

PUBLIC PROSECUTOR

V

KEITHSON LIU

*Date of Sentence:* 1<sup>st</sup> day of July, 2019 at 2:00 PM  
*Coram:* Chief Justice Vincent Lunabek  
*Counsel:* Mr Simcha Blessing for Public Prosecutor  
Mr Brian Livo for the Defendant

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SENTENCE

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A. **Introduction**

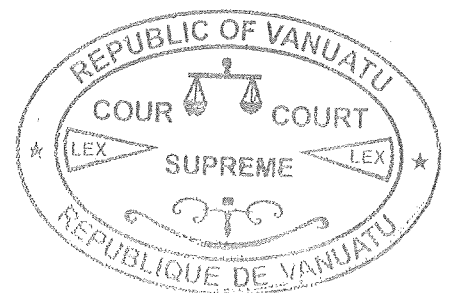
1. Mr Keithson Liu, this is your sentence on a representative Count of obtaining money by deception in the amount of Vatu 6,904,548 between the year 2009 and 2012.
2. On 14 May 2019, you pleaded guilty to that representative Count on the basis of the facts as alleged against you in the information dated 14 May 2019.

B. **Facts**

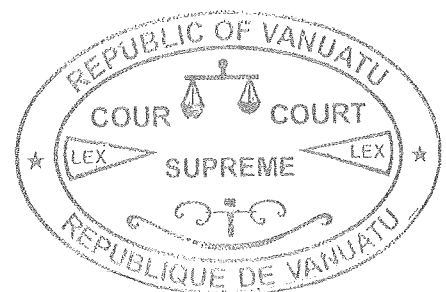
3. The facts of this case are provided by the prosecution. You accepted these facts before your guilty plea on 14 May 2019.
4. The facts are that you are from the Island of Pentecost. You were formally employed by the Department of Finance as a Payroll Officer. You were responsible to enter payroll data into the Government database and pay public servants salaries, allowances and other entitlements. You were then terminated and you worked as a public transport driver.

C. **Below is the factual basis upon which you are charged.**

- **The deception (dishonesty).**



5. You defrauded the revenue of the Government of Vanuatu between 2009 and 2012.
6. Your fraud involved you paying allowances of public servants who are your relatives who were employed by the Department of Education and the Department of Health and they were namely, Mrs Blandine Tevi, Mr Hubert Tevi, Mr Henry Sine, Mrs Aslina Vira, Regina Heheina, Atkins Orlrich and Mr Ronan Sine.
7. The allowances were never claimed by the respective officers whose accounts you credited and the allowances were never authorised to be paid to them by their respective Departments.
8. There were two ways you deceived the recipients of the monies and obtained money from the Government.
9. First, you called the individuals names in paragraph 6 above, informed them that you have audited the accounts of Ifira Trustees Limited and they have compensated you for your services. You asked them to give you their account numbers which you told them that you will provide to Ifira Trustees Limited and the Ifira Trustees Limited will deposit the money into their account. You instructed them to withdraw the monies and provide them to you. You explained to them that the reason you had not provided your own account was because you did not want the Department of Finance to know that you have a private auditing business.
10. Second, you simply manipulated the government's payroll by paying the individual's allowances and other entitlements without authorisation given by their respective Departments. After that you would contact the officers and would ask them whether they had seen any difference in the amount that was paid to them by the Department of Finance. They would confirm the anomaly and so you would advise them that the government's system used by the Department of Finance had caused the error which resulted in their payment increase. You would then instruct them to physically return the monies to you which you told them you will ensure the monies return



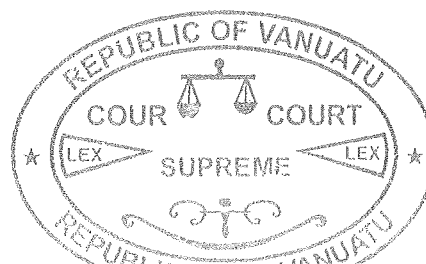
into the Government's treasury. In fact, you kept all the monies they returned to you and used them for your own purposes.

11. When the Human Resource Unit of a government department approves their staff's additional allowances or any other form of entitlement, they would submit the documents to the payment section of the Department of Finance for approval by the Salary Supervising Officer, the submissions will be passed on to the Payroll Officers, including you, who are officers who make the payments. Payments that are made by the Payroll Officers are not checked by the Salary Supervisor. You were well aware of the process and had full knowledge that your work will not be verified so you took advantage of the opportunity and stole a considerable amount of money from the Government of Vanuatu.

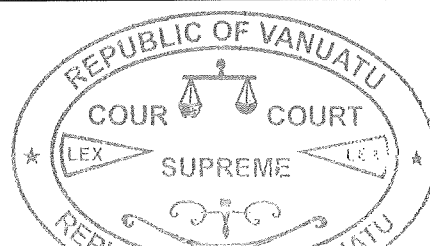
- **Money you obtained for yourself**

12. You dishonestly obtained a total of VUV6,904,548, you duped 7 civil servants, all of whom were your family members, into enabling your fraud and methodically stole money from the Government's treasury for period of approximately 3 years (2009-2012). You gave the 7 recipients monies as their commission for using their accounts, to compensate them for allowing you to use their accounts, and also for being able to trust them to return Government monies to you.
13. All the moneys were handed to you in person by officers residing in Port Vila. With respect to officers living outside of Port Vila, you instructed them to send to with relatives travelling to Port Vila and send the monies via Western Union to avoid detection. You applied a substantial proportion of the monies to your own use, and used VUV 10,000 to pay for your sister's tuition fee, and sent a good portion of the money to your father on Pentecost so that he will be able to make use of the proceed of your fraud.
14. The table below shows the amounts you sent to each of persons at different times:

Employee	Department	Payment	Amount	User
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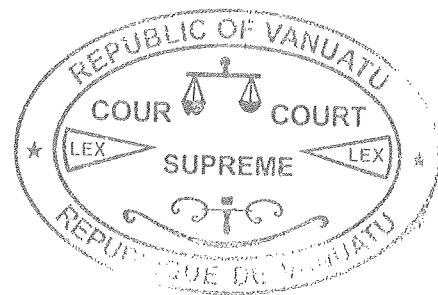
		Element		
Blandine Tevi	Education		VUV 325,202	Keithson Liu
Blandine Tevi	Education		VUV 20,000	Keithson Liu
Blandine Tevi	Education		VUV 210,204	Keithson Liu
Blandine Tevi	Education		VUV 220,501	Keithson Liu
Blandine Tevi	Education		VUV 325,202	Keithson Liu
Hubert Tevi	Education		VUV 20,000	Keithson Liu
Hubert Tevi	Education		VUV 20,000	Keithson Liu
Hubert Tevi	Education		VUV 20,000	Keithson Liu
Hubert Tevi	Education		VUV 160,523	Keithson Liu
Hubert Tevi	Education		VUV 372,502	Keithson Liu
Henry Sine	Education		VUV 523,344	Keithson Liu
Henry Sine	Education		VUV 442,033	Keithson Liu
Henry Sine	Education		VUV 150,332	Keithson Liu
Henry Sine	Education		VUV 320,505	Keithson Liu
Aslinda Vira	Education		VUV 475,206	Keithson Liu
Regina Heheina	Health		VUV 154,000	Keithson Liu
Regina Heheina	Health		VUV 65,000	Keithson Liu
Regina Heheina	Health		VUV 395,042	Keithson Liu
Regina Heheina	Health		VUV 249,042	Keithson Liu
Regina Heheina	Health		VUV 410,000	Keithson Liu
Regina Heheina	Health		VUV 85,400	Keithson Liu
Regina Heheina	Health		VUV 375,000	Keithson Liu
Atkins Olrich	Health		VUV 354,102	Keithson Liu
Atkins Olrich	Health		VUV 475,203	Keithson Liu
Ronan Sine	Health		VUV 20,000	Keithson Liu
Ronan Sine	Health		VUV 57,000	Keithson Liu



Ronan Sine	Health		VUV 57,000	Keithson Liu
Ronan Sine	Health		VUV 67,000	Keithson Liu
Ronan Sine	Health		VUV 485,205	Keithson Liu
Ronan Sine	Health		VUV 50,000	Keithson Liu
		<b>Total overpayment</b>	<b>VUV6,904,548</b>	

- **Detection**

15. Finance Officers of the Department of Education and Health started noticing that their officers were constantly receiving salaries and allowances that were either higher than their respective grades or for which they were not entitled to.
16. When they followed up with the Department of Finance they were told that you were the officer who prepared their payments.
17. Sometimes after the Department of Finance started receiving information from other Departments of anomalies in their staff remuneration, Mrs Aslinda Tari who was a teacher at the time, visited the Department of Finance to collect her salary slip. She was repaying a loan at the time so she wanted to see how much she had paid already.
18. When Mrs Takau printed out her payslip, she noticed that Mrs Tari received an extra responsibility allowance on 24<sup>th</sup> of December 2010. Being the payroll officer in charge for teachers' salary, Mrs Takau knew that to be an anomaly as teachers were not entitled to extra responsibility allowances.
19. Mrs Takau asked Mrs Tari to explain how she was paid the allowance to which she responded that someone in the Finance Department credited her account. Mrs Tari did not disclose to Mrs Takau the exact officer.
20. When Mrs Takau ran an audit report in the system, she discovered that the payment was made by you. The system showed your username. She immediately notified her superiors and sent an email to you requesting an



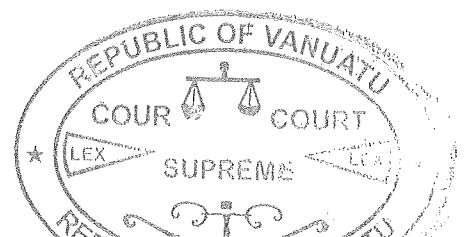
explanation from you. When you received the email, you walked out of the office and never returned.

**D. Investigation**

21. A formal complaint was lodged with the Police on or about the 23<sup>rd</sup> of September 2011 and formal police investigations ensued.
22. You were cautioned and interviewed on the 18<sup>th</sup> of March 2012. You denied the allegations and elected to remain silent. You offered no assistance to investigators during their investigation.
23. In your sentencing, I am provided with a pre-sentence report filed by the Probation Service on 7 June 2019. I have read and considered the Prosecution submissions and case authorities. I have also read and considered the submissions and case authorities filed by your lawyer on your behalf.

**E. Prosecution submissions – Essence**

24. The Prosecution places emphasis on denunciation and deterrence as one of the main purposes of punishment to protect the public from the commission of such crimes by making it clear to the offender like you and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment: **PP v. Kalosil and other [2015] VUSC 149** applying the ratio of **R v. Radich [1954] NZLR 86** and also **R. v. Harrison [1997] 93 A Crim R 314** reminding the duty of the Court to see that the sentence which is imposed will operate as a powerful factor in preventing the commission of similar crimes by those who may otherwise be tempted by the prospect that only light punishment will be imposed.
25. I agree with the prosecution on their submissions on the denunciation and deterrence as one of the main purposes for sentencing offenders in such an offending. I agree also with the prosecution submissions that the punishment must fit the crime as the principle of proportionality requires an assessment of the objective seriousness of the crime as a starting point. And

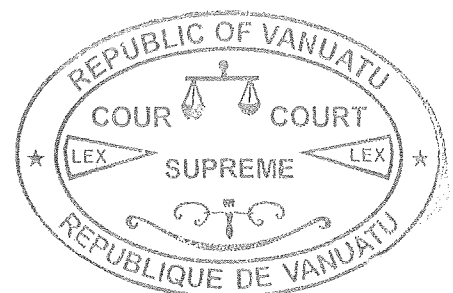


to consider further the subjective factors relevant to the offender to be assessed as the Courts do by following the approach of sentencing set by the Court of Appeal in **PP v. Andy [2011] VUCA 14**.

26. In terms of case authorities, the prosecution referred and relied on the case of **PP v. Mala [1996] VUSC 22; criminal case 042 of 1995 (2 January 1996)**. The Prosecution invites the Court to apply the guideline set out in the English case of **R v. Barrick** which were adopted and applied in **PP v. Mala [1996] VUSC 22**.
27. It is the Prosecution submissions that the Court to consider the maximum penalty prescribed for the offence, the relevant authority submitted above, the culpability of the offender, and the factors highlighted in their submissions exacerbate the offender's culpability to a starting point sentence within the range of 5 – 6 years imprisonment.
28. The Prosecution acknowledged that there is no factor personal to you which would aggravate your offending as you have no previous conviction. You will be entitled to the appropriate discount of one third for your guilty plea and other mitigating factors before an end sentence is made by the Court.

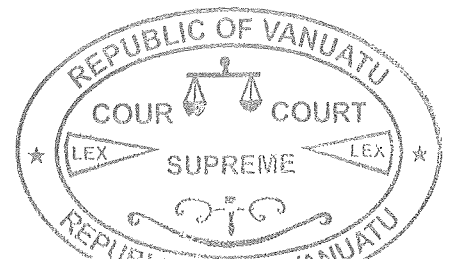
**F. Defence submissions - Essence**

29. Your lawyer conceded with the brief of facts provided by the Prosecution.
30. Your lawyer acknowledged the sentencing approach followed by the Courts in **PP v. Andy [2011] VUCA 14**.
31. Your lawyer noted that the offences were committed from 2009 to 2012 a period of 3 years. The amount involved was 6,904,548 Vatu.
32. Your lawyer referred and relied on the case of **Apia v. Public Prosecutor [2015] VUCA 30**, which adopted the guidelines for sentencing in those kind of offences in **Public Prosecutor v. Mala [1996] VUSC 27**.
33. Your lawyer submitted that the amount involved was 6 million Vatu plus. The appropriate starting point sentence for you should be around 2 ½ to 3 ½



years after considering the seriousness of the offence and the culpability of the actual offending.

34. Your lawyer agreed with the prosecution that there is no factor which will cause uplift to the starting point of your sentence as you do not have previous conviction and you are a first time offender.
35. Your lawyer said you have good previous good character and an allowance of reduction be given to you like the 6 months given in **Apia v. PP [2015] VUCA 30**.
36. Your lawyer informed the Court that you have made arrangement for 10,000 Vatu fortnightly repayments back to the Vanuatu Government through the Finance Department. He said so far an amount of 3,694,334 Vatu had been repaid back to the Government of Vanuatu as of 10 March 2019. The arrangement for repayment is on-going.
37. The pre-sentence report revealed that the arrangement of repayment of money by you to the Government of Vanuatu via the Department of Finance was successful. It is also said that your brother Sine Henry told the writer of the report that he is willing to assist you progressively in the repayment of these monies until completion.
38. Your lawyer also submitted that you are entitled to other deduction allowance as you cooperate well with the police, contrary to what the prosecution said in their submissions. He said you were remorseful for your past actions when you entered guilty pleas and you promised not to re-offend again in the future. You live a normal life now. You have good relationship with your community and your chief in Port Vila and you are the advisor to your community chief. You are a self-employed as a consultant and managing your own contract business and generate 50,000 Vatu monthly basis to support your family.
39. Your lawyer submitted your offending was between 2009 and 2012. It is around 7 years after the offence was committed. You should not be punished for delay and that some reduction allowance should be in your favour.





40. Finally, your lawyer submitted that taken the circumstances of this case, any imprisonment sentence be suspended with a community sentence or supervision be added to your suspended sentence.

**G. Court approach and considerations of your sentencing**

41. The offence of obtaining money by deception is dealt with under section 130B of the Penal Code as follows:-

*(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*

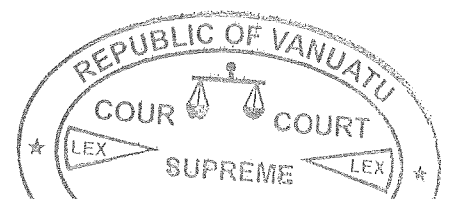
*(ii) a machine that is designed to operate by means of payment or identification,*

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

42. It is a serious offence. 12 years imprisonment as the maximum penalty for it shows the intention of the law-maker that this offence is a serious offence.

43. I accept that the case of **PP v. Mala [1996] VUSC 22, criminal case no. 042 of 1995 (2 January 1996)** is the relevant and appropriate case authority for this kind of case when the then Chief Justice set out the guidelines as follows:-

*“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*



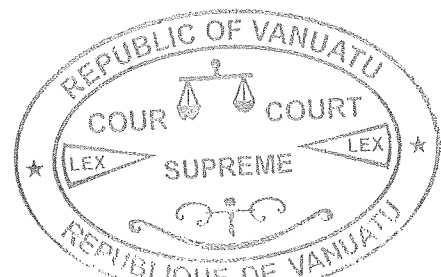
*imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered, but it may in many cases provide a useful guide. Where the amount involved cannot be described as small but are less than 1 million vatu or thereabouts, terms of imprisonment ranging from the very short up to about 18 months are appropriate. Cases involving sums of between about 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.*

*The terms suggested are appropriate where the case is contested. In any case where a plea of guilty is entered however the Court should give the appropriate discount. It will not usually be appropriate in cases of serious breach of trust to suspend the sentence. As already indicated, the circumstances of cases will vary almost infinitely.*

*The following are matters to which the Court will not doubt wish to pay regard in determining what the proper level of sentence would be:*

- (i) the quality and degree of trust reposed in the offender including his rank;*
- (ii) the period over which the fraud or the thefts have been perpetuated;*
- (iii) the use to which the money or property dishonestly taken was put;*
- (iv) the effect upon the victim;*
- (v) the impact of the offences on the public and public confidence;*
- (vi) the effect on fellow employees and partners; (My emphasis)*
- (vii) the effect on the offender himself;*
- (viii) his own history;*
- (ix) 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."*

44. I now apply the above guidelines in this case in the light of the sentencing approach provided in **PP v. Andy [2011] VUCA 14** in order to arrive at an appropriate starting point sentence which is the high level sentence including the aggravating factors in this case.



45. I agree that in this case, the following aggravating factors exist:-

- (i) the quality and degree of trust reposed in the offender including his rank-

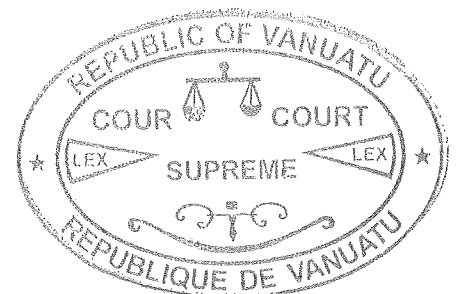
Mr Liu, you were at all material times a public servant employed by the Department of Finance and Treasury as a Payroll Officer. You were responsible to enter payroll data into the Government's database and pay public servants salaries, allowances and other entitlements. You were in a position of trust and you used that privilege and trusted position to defraud the Government and the people of Vanuatu.

- (ii) The period over which the money was dishonestly obtained was over a period of approximately 3 years between 2009 and 2012. It is quite a lengthy period of dishonesty in the trusted position of payroll officer of the Government of Vanuatu.

- (iii) The use to which the money dishonestly obtained was put. You deceitfully obtained money from the Government and the people of Vanuatu and applied them to your own use.

- (iv) The effect of your offending on the Government and the people of Vanuatu. Your offending constituted a substantive loss to the Government of Vanuatu and the people. They suffered considerable loss due to the offending. The money you obtained for yourself should have been used to benefit the people of Vanuatu anyway.

- (v) The impact of the offences on the public and public confidence. Public do not have confidence in the government public financial system in the payment and management of monthly salaries of Government employees.



(vi) The high degree of planning and sophistication. It is clear that the offending involved a premeditated, sophisticated and systematic fraud on your part. You knew the financial management used by the Department of Finance and Treasury. You knew also the people you used in your fraudulent scheme. You actually manipulated the financial management system used by the Department of Finance and Treasury (Smartstream) which enabled you to pay allowances for public servants who are your relatives who are employed by other Government Departments whom you would contact them and obtained them payments from as set out in paragraphs 4-10 of the facts of this case.

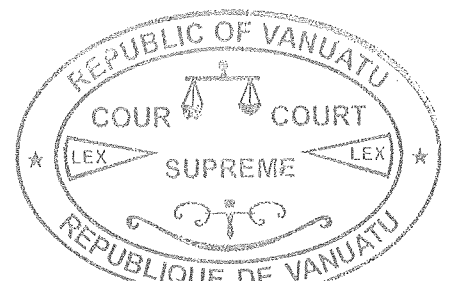
(vii) The benefit you derived from the offences you have obtained for yourself an amount of VUV 6,904,546. It is a substantial amount of public money you obtained by your own deceitful scheme and fraud.

46. Considering the seriousness of the offending, your dishonest intention and culpability, coupled with the above aggravating factors, I accept an appropriate starting point sentence within the range of 5 and 6 years imprisonment as submitted by the prosecution. Here, 5 years imprisonment is the appropriate starting point sentence.

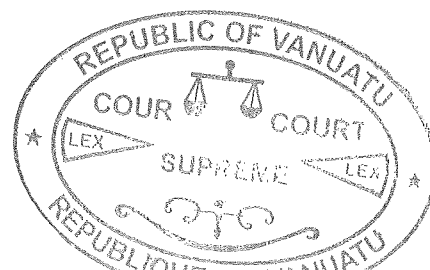
47. I now consider the next step in your process of sentencing by assessing factors personal to your which would aggravate your offending. I sense you have no previous convictions. There will be no uplift from the starting point sentence.

48. On the balance of the sentencing exercise, I now consider the mitigating factors. I give you the following credit allowances:

- 6 months for your previous good character;
- another 6 months for the fact that you are a first offender; and
- another 6 months for the inordinate delay of 7 years the prosecution took to prosecute you.



49. Your sentence is now reduced to 3 years and 6 months (42 months) imprisonment.
50. You are then entitled to one third (1/3) of that sentence. Your sentence is further reduced to 14 months (i.e. 1 year and 2 months) imprisonment. That is your end sentence.
51. The next question is whether the circumstances of this case justify that I suspend that term of 14 months (1 year and 2 months) imprisonment.
52. I am informed by your lawyer that you made arrangement with the Government via the Department of Finance and Treasury to pay back the money you have stolen to the Government. You paid back an amount of VT3,694,334 as at 10 March 2019. The record of payment annexed to the pre-sentence report filed 6 June 2019 showed that the repayment was actually made by one Mr Sine Henry who is one of the victim of your fraud. I take it from the submissions of your lawyer that Mr Sine Henry is your brother. I take it also that Mr Sine Henry is committed to assist you in paying back the Government money stolen until the payment is completed.
53. I apply my mind and consider section 57 of the Penal Code. I need to have a view of the seriousness of the offending in this case, I need to consider the particular circumstances of this case and I need to consider your character as the offender. I note as the prosecution reflected in their submissions that you were not suffering from any illness at the moment, you have not committed the offending due to the fact that you have being placed under great strain by excessive responsibility. I note too that you have just leave your position and function when your fraudulent scheme of obtaining money through manipulating the Government Financial Management system was discovered until you were terminated. You appear not to give consideration to the seriousness of this type of offending. You were not arrested. Further when the investigation is progressing or stagnant or pending, you were attempting on more than one occasion to be employed again under the Government of Vanuatu despite what you did.



54. In view of the seriousness of the offending, the particular circumstances of this case and your character as an offender in this case, I refuse to suspend your 14 months terms of imprisonment.
55. You are ordered to serve the 14 months terms of imprisonment to begin 2<sup>nd</sup> July 2019 as I give you 1 day grace period to visit your wife and children before you go straight to custody as you were not arrested or spent any time in custody before your sentence today. A Warrant of imprisonment is issued to start on 2 July accordingly.
56. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Port Vila this 1<sup>st</sup> day of July, 2019.**

**BY THE COURT**



.....  
**Vincent Lunabek**  
**Chief Justice**

