

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

Criminal Case No 17/2595 SC/CRML

**PUBLIC PROSECUTOR**  
**V**  
**TUSAVAKA NISHAI**

**Before: Chetwynd J**  
**Hearing: 5<sup>th</sup> April 2018**  
**Counsel: Mr Young for the Public Prosecutor**  
**Mr Takau for the Defendant**

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**SENTENCE**

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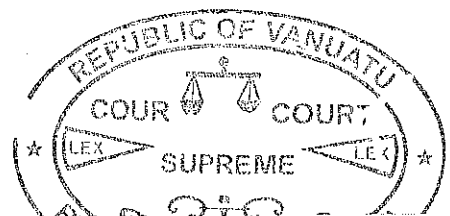
1. The defendant Tusavaka Nishai has been convicted of 16 offences involving money laundering. There is some confusion about the amounts involved. It is relatively simple to ascertain the money involved from the charges. There were 9 counts involving the receipt of money into her account. These were the unauthorised transfers from the Churchill's account. That totals VT 720,000. There were then 4 counts relating to her withdrawing money from her own account totalling VT 617,000. The remaining 3 counts involved her transferring funds by Western Union to Mr Bony. The total transferred, according to the charges, was VT 575,999. It is not known how much of the VT 720,000 was recovered by the bank.

2. Money laundering attracts a maximum sentence of a fine of VT 10 million or 10 years imprisonment (or both). It is clearly regarded as a serious matter. It can be contrasted with receiving under the Penal Code which (by reference to s.36(3) of the Interpretation Act) is punishable by VT5,000 fine or 1 years imprisonment.

3. The approach to sentencing has been set out in many cases in this jurisdiction but perhaps most comprehensively in the case of *Kalosil*<sup>1</sup>. Part of the sentencing

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<sup>1</sup> *Public Prosecutor v Kalosil and Others* [2015] VUSC 149



process involves consideration of punishment and deterrence. Deterrence is an important aspect of sentencing when dealing with the crime of money laundering. Without money laundering legislation international crime would be far less controllable and severe penalties are required to deter local people from becoming involved in such schemes. In these days of easily arranged and almost instant electronic transfers of money it is very easy to be tempted into becoming part of a money laundering scheme. Of course sentencing also involves the process set out by the Court of Appeal in the *Andy* case <sup>2</sup>.

4. The facts are straight forward in this case. In a short period between 27<sup>th</sup> January and 3<sup>rd</sup> February 2016 the defendant received payments into her ANZ bank account. She then withdrew some of that money and transferred it to one James Bony in Malaysia by Western Union money transfer. The money paid into her account was from unauthorised transfers another ANZ customers' account. She was drawn into the scheme by someone posing as company official based in the UK who promised her 10% of the funds paid into her account in recompense for her time and the stress of making the transfers. She was contacted on FaceBook by this bogus company representative and did nothing to check the *bone fides* of those she was dealing with. Her actions were driven by a something for nothing attitude, in other words pure greed. The scheme fortunately lasted a very short time and when she was questioned about her involvement she co-operated with both the Bank and the Police.

5. There is nothing which particularly aggravates the offences and the appropriate starting point is a sentence of 3 years imprisonment.

6. Looking at the factors personal to the defendant, she has no previous convictions. She is well educated and is well respected in the community, even regarded as something of a leader. Her contribution to the community is acknowledged. She has shown remorse and has co-operated fully with the authorities. It is also noted that the period of offending was relatively short. Taking all those factors into consideration her sentence should be reduced by 12 months.

7. That leaves a balance of 24 months to serve. I have considered the possibility of suspending all or part of her sentence. However, bearing in mind the Court of

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<sup>2</sup> *Public Prosecutor v Andy* [2011] VUCA 14; *Criminal Appeal 09 of 2010* (8 April 2011)

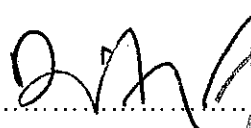


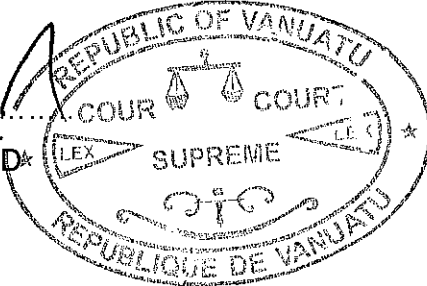
Appeal decision in *Garae*<sup>3</sup> and even though that case involved a larger sum of money, there is a need for deterrence in this case bearing in mind the nature of the crime. The repercussions of money laundering have an effect far greater than the actual value of the money involved. I do not consider any part of the sentence can be suspended.

8. I have also considered compensation. The difficulty is that there is insufficient evidence of what was actually lost as a result of the money laundering activities of the defendant. We know for sure that VT 575,999 was transferred out of the country but whether the defendant spent her 10% "commission" as well is not known. The evidence at trial was to the effect that the Churchill's did not suffer any loss. In all the circumstances a compensation order is not appropriate especially as the defendant has little by way of assets and if the bank has suffered loss they can better recover that loss through civil proceedings.

9. As I explained to the defendant in Court, she is entitled to appeal against this sentence if she is dissatisfied. She has 14 days in which to lodge her appeal but time shall only start to run when her counsel receives a copy of these written reasons.

Dated at Port Vila this 6<sup>th</sup> Day of April, 2018

  
D. CHETWYND  
Judge



<sup>3</sup> *Public Prosecutor v Garae* [2017] VUCA 21; Criminal Appeal Case 849 of 2017 (21 July 2017)