but he is not allowed to cash out the cheque or pay Mr. Kalorus in cash.
18. The cheque is to an amount of VT4, 000,000. The amount you were alleged to have misappropriated was in the amount of VT 1, 900, 000.



19. On 3<sup>rd</sup> July 2018, you admitted you had misappropriated the following sums entrusted to you in your capacity as the Land Manager of Ifira Land Corporation:-

- (a) VT500, 000 for the month of April 2014 (Count 3);
- (b) VT200, 000 for the month of May 2014 (count 4);
- (c) VT200, 000 for the month of June 2014(count 5)

20. On 17 September 2018, you admitted you had misappropriated the following sums entrusted to you in your capacity as the Land Manager of Ifira Land Corporation:-

- (a) VT500, 000 for the month of January 2014 (count 1)
- (b) VT500, 000 for the month of February 2014 (count 2)

21. You admitted to have misappropriated a total amount of VT1, 900, 000.

**The offending provision of the law**

22. Section 130B of the Penal Code is the relevant provision. It says:

*"(1) A person must not by any deception dishonestly obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever.*

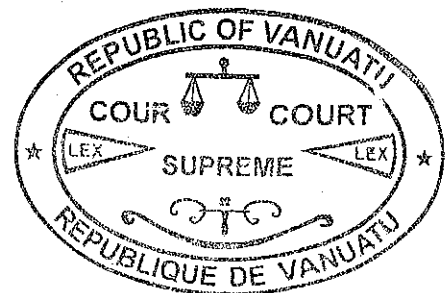
*Penalty: Imprisonment for 12 years.*

*(2) In subsection (1):*

*"deception" means deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including:*

- (a) a deception as to the present intentions of the person using the deception or of any other person; and*
- (b) an act or thing done or omitted to be done with the intention of causing;*

- (i) a computer system; or*



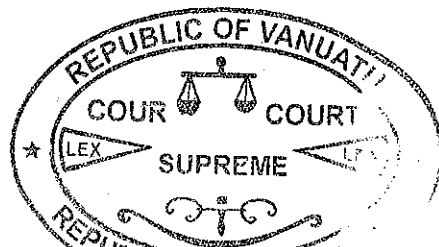
(ii) a machine that is designed to operate by means of payment or identification,

*to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make."*

23. The maximum penalty imposed by law for this type of offending is 12 years imprisonment. This is a serious offence. I hold you accountable for the harm you have done to the victim, the company (ITL) and ultimately to the people of Ifira and to the community at large. I hold you responsible for the offending which you have undertaken. I also denounce your conduct and deter you and others who might be like minded to offend this way from such offending. I need to protect the company and the community generally from this sort of offending. I also need to consider your interests among the mix of other matters that I have considered and stated. Those are the remarks made by Treston J in **PP -v- Gamma [2005] VUSC 60** that I approve and adopt in this case. Although, the facts are different, the principle is the same.
24. Here, the maximum potential penalty in relation to each offence is twelve years imprisonment. You are liable for 12 years imprisonment on each of these offences. You can sense the total is of 60 years on simple calculation. That is an arithmetical calculation of terms. But this is not the way the Court approaches the sentencing. As the prosecution point out in their submissions, the Court of Appeal in **Boesaleana -v- Public Prosecutor [2011] VUCA 33**, made the point clear when it was stated that:

*"there can be substantial debate as to the approaches which can be applied in sentencing. But it is essential that the Court does not become lost in formulae or arithmetic calculations but rather looks in a general and realistic way at the entire offending, assessing all relevant aggravating and mitigating factors, and then reaches a sentence which in its totality properly reflects the culpability which has been established."*

25. How then I should approach the sentencing in this case in order to arrive at an appropriate sentence?



## Sentencing approach and the appropriate sentence

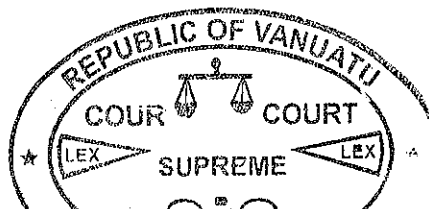
26. The leading authority on sentencing guideline for fraud and theft can be found in **Public Prosecutor –v- Keith Mala [1996] VUSC 22**; which was a decision of the then Chief Justice of this jurisdiction in **Criminal Case No.42 of 1995** where his Lordship said as follows:

*"The type of case with which we are concerned is where a person in a position of trust, for example, an accountant, solicitor, bank employee, manager of a company or public servant, has used that privileged and trusted position to defraud his partners or clients or employers or the general public of a sizeable sum of money. He will usually, as in this case, be a person of hitherto impeccable character... but Professional men should expect to be punished as severely as the others, in some cases more severely."*

His Lordship went on to say: -

*"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 provide a useful guide. Where the amount involved cannot be described as small but less than 1 million vatu or thereabouts, terms of imprisonment ranging from the very short up to 18 months are appropriate. Cases involving sums of between 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."*

27. It is to be noted that the cases of **PP –v- Mala [1996] VUSC 22** and **PP –v- Gamma [2005] VUSC 60** combined together to set out matters to which the

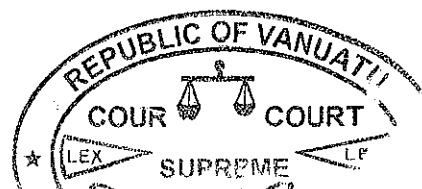


Court will wish to pay regard in determining what the proper level of sentence would be:

- (i) the amount taken;
- (ii) the quality and degree of trust reposed in the offender including his rank;
- (iii) the period over which the fraud or the thefts have been perpetrated;
- (iv) the use to which the money or property dishonestly taken was put;
- (v) the effect upon the victim;
- (vi) the impact of the offences on the public and public confidence;
- (vii) the effect on fellow employees and partners;
- (viii) the effect on the offender himself,
- (ix) his own history;
- (x) 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.

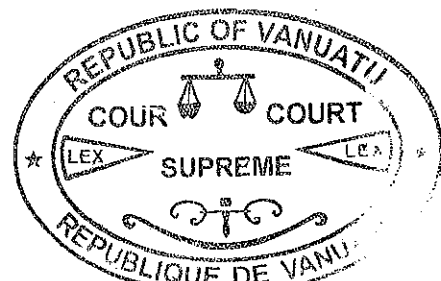
28. I now apply these matters in this case:-

- First, I look at the amount taken. The principle is that the larger the amount the greater should be the punishment. Here of course the amount lost is Vatu 1, 900, 000. So the appropriate sentence and punishment should be within the range suggested in PP -v- Mala [1996] with some adjustments.
- Second, the quality and degree of trust reposed in the offender including his rank. Clearly a greater degree of trust and a higher rank means the offence is more serious, and in this case it is clear from the summary facts, that you were one of the senior company officers and the Land Manager in the Ifira Land Corporation (ITL Company). You were a person in whom ITC and ITL reposed trust and recognised that by the rank you held, you were in the high position in the company and that made it easier for you to carry this offending. You are the senior



Land Manager that involved in collecting money from various people in respect of transaction concerning land.

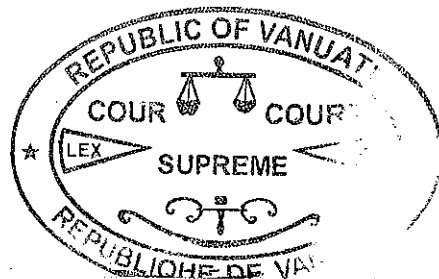
- Three, the period of which the frauds or deceitful acts have been perpetrated. They took place over a period of six months from January to June 2014. So it is indeed significant. In your case, it was obtaining money by deception through collective cheques and cash them and withholding certain amounts from January to June 2014 amounting to a total of Vatu 1, 900, 000 without returning them to the owner of the money.
- Four, the use of which the money or property was put. You obtained the money to benefit yourself and your family.
- Five, the effect on the victim, an individual person lost the amounts of money. He had suffered lost. It is significant for him that is why he lodged the complaint against you.
- Six, the impact of the offence upon the public confidence. It was the complainant (an individual person) that suffered the loss in this case but there is a loss of trust and confidence involving for the Ifira Trustee Limited as a parent company and ultimately the people of Ifira through your activities as a trusted Land Manager ITC.
- Seven, on the effect on you, yourself. Clearly you have and will suffer public disgrace and it will be difficult for you to obtain future employment in similar positions of trust and your own family too will suffer and are suffering and I take those matters into account.
- Eight, restitution. Although, this is appropriate to be considered, realistic reparation for the total amount of VT1, 900, 000 is not possible for you. You are now unemployed. You are detained in custody. You have a family of 6 children and your last son is still attending Malapoa Secondary School and there is no option for a restitution order to be made against you.





- Nine, your own history. You are a person who has appeared before the Court before for the similar type of offences committed against the Ifira Trustee Limited (parent company) and you were sentenced to 24 months imprisonment. Part of your sentence (i.e. 12 months imprisonment) is suspended for a period of 3 years. In this case, the complainant is not the ITL but an individual person for his moneys. I take it that you are not a first time offender although, the offences seemed to have occurred between 2012 and 2014. Here you are committed the offences in a period of 6 months from January 2014 to June 2014. You have offended not against the company but against an individual person.
- Finally, number ten, matters of mitigation special to yourself. You have cooperated with the police, you are unemployed.

29. I have considered the above ten step process, which consist of aggravating features and mitigating ones too. I need to balance and cross-reference to each and others. The amount of VT1, 900, 000 is a significant aggravation in the loss suffered by an ordinary citizen like the complainant in this case. There was a serious breach of trust involved in your activities and in the position which you hold, a period of six months is a long period over which the dishonesty occurred (suffered by a person) and there is a little prospect of realistic reparation. On the balance between the aggravating and the mitigating factors, the aggravating features clearly outweigh the mitigating factors.
30. I have considered an appropriate starting point sentence in your case to be of 18 months imprisonment (based on **PP –v- Mala [1996]** guideline).
31. I allow a deduction of 3 months for your cooperation with the police, your remorsefulness and other factors in your favour (exclusive of your guilty pleas).
32. I allow 3 months for the time delay to prosecute this case from 2014 to October 2018.



33. You pleaded guilty at the first opportunity and you are entitled to 1/3 allowance on the balance of your sentence. Your sentence is reduced to 8 months.
34. The next question is whether your sentence of 8 months imprisonment should be suspended.
35. I consider this question of suspension in the light of what Justice Chetwynd did , in **PP -v- Tari Kalterikia [2017] VUSC 2547**, I am also imposing a part suspending sentence on the sentence terms of 8 months imprisonment for a period of 2 months. I consider making 6 months imprisonment to be served immediately and the other part sentence of 2 months shall be suspended for a period of 12 months.


### **Sentence Orders**

36. I make the following sentence orders:

1. Your end sentence is of 8 months imprisonment;
2. You are ordered to serve 6 months immediately;
3. The part sentence of 2 months shall be suspended for 12 months.
4. You have the right to appeal this sentence if you are unsatisfied with it. Your appeal right is for 14 days commencing at the date of this sentence.

**Dated at Port Vila, this 17<sup>th</sup> October 2018.**

**By the Court**



Vincent Lunabek  
Chief Justice

