

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

**Criminal
Case No. 16/2401 SC/CRML**

BETWEEN: Public Prosecutor
Prosecutor

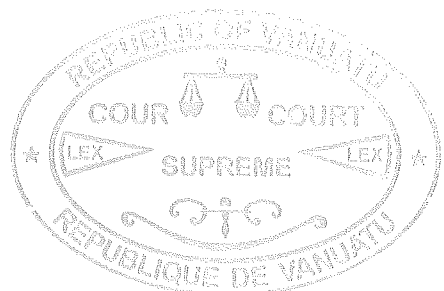
AND: Didine Nishai
Accused

Dates: *Hearing: 30th day of November, 2018 at 2:00
PM; Decision: 25th February 2019 at 3pm*
Before: *Justice Stephen D. Felix*
In Attendance: *Mr. Lenry Young for the Prosecution
Mr. Erick Molbaleh for the Defendant*

SENTENCE

INTRODUCTION:

1. Mrs. Didine Nishai, you were working for Elcress Agra Products Ltd as an accounts clerk from 2008 to 2009.
2. Between 15 January 2009 and 14 August 2009, you misappropriated a total sum of 527,762 Vatu belonging to Elcress Agra Products Limited, your former employer.
3. On the 9th of August 2010, you pleaded 'Not Guilty' to the twelve Counts of misappropriations laid against you on the 28th July 2016;
4. Later on the 12th of October 2018, you changed your Pleas to 'Guilty' to all of the 12 Counts of misappropriation contrary to Section 125 (b) of CAP 135.
5. The offence of misappropriation, under section 125 (b) of the Penal Code Act carries a maximum penalty of 12 years imprisonment.

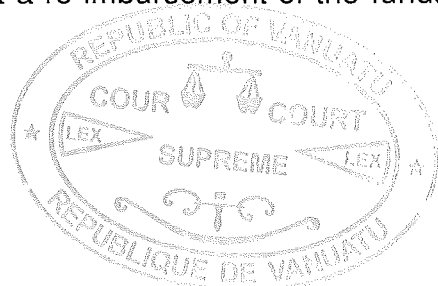


BRIEF OF FACTS:

6. On the 15th of October 2009, Mrs. Claudine Monvoisin and her husband Mr. Robert Monvoisin, owners and managers of Elcress Agra Products Ltd, lodged a complaint against you for misappropriating a total sum of VT 527, 762 from their company over the period between January and August of that year 2009.
7. You were given an opportunity to be heard by your then employer where you had confessed that you had been stealing from their company since 2008.
8. The internal investigation by the company's accounts supervisor and also by the Police confirmed that you have been altering the company's cheques by adding extra figures and credited to your personal accounts for your personal use.
9. The amount of money misappropriated is calculated to a total sum of VT 527,762.

SUBMISSIONS:

10. The aggravating factors to be considered in determining the starting point are: the amounts of money misappropriated, the breach of trust by you as an accounts clerk of the complainant her Employer, the repetition of offending for a period of seven (7) months, the financial loss caused to the complainants.
11. In mitigation, the pre-sentence report compiled after interviewing yourself, the victims, your chief, a community pastor and your husband, confirm the followings:
 - 1) You are aged 38, married, mother of 6 children;
 - 2) You are a graduate of the Vanuatu Institute of Technology with a Certificate in accounting.
 - 3) You are currently employed by Civil Aviation as an finance officer.
 - 4) You agreed to repay the funds misappropriated.
 - 5) You are an active member of the Community including your church.
 - 6) The victim's owner only request a re-imbusement of the funds stolen;



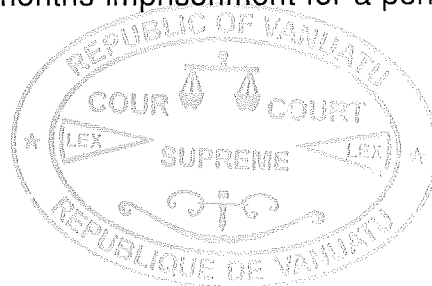
12. The prosecution submits further that there should not be a 1/3 deduction of the sentence for the guilty pleas taken but a lesser deduction due to your late Guilty plea.
13. The starting point, according to the Prosecution's submission should be a sentence ranging between 12 to 16 months imprisonment concurrently served for all of the 12 Counts.
14. They also submit that the end sentence may be suspended with a compensation order against the defendant under section 57 and 58 ZD of the Penal Code (Amendment) Act No 25 of 2006.
15. The Defence Counsel, Mr. Eric Molbaleh, on your behalf, submitted that the Court should follow the same approach taken in the cases of Public Prosecutor v Keith Mala (1996) VUSC 22, Public Prosecutor v Josette Doriri, Public Prosecutor v Connie Sewere (2018) VUSC 148 and Public Prosecutor v Kalotiti (2007) VUSC.
16. You admitted the offences to your former employer and to the Police when you were originally interviewed in 2009.
17. The defense submitted that the starting point should be 18 months imprisonment.
18. However, based on the factors personal to you, the defence submits that the end sentence should be suspended and a compensation order be made against you and in favor of the Complaints.

STARTING POINT:

19. In line with the principles of PP v Andy, and in consideration of the seriousness of these offence and the aggravating factors of the offending, I am fixing the starting point at 14 months imprisonment to be served concurrently for all of the 12 counts of misappropriation.
20. I only give 1 month deduction for the Guilty Plea taken because they were not taken at the earliest opportunity, which reduce the sentence to an end sentence of **13 months imprisonment**

SUSPENSION:

21. In consideration of your personal circumstances and also your capabilities in repaying the money stolen from the complainants, I am suspending the sentence of 13 months imprisonment for a period of 3 years from today.



22. But I Order that you repay the total Sum of VT 527, 762 to the complainants or your former Employer Elcress Agra Products Ltd by instalments of VT 20.000 every month commencing end of March 2019 and thereafter every consecutive months until the total amount of VT 527,762 is paid.

You have 14 days to Appeal.

DATED at Port Vila this 25th day of February 2019.

BY THE COURT


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Stephen D. Felix
Judge

