

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

Criminal
Case No. 21/1610 SC/CRML

PUBLIC PROSECUTOR

v

ALEXINE JOHN

Date: 21 July 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr L. Young
Defendant – Mrs C.T. Gesa

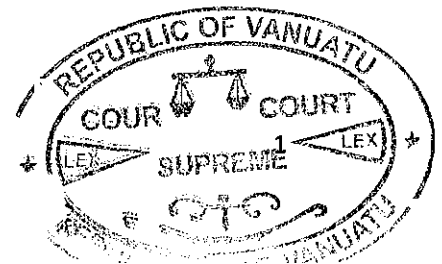
SENTENCE

A. Introduction

1. Ms John pleaded guilty to 34 charges of misappropriation. She accepted the summary of facts and was accordingly convicted on her own pleas and the admitted facts.

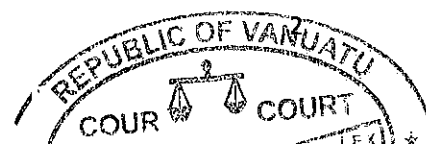
B. Facts

2. From 2012 to 2017, Ms John acted as a real estate agent on behalf of a customary land owner. She subdivided and sold plots of land to 34 complainants. Most signed a Sale and Purchase Agreement with Ms John and gave her various amounts of money as deposits for land located at Stella Mare/2nd Lagoon, Etas, Teouma and Rentapao.
3. Consequently, Ms John misappropriated the money totalling VT10,375,600. None of the complainants received land or leases over land. She partially refunded money to just 3 complainants: Lina Bae, Juliet Aru and James Fred. The total that remains missing in Ms John's hands is VT10,110,600 causing significant financial loss to the complainants.
4. The customary land owner Silas Alban confirmed giving his consent verbally to Ms John to sell his lands. In 2016, he became aware that she needed to refund the complainants' money. He only received VT100,000 from her.



5. On the following dates, Ms John converted the following sums of money for her own use, which money had been entrusted to her by the following persons as deposits for the relevant plots of land, and which money was not for loan or consumption:

	Dates	Person	Plot of land	Amount of money
Count 1	July 2015-October 2016	Tony Alick	Land lot 38	VT177,000
Count 2	August 2015-July 2016	Lina Bae	Land lot 18	VT208,000
Count 3	June-October 2015	Sylvain Lingsare	Land lot 46	VT112,000
Count 4	August 2015-October 2016	Paul Kalomuana	Land lot 26	VT220,000
Count 5	August 2015-December 2016	Jim Knox	Land lot 14	VT645,000
Count 6	August 2015-December 2016	Ken Amkori	Land lot 10	VT172,000
Count 7	September 2015-October 2016	Meriam Frank	Land lot 51	VT396,000
Count 8	September 2015-February 2016	Rinnie Sandy	Land lot 70	VT134,000
Count 9	September-October 2015	Bruce Wilson Abel	Land lot 87	VT222,000
Count 10	September-November 2015	Peter Viratokaki	Land lot 51	VT136,000
Count 11	September-October 2015	Jason Bakeo	Land lot 29	VT112,000
Count 12	October 2015	Peter Tasale	Land lot 87	VT100,000
Count 13	October 2015-November 2016	Patricia Solomon	Land lot 40	VT350,000
Count 14	November 2015	Whitely Jack	Land lot 41	VT200,000
Count 15	November 2015-March 2016	Mathew Aru	Lands lots 40 and 41	VT280,000
Count 16	November-December 2015	Charley Daniel	Land lot 40	VT150,000
Count 17	November 2015-June 2016	Timothy Maltock	Land lot 17	VT172,000
Count 18	December 2015-March 2017	Jenny Kenneth	Land lot 38	VT220,000
Count 19	December 2015-July 2017	Johnety James	Land lot 34	VT328,000
Count 20	January 2016	Jerry Gedeon Shem	Land lot 5	VT100,000

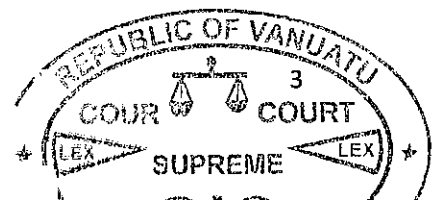


	Dates	Person	Plot of land	Amount of money
Count 21	February 2016	Saksak Celine	Land lot 16	VT100,000
Count 22	September 2015-July 2016	Kym Frericks	Land lot 54	VT124,000
Count 23	July-December 2016	Dora Obed	Land lots 14 and 15	VT2,700,000
Count 24	August-October 2016	Sheba Kaurua	Land lots 2 and 3	VT222,000
Count 25	September-October 2016	Mariana Mangau	Land lot 5	VT229,000
Count 26	September-October 2016	Veloboi Kalmelu	Land lot 33	VT112,000
Count 27	October 2016	Annie Sam	Land lot 3	VT100,000
Count 28	March 2012-July 2014	Juliet Aru	Lands lots 32 and 117	VT510,000
Count 29	September 2012-June 2016	James Fred		VT603,600
Count 30	April 2017	Kisson Rapsarei		VT320,000
Count 31	July 2013-October 2014	Henrick Karoly Mahinko	Land lot 16	VT261,000
Count 32	July 2015-April 2016	Dorry Ian	Land lot 44	VT202,000
Count 33	July 2015-February 2017	Juda Welin	Land lot 39	VT346,000
Count 34	July-August 2015	Edwin Obed	Land lot 14	VT112,000

TOTAL VT10,375,600

6. Some time after making initial payment, the complainants ceased making further payment and requested that Ms John return or refund their money due to factors including:

- There was no road access or power supply to the land lots;
- Duplicity in the sale of the land lots, including:
 - Lot 14 was sold three times to Jim Knox Allanson, Serah Obed and Edwin Obed;
 - Lot 16 was sold twice to Saksak Celine and Henrick Karoly Mahinko;
 - Lot 3 was sold twice to Sheba Karua and her mother and Annie Sam;
 - Lot 38 was sold twice to Tony Alick and Jenny Keneth;
 - Lot 51 was sold twice to Meriam Frank and Peter Viratokaki;
 - Lot 87 was sold twice to Bruce Wilson Abel and Peter Tasale;



- Lot 40 was sold three times to Patricia Solomon, Mathew Aru and Charley Daniel;
- Lot 41 was sold twice to Whitely Jack and Mathew Aru;
- Lot 5 was sold twice to Jerry Gedeon and Mariana Mangau;
- Ms John delayed taking some complainants to the land lots for which they had made payment;
- Ms John had an issue with the customary land owner;
- The land was disputed; and
- They had not received or owned the land or leases for the land despite their payments and for one complainant Dorah Obed, despite having made payment in full.

The specific facts relating to each count

7. The specific facts of each Count are:

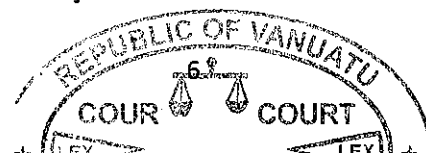
- i. Between July 2015 and October 2016, Tony Alick entrusted a total of VT177,000 to Ms John for lot 38. He paid the first deposit of VT100,000 on 29 July 2015. Subsequently and consistently he made other payments, totalling VT177,000. However Ms John never showed him where lot 38 is. He found out that she had an issue with the customary land owner when he returned to pay his monthly payment and she told him not to pay it. She told him also that she will transfer their names (complainants) to another agent who is also selling the same lands. He asked her to refund his money. She agreed. But she never did despite his numerous attempts to get it back from her. He went to her office but it was locked. He even tried to call her but without any answers from her. He has never owned land lot 38 nor his money refunded (Count 1).
- ii. Between August 2015 and July 2016, Lina Bae entrusted a total of VT208,000 to Ms John for lot 18. She consistently paid her deposits until she learnt from a friend that Ms John is not the right person to sell land as she was not registered at the Lands Department. Since then she approached Ms John to refund her money. Ms John agreed. However she only refunded her VT20,000. She has never owned lot 18 nor her money refunded in full (Count 2).
- iii. Between June 2015 and October 2015, Sylvain Lingsare entrusted a total of VT112,000 to Ms John for lot 46. He paid VT100,000 separately in June and August 2015 for lot 46. Two months later he paid VT12,000 therefore totalling VT112,000 paid to Ms John. Subsequently he found out that there were 4 to 5 people that were paying for that same lot. He then attempted to get Ms John to refund his money. However her office door was locked. She was unreachable by phone. They had a meeting with the police and she promised to return his money. She has not done so. He has never owned lot 46 nor his money refunded (Count 3).
- iv. Between August 2015 and October 2016, Paul Kalomuana entrusted a total VT220,000 to Ms John for lot 26. He consistently made payment to her. However, he

heard rumours that she has not paying the customary land owner. So he ceased his payments to Ms John. She would not answer her phone. His attempts to reclaim his money were unsuccessful. He has never owned lot 26 nor his money refunded (Count 4).

- v. Between August 2015 and December 2016, Jim Knox entrusted a total of VT645,000 to Ms John for lot 14. He was consistent and faithful in making monthly payments until the beginning of 2017 when he could not reach Ms John to continue with his payments. He even tried to contact her on her personal mobile phone numbers 7714147/5358757 that she gave him but without any success. She never showed him lot 14. He has never owned lot 14 nor his money refunded (Count 5).
- vi. Between September 2015 and March 2016, Ken Amkori entrusted a total of VT172,000 to Ms John for lot 10. He was consistent in making monthly payments however Ms John failed to show him where lot 10 was as she had promised. He ceased making payment and attempted to reclaim his money from her but without any success. She agreed to refund him but then did not. He has never owned lot 10 nor been his money refunded (Count 6).
- vii. Between 2 September 2015 and October 2016, Meriam Frank entrusted a total of VT396,000 to Ms John for lot 51. She consistently made payments but Ms John failed to show her where lot 51 was as she had promised. Ms Frank stopped paying Ms John and asked that her money be returned. This has not been done nor has she ever owned lot 51 (Count 7).
- viii. Between September 2015 and February 2016, Rinnie Sandy entrusted a total of VT134,000 to Ms John for lot 70. He made the following payments: VT100,000 on 7 September 2015; VT12,000 on 3 November 2015; VT10,000 on 11 January 2016 and VT12,000 on 19 February 2016. After that, he found out that Ms John had sold that same lot 70 to two others so he asked that his money be returned. She told him that she had started to refund others and that he needed to go to her office on 15 August 2017 to get his refund. He went to her office then to find the office closed. He has never owned lot 70 nor his money refunded (Count 8).
- ix. Between September 2015 and October 2015, Bruce Wilson Abel entrusted a total VT222,000 to Ms John for lot 87. He consistently made payments to Ms John. She told him that the land was not in dispute. They visited the area on one occasion but Ms John told him that they could not see the survey pegs because of the bushes. She told him also that the bulldozer would clear the area the following week. This was not done so he asked her to refund his money as he wanted to find another land instead. She agreed and asked him to return the following week. He went to her office to find other complainants also at her office. They were told to return the following week. At their meeting at the Police station, the customary land owner said that he never received one million vatu from her. Ms John was asked how she would refund the complainants' money. Her answer was that she would do so after land that she owned at Independence Park was sold. Bruce Wilson Abel has never owned lot 87 nor his money refunded (Count 9).
- x. Between October 2015 and November 2015, Peter Viratokaki entrusted a total of VT136,000 to Ms John for lot 51. She never showed him lot 51. He asked her to

refund his money. She refunded VT64,500. The balance of VT71,500 remains outstanding. He has never owned lot 51 nor his money refunded in full (Count 10).

- xi. Between September 2015 and October 2015, Jason Bakeo entrusted a total of VT112,000 to Ms John for lot 29. She promised him to show him lot 29 but she never did. He stopped making payment and asked her to return his money. He has never been refunded nor owned lot 29 (Count 11).
- xii. On 20 October 2015, Peter Tasale deposited VT100,000 for lot 87 and signed a sale and purchase agreement with her. She delayed to show him lot 87 so he asked her to return his money. His money has never been refunded nor has he ever owned lot 87 (Count 12).
- xiii. Between October 2015 and November 2016, Patricia Solomon entrusted a total of VT350,000 to Ms John for lot 40. She met Ms John and she told her that she was selling land on behalf of the customary land owner from Eratap. She told her about the payment arrangements. They signed a sale and purchase agreement and she consistently made payment. After Ms John failed to show her lot 40 as promised, she stopped making payment and asked for her money to be refunded. Ms John agreed to do so. She has never done so. Ms Solomon has never owned lot 40 (Count 13).
- xiv. On 3 November 2015, Whitely Jack entrusted a total of VT200,000 to Ms John for lot 41. Ms John promised him that once the area was cleared, she would let him know so that he could move in. This never happened. So he ceased making payment and asked that his money be refunded. He has never owned lot 41 nor his money refunded (Count 14).
- xv. Between November 2015 and March 2016, Mathew Aru entrusted a total of VT280,000 to Ms John for lots 40 and 41. He paid another VT80,000 on 29 March 2016. Subsequently he heard rumours that Ms John was deceiving people so he approached her to refund his money. She agreed to but then never did. He has never owned lots 40 and 41 (Count 15).
- xvi. In the period November to December 2015, Charley Daniel entrusted a total of VT150,000 to Ms John for lot 40. He was consistent in making payment for lot 40 however Ms John failed as promised to show him where lot 40. He stopped making payment and requested his money back. She has never refunded his money. He has never owned lot 40 (Count 16).
- xvii. Between November 2015 and June 2016, Timothy Maltock entrusted a total of VT172,000 to Ms John for lot 17. He made payments but then became aware that the land was in dispute. He stopped making payment and asked Ms John to return his money. She agreed but has never done so. Mr Maltock has never owned lot 17 (Count 17).
- xviii. Between December 2015 and March 2017, Jenny Kenneth entrusted a total of VT220,000 to Ms John for lot 38. She consistently made payments but stopped after hearing that someone else had taken that lot and after Ms John had failed as promised to take her to lot 38. She has never owned lot 38 nor her money refunded (Count 18).



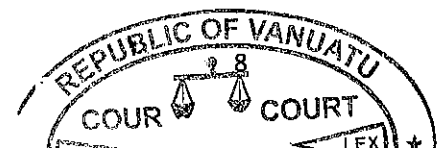
- xix. Between December 2015 and July 2017, Johnety James entrusted a total of VT328,000 to Ms John for lot 34. He consistently made payment via a standing order (can be seen from his bank statements). However, he learnt that Ms John had misused monies and the process of the sale of those lands was not proper so he ceased making payments. He has never owned lot 34 nor his money refunded (Count 19).
- xx. On 21 January 2016, Jerry Gedeon Shem entrusted a total VT100,000 to Ms John for lot 5. He paid the deposit and his wife signed the sale and purchase agreement with Ms John on his behalf as he was working. Subsequently he heard from one of his brothers that another real estate agent namely LJ Hooker was selling the lands that Ms John was also selling. So he stopped making payment and requested his money back. He has never owned lot 5 nor his money refunded (Count 20).
- xxi. In February 2016, Saksak Celine entrusted a total of VT100,000 to Ms John for lot 16. She and her husband (Jimmy David) he deposited VT100,000 on 5 February 2016 for lot 16 and then signed a sale and purchase agreement with Ms John on 11 February 2016. She heard later that Ms John was misusing money so she stopped making payment and requested their money back. That has never been done. They have never owned lot 16 (Count 21).
- xxii. Between September 2015 and July 2016, Kym Freriks entrusted a total of VT124,000 to Ms John for lot 54. Subsequently she wrote to Ms John terminating the Sale and Purchase agreement due to Ms John's failure to provide road access to lot 54. Ms John agreed to return her money but has never done so. Ms Freriks has never owned lot 54 (Count 22).
- xxiii. Between July 2016 and December 2016, Dora Obed entrusted a total of VT2,700,000 to Ms John for lots 14 and 15. She made payments until she completed payment in full. She asked Ms John to provide her with her registered lease; Ms John said she would do so on completion of payment. She completed payment and Ms John instead gave her the sale and purchase agreement. Ms Obed went to her office but it was closed. She met the land owner at Eratap and he told her that he allowed Ms John to sell his lands but she was not faithful and honest with him so he cancelled their agreement. Ms Obed then asked Ms John to return her money. Ms John agreed. She has never refunded the money. Ms Obed has never owned lots 14 and 15 (Count 23).
- xxiv. Between August and October 2016, Sheba Kaurua entrusted a total of VT222,000 to Ms John for lots 2 and 3. After meeting Ms John, she and her mother Louise Nauka chose the two plots of land, lots 2 and 3. They signed the sale and purchase agreement. They paid their deposits. Ms John promised the installation of water and power before December 2016. Ms Kaurua visited the area after that but there was no road access to lots 2 and 3. She asked Ms John to return her money. Ms John agreed but then has never done so. Ms Kaurua and Ms Nauka have never owned lots 2 and 3 (Count 24).
- xxv. Between September and October 2016, Mariana Mangau entrusted a total of VT229,000 to Ms John for lot 5. Her son Brian Mangau signed the sale and purchase agreement for lot 5. She faithfully made payment. She later found out that lot 5 was

in dispute so she stopped making payment and requested her money back. On 18 August 2017, they met at the Police Station. Ms John agreed to return the complainants' money but she has not. Mrs Mangau has never owned or occupied lot 5 (Count 25).

- xxvi. Between September and October 2016, Veloboi Kalmelu entrusted a total of VT112,000 to the accused. She made payments to Ms John however Ms John did not show her lot 33 as promised. She stopped payment and requested her money back. She has never owned lot 33 nor her money refunded (Count 26).
- xxvii. On 14 October 2016, Annie Sam entrusted a total of VT100,000 to Ms John for lot 3. Ms John promised to take her to lot 3 but this never happened. Ms Sam requested her money back. Ms John has never done so. Ms Sam has never owned lot 3 (Count 27).
- xxviii. Between March 2012 and July 2014, Juliet Aru entrusted a total of VT510,000 to Ms John for lots 32 and 117 (VT300,000 paid on 22 March 2012 and VT210,000 on 16 July 2014). In 2015, she found out that another person was working on these lots of land. In 2017 she asked Ms John to refund her money. Ms John promised to refund her in full but then has only refunded VT40,000. Ms Aru has never owned lots 32 and 117 (Count 28).
- xxix. Between September 2012 and June 2016, James Fred entrusted a total of VT603,600 to the accused. He faithfully made monthly payments until told by his friends that Ms John was prevented from selling lands. He ceased making payment and asked for his money to be refunded. Ms John partially refunded his money as follows:
- VT100,000 on 22 December 2016;
 - VT60,000 on 15 February 2017;
 - VT20,000 on 2 March 2017;
 - VT15,000 on 10 March 2017; and
 - VT10,000 on 4 April 2017.

Ms John still owes him VT398,600. He has never owned the piece of land paid for nor his money refunded in full (Count 29).

- xxx. On 24 April 2017, Kisson Rapsarei entrusted a total of VT320,000 to Ms John for a piece of land. He faithfully made payments. Road access was never provided as promised. He found out later that the same land was sold to another person. He approached Ms John for his refund. Ms John agreed to refund his money but has never done so. He has never owned the land paid for (Count 30).
- xxxi. Between July 2013 and October 2014, Henrick Karoly Mahinko entrusted a total of VT261,000 to Ms John for lot 16 at Rentapao. He faithfully made payment to Ms John. Subsequently he became aware that Ms John had deceived him and that she was not the genuine agent to sell lands. He approached her to refund his money. She has never done so. He has never owned lot 16 (Count 31).

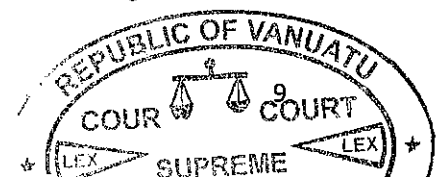


- xxxii. Between July 2015 and 4 April 2016, Dorry Ian entrusted a total of VT202,000 to Ms John for lot 44. She faithfully made payment until she heard from her friend that Ms John was not honest in her dealings. She stopped making payment. There was no sale and purchase agreement signed between them. She has never owned lot 44 nor been refunded (Count 32).
- xxxiii. Between July 2015 and February 2017, Juda Welin entrusted a total of VT346,000 to Ms John for lot 39. He faithfully made payments to Ms John. After Ms John failed as promised to show him where lot 39 was, he stopped making payment. He asked her to return his money. She agreed. She has never refunded his money. He has never owned lot 39 (Count 33).
- xxxiv. Between July and August 2015, Edwin Obed entrusted a total of VT112,000 to Ms John for lot 14. He met Ms John and she told him the process of selling the land. She showed him the map of the lands too. He chose lot 14. On 29 July 2015, they signed the sale and purchase agreement. He made five deposits altogether totalling VT260,000. Someone broke into their house and stole his wife's wallet containing the copies of the receipts. The only receipt records he could provide are for payments of VT100,000 on 29 July 2015 and VT12,000 on 24 August 2015. Ms John promised to show him lot 14 but she never did. So he ceased making payments and requested his money back. Ms John promised to refund his money. She has not. He has never owned 14 (Count 34).

8. On 6 June 2020, Ms John made full admissions to the Police.

C. Sentence Start Point and Personal Factors

9. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.
10. The maximum sentence for misappropriation is 12 years imprisonment.
11. It is mitigating that 3 complainants were partially refunded.
12. The offending is aggravated by the following:
- The significant financial loss caused to the complainants;
 - The number of complainants involved (34);
 - Repeated dishonest offending over a 6-year period;
 - Ms John benefitted substantially from the offending;
 - The offending was premeditated and planned;
 - The subterfuge employed including the use of a sale and purchase agreement and map showing the land lots to conceal the reality of her offending; and
 - No prospect of reparation despite her promises to.



13. The factors set out above require a global sentence start point of 7 years imprisonment.
14. Ms John pleaded guilty at the first opportunity. Given the strength of the Prosecution case, I deduct 25% for the plea (21 months).
15. Ms John is 53 years old. She has 4 children and is separated from her husband. She has no previous convictions. No custom reconciliation ceremony has been performed. A number of the complainants have stated they will not accept any custom reconciliation; they would like their money refunded.
16. Some of the complainants commenced civil proceedings against Ms John and have obtained an enforcement warrant for seizure and sale of a registered leasehold property. Mrs Gesa submitted that given the civil proceedings, the criminal case came as a surprise to Ms John as she thought the matter had already been dealt with by the Court. With respect, I do not agree. The taking of civil action does not preclude a criminal prosecution. Further, only some of the complainants took the civil action, not all the complainants.
17. Ms John is stated to be remorseful however that does not sit well with her dishonesty offending over a 6-year period, even after numerous complainants had requested refund of their money.
18. I deduct 3 months for Ms John's personal factors.

D. End Sentence

19. Taking all of those matters into account, the end sentences imposed concurrently on all charges (Counts 1-34) is 5 years imprisonment.
20. The end sentences imposed are to denounce dishonesty offending, particularly in the circumstances where each complainant undoubtedly expended part of their savings on what Ms John led them to believe was the purchase of land resulting in their suffering significant financial loss. The sentences are also imposed to mark the gravity of the offending, to hold Ms John accountable for her offending and to deter Ms John and others.
21. The circumstances, the nature of the crime and the character of the offender do not constitute exceptional circumstances to suspend the sentence.
22. Ms John has 14 days to appeal.

**DATED at Port Vila this 21st day of July 2021
BY THE COURT**

..... *VM Trief*
Justice Viran Molisa Trief

