

PUBLIC PROSECUTOR

- v -

AMOS BONG

Coram: Vincent Lunabek - CJ

Counsel: Mr. Simcha Blessing for Public Prosecutor
Mrs. Kylie B. Karu for the Defendant

Date of Sentence: 19th October 2018

SENTENCE

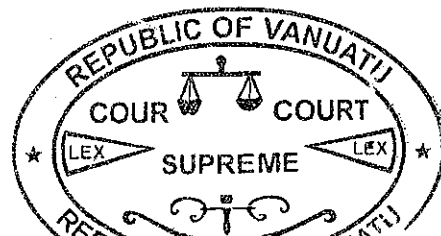
1. Mr. Amos Bong this is your sentence. You are charged with thirty two (32) counts of obtaining money by deception – contrary to section 130B of the Penal Code Act [Cap 135] (“the Act”).
2. On 12th September 2018, you entered guilty pleas to twenty three (23) counts and not guilty pleas to 9 counts of those offences. You are discharged of the 9 counts that you pleaded not guilty to them accordingly on the same date (12 September 2018).
3. Today you are going to be sentenced on 23 counts remaining.
4. The offending provision in section 130B of the Act which provides:

“(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,

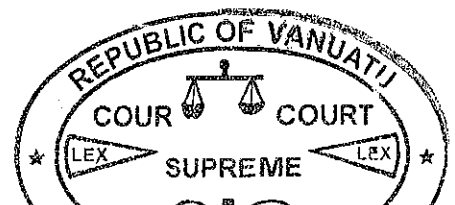
to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.”

5. On 17th October 2018, I sentenced Defendant Tari Kalterikia on similar type of fraud and theft (dishonest offences). I repeat by adjusting to the circumstance of this case what I said in Mr. Kalterikia’s case.-

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 individual victims and all together 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 victims 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.

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 23 counts of offences. You can sense the total by just multiplying 12 x 23 which is equalled to 276 years on simple calculation. That is an arithmetical calculation of total terms. But this is not the way the Court approaches the sentencing. As the Court of Appeal in **Boesaleana –v- Public Prosecutor [2011] VUCA 33**, made the point clear when it stated there:

“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."

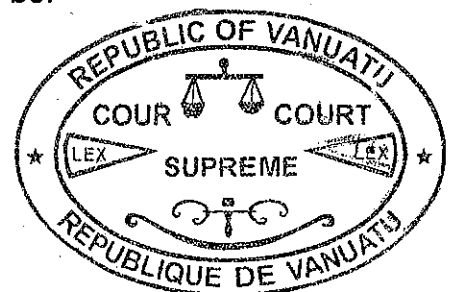
6. How then I should approach the sentencing in this case in order to arrive at an appropriate sentence? I must bear in mind that *"Any sentence imposed by the Court must reflect the seriousness of the offending...."* **Public Prosecutor – v- Tavdey [2017] VUCA 11; Criminal Appeal Case 07 of 2017 (7 April 2017).**

7. I refer to the leading authority on sentencing guideline for fraud and theft in public Prosecutor –v- Keith Mala [1996] VUSC 22 where the then Chief Justice stated:

"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."

8. In **PP v. Tari Kalterikia [2018], Criminal Case No. 1414 of 2018**, I observed that the cases of **PP –v- Mala [1996] VUSC 22** and **PP –v- Gama [2005] VUSC 60** combined together set out matters to which the Court will pay regard in determining what the proper level of sentence would be:

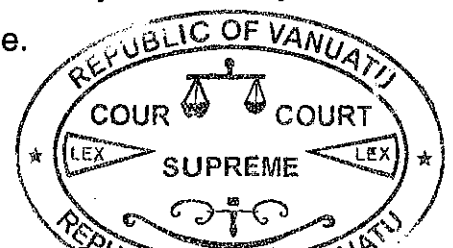
(i) the amount taken;



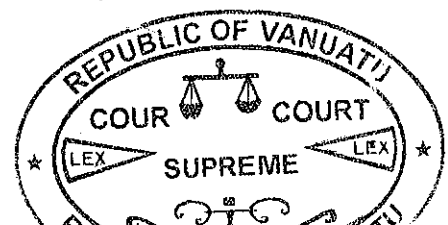
- (ii) the quality and degree of trust reposed in the offender including his rank;
- (iii) the period over which the fraud or the thefts have been perpetrated;
- (iv) the use to which the money or property dishonestly taken was put;
- (v) the effect upon the victim;
- (vi) the impact of the offences 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.

9. The above matters are ten (10) steps to assist me to determine the proper level of sentence in this case. I now apply them here:-

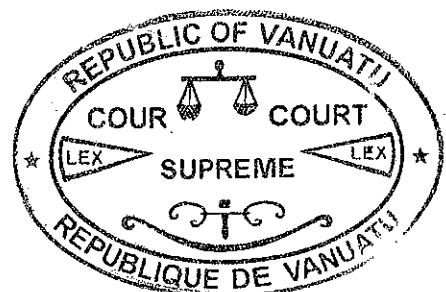
- First, the amount taken. I look at it. The principle is that the larger the amount the greater should be the punishment. In this case, the amount lost is vatu 622, 000. So the appropriate sentence and punishment should be within the range suggested in **PP -v- Mala [1996] VUSC 22** with some adjustments.
- Second, the quality and the degree of trust reposed in the offender. Here, the Defendant is not someone working in a government office or company manager or a solicitor or accountant, but he is a citizen who convinced other citizens, business people with false but convincing statements to obtain their money fraudulently and deceitfully. There is a degree of trust on the defendant from the start and until the complaints and the charges are lodged. Of course a greater degree of trust means the offence is more serious. In this case, you easily used deceitful statements to convince other citizens to obtain their money in trust. They saw you as a person in whom they can trust but you seriously breached their trust in the circumstances of this case.



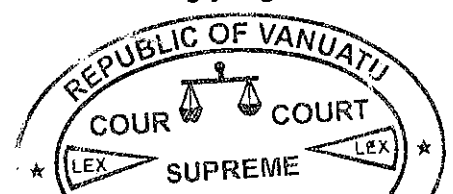
- Three, the period of which the frauds or deceitful acts have been perpetrated. They took place over a period of 4 years between 2015 and 2018. It is a significant period. The offending amounted to a relatively elaborate and sophisticated con on unsuspecting members of the public including business people. You were aware of the attractiveness of the Recognised Seasonal Employment Scheme (RSE) which employs Ni-Vanuatu citizens to work in farms in Australia. You then used it to deceive a large number of relatively unsuspecting victims who were willing to part with their hard earned monies on the assurance that a stranger (here you) would obtain for each of them a place on the scheme. This was a serious fraud perpetrated by you on a lengthy period.
- Four, the use of which the money or property was put. Here, the money was used to your own benefit and purposes..
- Five, the effect on the victims, twenty three (23) people lost their money. They suffered loss. For these simple and unsophisticated citizens, it is a significant loss for each of them.
- Six, the impact of the offence upon the public and public confidence. Various individuals suffered the loss as a result of your deceitful use of the RSE scheme to your own advantage. The RSE scheme is well known in Vanuatu. It provides uneducated, untrained, unqualified and unexperienced citizens with the opportunity to earn well-paid employment. Mr. Bong, you were well aware of the attractiveness of the scheme and you used it to your own advantage. A large number of victims were willing to part with their hard earned monies on your assurance to them that you would get a place for each one of them. The primary motivation of the victims was the desire to travel overseas and earn money to improve their personal and family lives and their communities. Corrupt and deceitful individual like you, Mr. Amos Bong, in this case, demeans the integrity of the scheme and diminishes the public confidence and enthusiasm to seek employment under the scheme.



- Seven, on the effect on you, yourself. Clearly you have and you will suffer public disgrace and it will be difficult for you to engage into trusted relationships with others in the future. Your family too will suffer the consequence of your offending. The pre-sentence report filed in this case attached a letter from your wife (Mrs. Pierrette Tankon) dated 8 June 2018. She is pointing to the hardship she faces with the school fees of five (5) daughters. She needs you back home. I will consider this aspect later on.
- Eight, restitution. I do not see any submission from the prosecution or your own lawyer on this aspect. There is no specific request made pursuant to section 42 of the Act for a report made on your financial circumstances to see and consider whether there is a viable option to consider. In the absence of a special report or submission made to this point, I take it that although this is to be considered, realistic reparation for the total amount of VT622, 000 is not possible for you. You have five (5) daughters attending schools and there is no option for a restitution order to be made against you. (This does not prevent the victims to file civil claims against you).
- Nine, your own history. You are not a first time offender. You are convicted for similar type of offending for theft. You were convicted and sentenced to 6 months imprisonment on 22 April 2016. You have previous conviction and your certificate of previous convictions was attached to the prosecution submissions (Annexure (1)). This will be uplift in your aggravating features consideration.
- Finally, number ten, matters special to yourself. You are not a person of previous good character. You did not cooperate with the police. Although, your lawyer said you are remorseful, there is no sign, apart from your guilty pleas. You are unemployed, your wife is unemployed. You have 5 children still attending. You have already spent 10 months in custody before you are sentenced today.



10. I have considered the above ten (10) steps process, which contains aggravating factors, factors personal to the Defendant and also mitigating factors.
11. I have considered an appropriate starting point sentence in your case. I have considered ranges of starting points based on **PP -v- Mala [1996] VUSC 22** guideline. However, I note that the range was based more or less on the amount which is the determinant factor in the sentencing exercise in Mala case. I observe that in the present case, there are more aggravating factors than just the amount such as – various victims (more than 20), a lengthy period of 4 years dishonesty and Mr. Amos Bong was involved in this type of offending before. His previous conviction and sentence of 6 months imprisonment do not teach him a lesson. So in this case, an appropriate starting point sentence is uplifted to 30 months imprisonment as I find the aggravating features outweigh the mitigating ones.
12. In mitigation, I allow a deduction of 3 months for the fact that you are unemployed and your family depends on you for a living.
13. You plead guilty for the available opportunity given to you by the Court. You are thus entitled to 1/3 of the balance of your sentence. This means your sentence is further reduced to 18 months imprisonment.
14. You have already spent 10 months in custody before you are sentenced today. This will also be deducted in your favour. Your sentence is further reduced to 8 months imprisonment.
15. I now ask the question whether the circumstances of this case justify that I suspend your sentence of 8 months imprisonment.
16. Is there any factor specific to you personally that would justify a suspension of your term of 8 months imprisonment? There is none in the pre-sentence report or in the submission of your lawyer. Whether the letter of your wife dated 8th June 2018 with the supporting letter of Chief Kalpilelu, chief representative of Black Sands community, constituting a sufficient and justified basis to suspend your imprisonment term of 8 months imprisonment?. The two letters combined and particularly that of your wife, is pleading to me as the sentencing judge to



release you back home. She and the children needs your presence at home; they need you for the school fees of the two daughters in the secondary school and 3 others in the primary school; the bus fare as well.

17. Before I exercise my discretion to decide whether or not I will suspend the imprisonment sentence, I am guided by the Court of Appeal decision in **Public Prosecutor –v- Tavdey [2017] VUCA 11; Criminal Appeal Case 07 of 2017 (7 April 2017)** that *“Any sentence imposed by the Court must reflect the seriousness of the offending.”* I have done so when I assess the starting point. I have also considered the length of time of 4 years of dishonesty as very serious offending. I have further considered the fact that the Defendant in this case is re-offending by committing same type of offending and was sentenced to 6 months imprisonment. However, despite being sentenced to imprisonment in 2016, this defendant appeared not to have learned his lesson. He committed the same offence again but this second time in more serious circumstances with various victims. If I suspend the sentence what type of message, the Court is sending to this defendant and like-minded offenders who might commit same offences as well. Is the “wants” of the wife and the mother of the children sufficient to justify a suspension? I answer this question in the negative (no) when I consider the circumstances of this case, the nature of the crime and the character of the offender (Section 57 of the Act).
18. You shall serve your sentence of 8 months imprisonment immediately.

Sentence Orders

1. You are ordered to serve your end sentence of 8 months imprisonment immediately.
2. You have the right to appeal this sentence if you are unsatisfied with it within 14 days which begins at the date of this sentence.

Dated at Port Vila, this 19th October 2018.

By the Court

Vincent Lunabek

Chief Justice

