

BETWEEN: Public Prosecutor

AND: John Vira Mavuti
Defendant

Date of Hearing: 19 September 2019
By: Justice G.A. Andrée Willens
Counsel: Mr S. Blessing for the Public Prosecutor
Mr S. Stephens for the Defendant

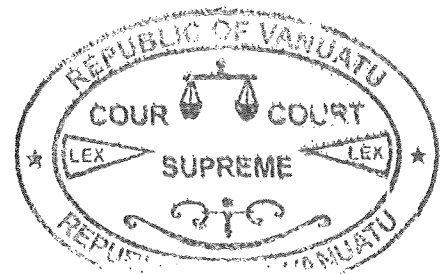
SENTENCE

A. Introduction

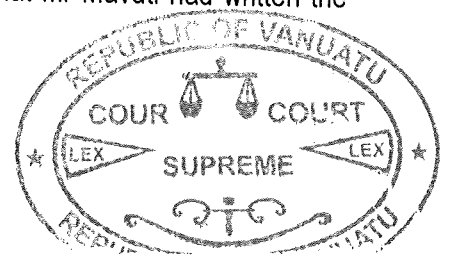
1. Mr Mavuti was convicted on his own plea and the admitted facts of one charge of obtaining money by deception. The maximum penalty for that offence is 12 years imprisonment.

B. Facts

2. Mr Mavuti was the Deputy Sheriff of the Supreme Court at the material time, based at Port Vila.
3. In early 2016, Mr Mavuti took advantage of Mr Jimmy Nambas, an illiterate debt collector for a local lawyer. Mr Mavuti enticed Mr Nambas to agree to assist him in finding a purchaser for a property being sold by Supreme Court order. Mr Mavuti explained the "official" selling price was VT 4m, but the purchaser would need to pay VT 5m, with Mr Mavuti and Mr Nambas each taking VT 500,000 as their commission.
4. Mr Mavuti had no right to enter into such an arrangement. The property was to be sold pursuant to a Supreme Court order, but Mr Robert Sugden was the only person authorised by the Supreme Court to do so by utilising a tender process. Mr Nambas had been recruited without knowing the true situation.



5. Mr Nambas duly found a prospective buyer for the property, Mr and Mrs Mera, and introduced them to Mr Mavuti. On 3 March 2016, Mr and Mrs Mera gave Mr Mavuti a cheque for VT 5m, which Mr Mavuti cashed - he provided a receipt subsequently. In order to "speed up" the transaction, Mr Mavuti asked for and received an additional VT 250,000.
6. Mr Mavuti then set about attempting to complete the sale and purchase. He persuaded Mr Nambas to sign a document, which turned out to be a tender offer in respect of the property, which was subsequently provided to Mr Sugden. Mr Nambas had no knowledge what he was signing.
7. On 4 March 2016 Mr Mavuti paid VT 1m to Mr Sugden's office as the deposit to accompany Mr Nambas' tender offer. That was the successful bid for the property, with the balance of the purchase price to be paid on or before 25 March 2016.
8. Mr Mavuti subsequently paid Mr Nambas the VT 500,000 cash "commission" he had promised for his assistance.
9. However, Mr Mavuti did not complete the transaction, despite Mr Sugden making demands of Mr Nambas do so. Mr Sugden later obtained Supreme Court directions to sell the land via a Real Estate Agent, which proved successful – the property sold for VT 8m. In the meantime, using Mr Nambas' name without his permission or knowledge, Mr Mavuti sought the return of the "deposit" which had accompanied the tender offer. Mr Sugden returned VT 895,000, which Mr Mavuti received.
10. Mr and Mrs Mera made several enquiries of Mr Mavuti as to when the property would be registered in their names. They were given excuses and promises that this would be achieved imminently. However, after the passage of a year, Mr and Mrs Mera approached the Port Vila Sheriff and belatedly discovered the true situation. Involved in that was a meeting attended by Mr Mavuti, Mr Sugden and several others. At the meeting Mr Mavuti protested his innocence and insisted that he had paid the purchaser's VT 5m to Mr Sugden's office. After checking, Mr Sugden advised the Sheriff that was incorrect.
11. Finally, at a further meeting, Mr Mavuti admitted to a number of persons that he had misused the VT 5m and VT 250,000 and admitted that he had given Mr Nambas VT 500,000 commission. He subsequently confirmed that in writing to the Supreme Court Registrar. The Registrar had written to Mr Mavuti on 1 December 2017 plainly setting out all the allegations; and Mr Mavuti admitted that on 5 December 2017.
12. Between 1 and 5 December 2017, Mr Mavuti arranged a meeting with Mr Nambas. At the meeting Mr Mavuti instructed Mr Nambas how he should respond if the police made inquiries of him in relation to the sale; and subsequently Mr Mavuti prepared a statement for Mr Nambas to sign. The statement, when read to Mr Nambas, appeared to him to be incorrect as it blamed the misuse of the VT 5m on him and Sheriff Malachi. He therefore refused to sign it. Mr Mavuti again instructed Mr Nambas as to what he should do if asked questions by the police. Eventually Mr Nambas was persuaded to sign the false statement.
13. When the statement was given to the Registrar, he doubted the accuracy of it and asked Mr Nambas to confirm/deny the statement. Mr Nambas admitted that Mr Mavuti had written the statement for him, and that it was incorrect.



14. A week later, Mr Mavuti offered Mr Nambas a Toyota bus plus VT 1m cash if he took all the blame. Two days later Mr Mavuti gave Mr Nambas VT 5,000 and re-iterated his promises of cash and a bus if Mr Nambas lied to the police for him. Several days later Mr Mavuti gave Mr Nambas a further VT 100,000 cash.
15. Mr Mavuti was arrested on 24 May 2018. He remained silent when cautioned in respect of the present offending.

C. Sentence Start Point

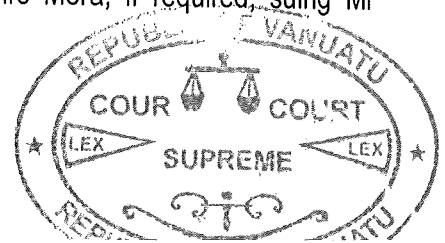
16. Mr Blessing has submitted a start point for sentencing of between 5 and 6 years imprisonment. He relies on a number of authorities which are at Supreme Court level and confirm the various aggravating factors to be taken into account as set out in the UK authority of *R v Barrick* (1985) 81 Cr App R 78. I accept those factors as being relevant, but consider Vanuatu Court of Appeal cases of greater relevance when determining appropriate sentencing levels.

17. In particular, I take into account the authorities of:

- *PP v Garae* [2017] VUCA 21 – involving VT 11m, 4 charges, and a start point of 4 years imprisonment;
- *PP v Sewere* [2018] VUCA 57– involving VT 6.5m, 1 charge and a start point of 4 years imprisonment; and
- *Hinge v PP* [2019] VUCA – involving VT 8.6m, 19 charges and a start point of 6 years imprisonment.

18. The aggravating factors to Mr Mavuti's offending are as follows:

- As the Deputy Sheriff of Port Vila, Mr Mavuti was an officer of the Supreme Court and held a senior position of trust within the community. The offending involves a gross breach of trust;
- Mr Mavuti took advantage of his position to trick Mr Nambas to assist him to perpetrate a relatively sophisticated and well-planned fraud on the unsuspecting Mr and Mrs Mera;
- Mr Mavuti's dishonesty extended over a 2-year period, and displayed raw greed – had Mr Mavuti simply completed the transaction for Mr and Mrs Mera he stood to gain VT 500,00, but that was clearly insufficient for him, so he reneged on that transaction and dishonestly obtained for himself even more;
- The total amount dishonestly obtained – VT 5.25m gross, VT 4.5m net. I exclude from that calculation the cash paid by Mr Mavuti to Mr Nambas, namely VT 605,000;
- There appears little if any prospect of reparation, Mr Mavuti admitting he has squandered the money – with the consequent effects on Mr and Mrs Mera. However, I can see the possibility of Mr and Mrs Mera, if required, suing Mr



Nambas for VT 105,000 – cash he knew he should not have accepted as it was part of an attempt to cover up the truth; and

- The positive steps repeated taken by Mr Mavuti to conceal the truth and to falsely attribute blame to other innocent individuals.

19. There are no mitigating factors in respect of Mr Mavuti's offending.

20. The sentence start point I adopt, taking all those matters into account is 6 years 6 months imprisonment.

D. Personal Factors

21. I take into account that Mr Mavuti is now 33 years of age, in a defacto relationship with his partner and they have 2 children. Mr Mavuti is the sole bread-winner. Mr Mavuti had the benefit of having very good education when young. He claims to be remorseful, but there is no indication of that in his conduct; and it is accordingly a factor I give little weight to. I note that he has expressed a willingness to partake in a custom reconciliation ceremony, but the prospect of that occurring is slim – I also attribute little credit for this.

22. Mr Mavuti has no previous convictions. However, given the seriousness of his offending, and the subject matter of his offending, his previous good character is little assistance to him in terms of mitigation.

23. I note that in his submissions Mr Mavuti makes mention of a lack of adequate supervision of his conduct by the Chief Justice's office and the Chief Registrar. I reject that submission – Mr Mavuti's conduct was deliberately clandestine to ensure he would not be apprehended. No amount of supervision could have prevented this planned dishonest conduct.

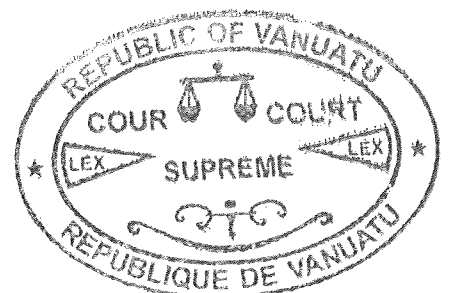
24. For Mr Mavuti's personal factors, I generously allow a reduction of sentence of six months imprisonment.

E. Plea

25. Mr Mavuti pleaded guilty. He did so at a very late stage. He had pleaded not guilty at plea day, and maintained that position on the first day of trial when asking for an adjournment. When the adjournment was declined, he then asked to be re-arraigned and pleaded guilty. The maximum discount available for a prompt plea is one-third. Mr Mavuti is entitled to no more than 15% discount for the timing of his plea – namely 10 months imprisonment.

F. Suspension

26. There is no possibility of suspending the sentence that must be imposed. This matter is simply too serious, and Mr Mavuti has not shown any remorse. I decline to exercise my discretion.



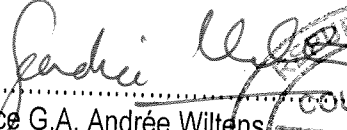
G. Result

27. Mr Mavuti is sentenced to imprisonment for a rounded down term of 5 years imprisonment.
28. He had served some days already, prior to his remand in custody pending sentence on 10 July 2019. The sentence is accordingly back-dated to commence as from 1 July 2019.
29. Mr Mavuti has the right to appeal this sentence within 14 days.

H. Victim Impact Statement

30. The Victim Impact Statement provided has not contributed to the sentence imposed in any way. It appears to me to be a gross exaggeration. The funds contributed to the purchase of the property came from a Term Deposit account; and I accept the complainants no longer have those funds. However, that loss cannot in any way have affected their standard of living or ability to earn their usual incomes. The plea of recent impoverishment as a result of this offending simply does ring true.

Dated at Port Vila this 19th day of September 2019
BY THE COURT


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Justice G.A. Andrée Wiltens

