

PUBLIC PROSECUTOR

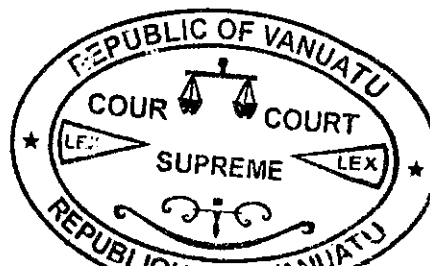
v

STEVE BANI

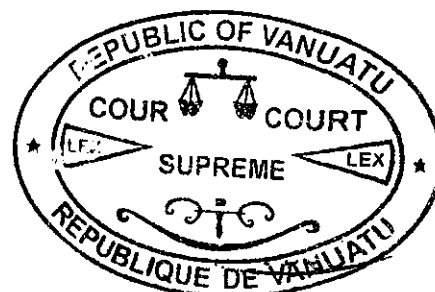
Coram: Chief Justice Lunabek
Counsel: Mr. D. Boe for the Public Prosecutor
Mr. T. J. Botleng for the Defendant
Date of Sentence Friday 8th June 2018

SENTENCE

1. Mr. Steve Bani, you are charged with the following offences:-
 - One count of Engaging in Transaction that involved money that ought to have reasonably been known to be proceeds of crime, contrary to section 11 (3) (a) of Proceeds of Crime (Amendment) Act 2005; and
 - Five counts of Converted Property that ought to have reasonably been known to be Proceeds of Crime, contrary to section 11 (3) (b) of the Proceeds of Crime (Amendment) Act 2005; and
 - Two counts of Attempted Transfer of Property that ought to have reasonably been known to be Proceeds of Crime, contrary to section 11 (3) (b) of the Proceeds of Crime (Amendment) Act 2005; and
 - One count of Transfer of Property that ought to have been reasonably known to be Proceeds of Crime, contrary to section 11 (3) (b) of the Proceeds of Crime (Amendment) Act 2005.
2. On 4 June 2018, you entered guilty pleas to each of the above nine (9) counts of offences against the Proceeds of Crime (Amendment) Act of 2005.
3. The facts provided by the Prosecution are accepted by you and are set out below:-



4. A formal complaint was made against you for the offences of Money Laundering or Proceed of Crimes.
5. The offences are said to have occurred sometimes between the 12th and 15th February 2016 at Port Vila at ANZ Bank.
6. You have engaged with unknown person on face book. The unknown person is said to have been based in England and is said he is the Director of the Human Resource Department of Lina Interior Company. He said to you that he wanted you to work for him in Vanuatu. After some chat conversation on face book, you agreed to work for the unknown person. He is to receive monies in his account and then cash the monies and sent it over to Malaysia.
7. The unknown person then transferred money out of victims account at ANZ bank to your account also at ANZ bank. The account of the victims at ANZ was 1447957 in the name of Alan William and Nan Churchill. Your account number at ANZ bank was 1785340.
8. The actual transactions being that on the 12th day of February 2016, you received an amount of 80,000 vatu in your ANZ account. The money was transferred via internet which was done by the unknown person.
9. After you received that amount, you withdrew 20, 000 vatu cash from the ANZ ATM machine. On that same date you withdrew an amount of 20, 000 vatu four times. Then you sent the monies via Western Union to Malaysia to a person named Amadou Diallo.
10. The next transactions occurred on the 15th of February 2016. At that time, you received another 80, 000 vatu from your bank account. The amount was transferred to you by the unknown person. The transfer was done via internet or online.
11. You then went and cash that amount and then sent it to the same person in Malaysia. You sent money via western union. In all transactions, you were paid a 10 percent commission. There are CCTV cameras that captured you withdrawing cash at the ANZ ATM. Also the bank statements that show the transactions into your account and out of your account by way of withdrawals. There are also receipts from the western union which show that you sent monies out of the country to Malaysia.
12. Furthermore, you did involve in the transactions despite the fact that you barely know the unknown whatsoever. Instead of you taking proactive measures to find out if that was appropriate you he went on to involve in such an act.



13. The matter came into light and you were arrested by the Police. You were cautioned and interviewed by the Police where you admitted the offence as alleged.
14. The relevant sections of the Proceeds of Crime (Amendment) Act of 2005 are set out below:

"11. Money-laundering

(1) *In this section:*

"transaction" includes the receiving or making of a gift.

(2) *A person who, after the commencement of this Act, engages in money-laundering is guilty of an offence punishable on conviction by:*

(a) *if the offender is a natural person – a fine of VT 10 million or imprisonment for 10 years, or both; or*

(b) *if the offender is a body corporate – a fine of VT 50 million.*

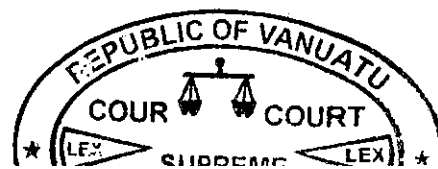
(3) *A person engages in money-laundering only if the person:*

(a) *acquires, possesses or uses property or engages directly or indirectly, in an arrangement that involves property that the person knows or ought reasonably to know to be proceeds of crime; or*

(b) *converts or transfers property that the person knows or ought reasonably to know to be proceeds of crime; or*

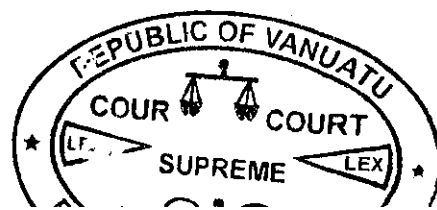
(c) *conceals or disguises the true nature, source location, disposition, movement, ownership of or rights with respect to property that the person knows or ought reasonably to know to be proceeds of crime."*

15. These penalties reflect that parliament which makes the law intended to deal with these offences seriously. And Court when passing sentence on these contravening sections must also reflect that intention.
16. I am considering your sentencing. I read and consider the same day report provided by the Probation Service.
17. I also consider submissions made by the prosecution and those filed by your lawyer on your own behalf.
18. Money laundering is a serious offence. Offences of this type involve receiving money from an unknown individual, company or agencies of any type in one's local bank account and with the mission to transfer the money into another client



of that same bank overseas. With the promise of a good percentage commission in return as compensation. That is the simplest version. Those type of offending may be simple or complex and on occasion intricate. The sentences of the Court must reflect those considerations. It is wrong in principle to approach the law of sentencing as though automatic consequences follow from the presence or absence of particular factual circumstances. In every case, the Court must make a discretionary decision in the light of the circumstances of the individual case and in the light of the purposes to be served by the sentencing exercise. In doing so, another principle must be born in mind, that of proportionality in sentencing. It requires that a sentence should neither exceed nor be less than the gravity of the crime having regard to the objective circumstances. (See **Veen v The Queen (No.2) [1988] HCA 14; (1988) 164 CLR 465; R v Dodd (1991) 57 A Crime R 349 at 354 and R v Whyte (2002) 55 NSW LR252.**)

19. The sum of VT160, 000 is the total sum involved in the money laundering transactions and an amount of 16,000 Vatu is the amount you took for your personal use.
20. A starting point sentence of 3 years imprisonment is appropriate.
21. There are no aggravating factors personal to you.
22. The Same Day (SD) Report dated 06 June 2018 shows:
 - You are never remanded in custody.
 - You are a first time offender.
 - You committed these offences in order to use those monies for your personal use.
 - You are now unemployed and you involved in social and church activities.
23. You plead guilty at the first opportunity given to you by the authorities. You are entitled to 1/3 of your sentence.
24. Your sentence is reduced to 2 years. You are given another allowance of 8 months to take into account of your other mitigating factors. Another allowance of 6 months is given to you to reflect the delays taken to prosecute your case before the court.
25. Your end sentence is 12 months imprisonment.
26. I consider whether the circumstances of your offending justify a suspension of your 12 monts imprisonment sentence.
27. I consider and bear in mind of the deterrent effect of such a crime on you as your punishment and also on others to engage in that type of offences. In **Public Prosecutor v Nishai [2018] VUSC 36** the Court states:

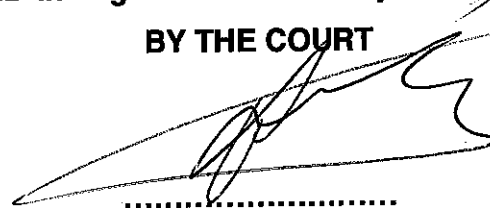


“Deterrence is an important aspect of sentencing when dealing with the crime of money laundering. Without money laundering legislation International Crime would be far less controllable and severe penalties are required to deter local people from becoming involved in such schemes. In those days of easily arranged and almost instant electronic transfers of money it is very easy to be tempted into becoming part of a money laundering scheme.”

28. The circumstances of your offending do not justify a suspension of your term of imprisonment.
29. You are therefore ordered to serve 12 months imprisonment with immediate effect.
30. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Luganville this 8th day of June, 2018

BY THE COURT



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Vincent Lunabek
Chief Justice

