

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

Cr. Case No. 289 of 2015

PUBLIC PROSECUTOR

-v-

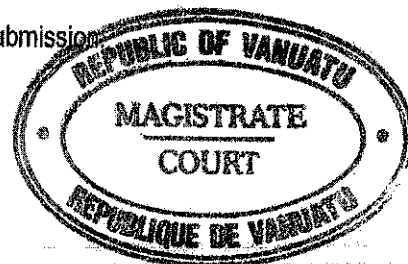
EMILE BONG

Coram: *Moses Peter*
Court Clerk: *Florina Ephraim*

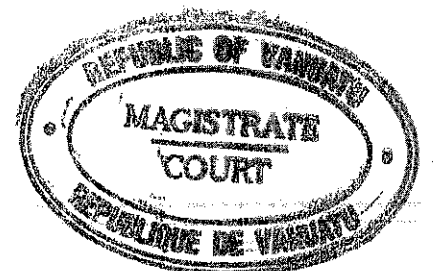
Appearances: *Betina Ngwele for the State*
Linda Bakokoto for Defendant
Defendant appear in Person

SENTENCING

1. Mr. Emile Bong, you first appeared in court on 3rd April 2017 and pleaded guilty on the charge of Misappropriation contrary to section 125 (b) of the Penal Code Act [CAP.135].
2. Today you appear for sentencing on the charge after time was allocated for a pre-sentence report to be submitted by Probation Officer in the Correctional Service, and sentencing submissions to be filed by both counsels.
3. The brief facts of the case have it that one colleague Police Officer namely Anne Marie Simeon lodged a complaint against you for misappropriating an amount of VT 18,000 that was entrusted to you by Police College Staff as their contributions towards the social club. Over time, they have requested a report from you about how the money had been spent and the purpose for which it was spent. However, you failed to report the money as requested.
4. You were cautioned by the police with regard to the complaint and you disputed the money reported to have been misappropriated by you. You said the amount you had possession thereof was less than VT 50,000.
5. The maximum penalty for Misappropriation is 12 years imprisonment.
6. The Court is grateful to both counsels for their helpful sentencing submission.



7. Having observed the brief facts of the case, I am of the view that you being a police officer shared responsibilities outside the scope of your duties with your colleague police officers and was given responsibility to look after the money which was given by other colleague police officers as contributions towards the social club.
 8. When you were given the money, you were tempted by it and used it to satisfy your personal desires.
 9. You have breached the high level of trust on you as a police officer with your colleague police officers. You are supposed to have account of all spending of the money for all social club activities. That did not happen as time went by and no social club activities were organized so the social club members demanded a report of the money you have on your possession.
 10. If you can do such an unacceptable act with your colleague police officers in your work place, then it is possible that you can do same outside your workplace. That defeats your entire duty as a police officer to protect people's life and property in this country.
 11. Our system of governance upholds rule of law which means irrespective of your status in the society, everyone is subject to the law.
 12. A sentence I will impose on you is to mark the seriousness of your offence and to set as an act of deterrence to you and to your colleague police officers.
 13. In the case of **Public Prosecutor v Ravalou [2003] VUSC 53**, the Court imposed custodial sentence of one (1) year and four (4) months on the defendant who misappropriated VT 4,178,002 from National Bank of Vanuatu when he was working as a Loan Recovery Officer.
 14. In **Public Prosecutor v Lucy Morris [2011] VUSC 62**, the Court adopted starting point of 6 months' imprisonment for all offences of forgery, theft and misappropriation when working in the National Bank of Vanuatu. 2 months were deducted to reflect early guilty plea and a further one month for previous good character. The court also considered time spent in custody and imposed end sentence of 23 days.
 15. Given the nature of your offence, I am persuaded to adopt the sentencing tariff in the case of Public Prosecutor v Lucy Morris above on the view that the amount you misappropriated is far lesser than that misappropriated by Lucy which is VT 94,800.
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16. I consider that the starting point for you shall be 6 months' imprisonment.
 17. The aggravating factors taken into account are:
 - You as a Police Officer breached trust by other colleague police officers.
 - Your social club members were deprived enjoyment of their money.
 - You abused your authority as the treasurer of the social club.
 18. In considering the aggravating factor, I uplift this by 2 month making a total sentence of imprisonment to 8 months.



19. The mitigating factors taken into account from your counsel are that:

- You are a first time offender.
- You are married with 5 children
- Your family depended entirely on your employment for their needs.
- You displayed remorse for your action.
- The prosecution of this case had taken more than 6 years.

20. You are entitled to one third reduction of the sentence because of your guilty plea and that is 11 weeks' reduction which now leaves you with a balance of 5 months and 7 days' imprisonment.

21. I further deduct 5 weeks after considering the mitigating factors and the delay in prosecuting your case.

22. Your end sentence is 4 months imprisonment.

23. I have considered the amount you have misappropriated and accepted to suspend your sentence for 12 months. In event that you are further convicted for any other offences, this sentence will automatically be activated and you will serve the full sentence together with any other sentences imposed on you for your reoffending.

24. For completeness, you are ordered to compensate the Complainant for their loss in the sum of VT 18,000 in 1 month from date of this judgment, failure of which, the court shall impose the imprisonment sentence pursuant to section 58ZD (2) (3) of the Penal Code Act [CAP 135].

25. You have 14 days to appeal to the Supreme Court if you are not satisfied with this sentence.

DATED at Port Vila this 24th day of May 2018

BY THE COURT

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MOSES PETER
Senior Magistrate

