

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

**Criminal  
Case No. 19/3411 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Samuel Namuri**  
Defendant

*Date of Sentence:* 29 January 2020  
*Before:* Justice G.A. Andrée Wiltens  
*Counsel:* Ms L. Lunabek for Mr S. Blessing for the Public Prosecutor  
Ms A. Sarrisets for Mr D. Yahwa for the Defendant

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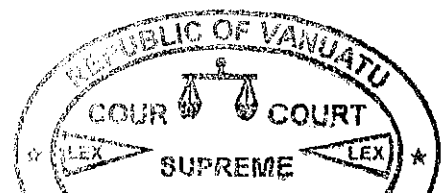
**SENTENCE**

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**A. Introduction**

1. Mr Namuri has pleaded guilty and accepted the summary of facts in relation to the following:

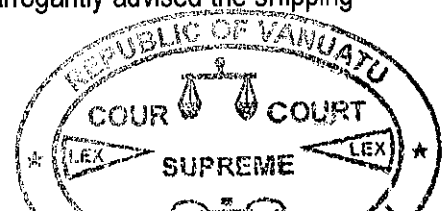
- Charge 1 – obtaining financial advantage by deception, namely evading import duty of VT 123,120 - the maximum sentence for that offence is 12 years imprisonment.
- Charge 2 - obtaining financial advantage by deception, namely evading Value Added Tax ("VAT") of VT 387,825 - the maximum sentence for that offence is 12 years imprisonment.
- Charge 3 - obtaining financial advantage by deception, namely evading vehicle registration fees of VT 188,879 - the maximum sentence for that offence is 12 years imprisonment.
- Charge 4 – theft of a Toyota Land Cruiser motor vehicle - the maximum sentence for that offence is 12 years imprisonment.



- Charge 7 – use of a vehicle for an improper purpose - the maximum sentence for that offence is a fine of to 3x the duty payable.
  - Charge 8 – carrying on business without a valid business license - the maximum sentence for that offence is 1 year imprisonment.
  - Charge 9 – money laundering in respect of using the Toyota Land Cruiser - the maximum sentence for that offence is 10 years imprisonment.
  - Charge 10 – money laundering in respect of possessing VT 572,400 cash - the maximum sentence for that offence is 10 years imprisonment.
  - Charge 11 – money laundering in respect of using VT 572,400 cash - the maximum sentence for that offence is 10 years imprisonment
2. The offending occurred between January 2014 and December 2016.
  3. Further, the maximum penalty for money laundering was raised by legislative amendment as of 16 June 2017 – very shortly after Mr Namuri’s offending ceased. The maximum sentence now available for such offending is a term of 25 years imprisonment, reflecting the seriousness with which Parliament regards this criminal type of conduct. The money laundering charges are the most serious charges faced by Mr Namuri – I take them as the lead offending.

B. Facts

4. In late 2014, to properly oversee the China Civil Engineering Construction Corporation (“CCECC”) road remediation contract on Tanna Island, the Public Works Department (“PWD”) required additional resources in the form of transport vehicles for inspection purposes.
5. As Director of PWD, the second most senior position within the Department, Mr Namuri arranged for CCECC to purchase a vehicle for PWD to use for that specific purpose. That was, however, not Mr Namuri’s true intent.
6. CCECC purchased the Toyota Land Cruiser and paid the associated registration costs. Mr Namuri attended to obtaining exemptions for import duty and VAT in respect of the vehicle, due to the representation it would be used by PWD on official Government business. As a result of those steps being undertaken, Mr Namuri obtained a new vehicle at no cost to himself. If Mr Namuri had simply purchased his own vehicle it would have cost him VT 4,850,824. Instead, he arranged for CCECC to pay out a total of VT 4,339,879 and for the Government to exempt VT 510,945 of duty/VAT.
7. As soon as he received the Toyota Land Cruiser from CCECC as the official PWD representative, Mr Namuri commenced to use the vehicle as if it was his own. He did so from December 2014 to December 2015, and he used subterfuge to conceal the reality of the situation.
8. At the beginning on 2016, Mr Namuri moved the Toyota Land Cruiser to Tanna Island. He was dilatory in paying the shipping fees, and eventually ended up paying less than required. He was annoyed at being chased to pay the outstanding fees, and arrogantly advised the shipping

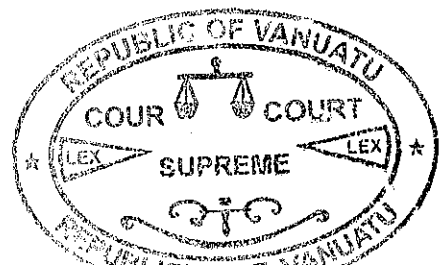


company when short-changing them that PWD would never again use their services. He was purporting to use his official status in relation to a personal matter.

9. Mr Namuri convinced a PWD driver to resign from his job at PWD and work for him in driving the Toyota Land Cruiser on Tanna Island. In order to achieve that Mr Namuri arranged for the Tafea Provincial Government to issue a public transportation permit for the Toyota Land Cruiser. That involved dishonesty on the part of Mr Namuri, as the vehicle was not his – it belonged to and was registered as a company vehicle in the name of CCECC, without any special permits.
10. Between May and September 2016, the former PWD driver earned VT 572,000 for Mr Namuri while driving the Toyota Land Cruiser. Mr Namuri held no business license to be able to conduct such business. Additionally, all funds earned were channelled through the bank account of Mr Namuri's brother – in an attempt to distance Mr Namuri from the illegal activity. However there are several withdrawals from that account attributable to Mr Namuri which reveals the true position.
11. All the while CCECC received no value for their provision of the vehicle to PWD. As well, their reputation was harmed when this case came to light, as there was suspicion the company was involved. Further PWD was also deprived of the additional resource it badly needed; and when the truth was revealed, PWD's reputation was also affected in a negative way. Finally, had Mr Namuri simply purchased his own vehicle, the Government would have earned the import duty and gathered the VAT. The short version is that Mr Namuri did extremely well out of this; and everyone else involved suffered badly.

C. Sentence Start Point

12. The charges are very serious.
13. Mr Blessing has submitted that the start point for Mr Namuri's sentencing should be set at between 5 and 7 years imprisonment. Mr Yahwa has unrealistically submitted a much lower tariff – he has submitted that Mr Namuri pay a fine over time, attend to some community work, and be the subject of a short term of imprisonment which should be suspended.
14. There are significant aggravating factors to the offending.
  - Firstly, there is Mr Namuri's very senior position as Director and later Acting Director General of PWD, and the use of his position to achieve his own ends. That equates to a gross breach of trust with his employer.
  - Secondly, the offending took place over an extended period of time – from December 2014 to December 2016.
  - Thirdly, there is a multiplicity of charges, all of which can be characterised as involving dishonesty.
  - Fourthly, no less than 4 different entities were duped by Mr Namuri.



- Lastly, Mr Namuri persuaded a wholly innocent person to give up secure employment with PWD in Port Vila and go to work for Mr Namuri on Tanna Island. Now that Mr Namuri's scheme has been stopped, that person is unemployed. He was simply used for Mr Namuri's personal gain.

15. The start point that I adopt for Mr Namuri's sentence, looking at his criminal culpability on a global basis, is a term of 7 years imprisonment.

D. Mitigation

16. I accept that Mr Namuri has no previous criminal convictions; and that he co-operated with the authorities during the investigation into this matter.

17. His stated remorse to the PSR writer is more difficult to accept. I note that the criminal conduct only came to an end after the offending had been discovered. I also note that there has been no custom reconciliation meeting.

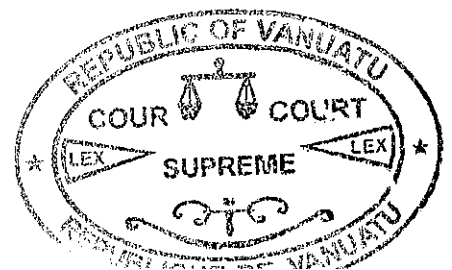
18. Mr Namuri is currently 44 years of age. He was 41 or so at the time of the commencement of his offending. He is married with 2 children; and there are a further 2 adopted children. The children are still young and all attend school or kindergarten, with the associated costs having to be met.

19. Mr Namuri's wife works overseas pursuing seasonal work – Mr Namuri's claim to the PSR writer that he is the sole bread-winner cannot therefore be given any credence. Mr Namuri has reported to the PRS writer that he has good relations with his wider family and also with his community.

20. For Mr Namuri's personal circumstances, I am prepared to reduce the end sentence by 6 months.

21. Mr Namuri pleaded to all bar the 3 money laundering charges at the first opportunity. He asked to be re-arraigned on the money laundering charges when the amounts were perfected. The maximum discount available for prompt pleas is a reduction of one-third. That recognises that the offender has remorse, has acknowledged the wrong-doing, has saved Court time and expense; and in more serious cases, it also reflects the fact that a victim will no longer be required to give evidence of often harrowing and embarrassing events in a public setting and in front of strangers. Where all those considerations are applicable a discount of up to one-third is available.

22. However, there is no general rule that such a discount should automatically follow prompt or early pleas. It is important to also take into account other factors, such as the strength of the prosecution case. In this instance, it is obvious that Mr Namuri had little option but to plead guilty. I add to that, that there is in this case no sparing the feelings of a vulnerable witness, as a result of Mr Namuri's pleas. Accordingly, the discount I apply to reflect Mr Namuri's early guilty pleas is a reduction of 25 %.



E. End Sentence

23. Taking all of those matters into account, the end sentence that must be imposed is one of 5 years imprisonment. I impose that sentence on charges 1, 2, 3, 4 and 10, all concurrently. In respect of charges 7 and 8, I impose an end sentence of 6 months imprisonment for each charge, concurrently. In respect of charges 9 and 11, I impose only a conviction and discharge – I do so on the basis that I see these charges as duplicating the criminal culpability already reflected the sentences imposed for charges 4 and 10.
24. The sentence is to commence from 19 January 2020 - to reflect time already spent in custody by Mr Namuri.

F. Suspension

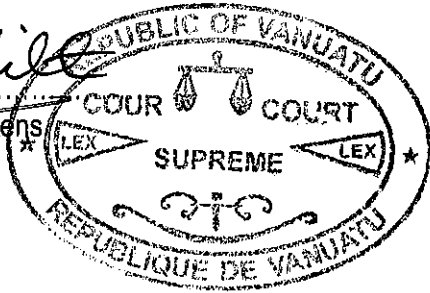
25. There is no prospect of suspending the sentence or any part of it. The foremost sentencing principles applicable to this case are to hold Mr Namuri accountable for his criminal conduct, and to deter him and other members of the community from offending in a like manner in future.
26. The persistent dishonesty and corruption exhibited by so senior a public servant deserves to be met with a condign punishment.
27. Given the sentence imposed, I do not intend to impose any financial penalty.
28. The Toyota Land Cruiser, if it has not already been, must be returned to CCECC forthwith.

G. Other

29. Mr Namuri has 14 days to appeal this sentence if he disagrees with it.

**Dated at Port Vila this 29th day of January 2020  
BY THE COURT**

*Gandhi Will*  
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Justice G.A. Andrée Wilkens

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The words "PUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR" and "COURT" are positioned on either side of the scale, with "SUPREME" below them. Two small triangles containing the word "LEX" are also present on either side of the central text.