

PUBLIC PROSECUTOR - v - DICK EADE

Coram: Chief Justice Vincent Lunabek

Counsel: Mrs Heather Leo for the Public Prosecutor
Mr Colin for the Defendant

SENTENCE

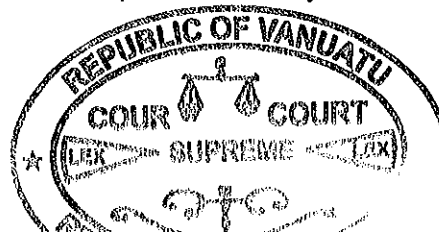
This is the sentence of the Defendant, Dick Eade. The Defendant was charged and pleaded guilty to a total of 109 counts of offences under the Vanuatu National Provident Fund Act [CAP.189].

The charges being:

- (a) 1 count of failure to pay contributions after having made deductions to the employees' wages, contrary to Sections 26(1) & 50(2);
- (b) 36 counts of failure to produce pay rolls records, contrary to Sections 58(c) & 50(1)(i);
- (c) 36 counts of failure to pay contributions, contrary to Sections 26(1) & 50(1)(c);
- (d) 36 counts of failure to pay surcharge, contrary to Sections 26(2) & 50(1)(e) of the VNPF Act.

The brief facts show that the Defendant, Dick Eade, is the current owner and Manager of Teouma Gardens. The Defendant took over ownership and management of the Teouma Gardens from one Rusty Russ in 1990. Teouma Gardens is a registered employer with VNPF since May 1987 and its Employer number is 14558.

Since the Defendant took over the ownership and management of Teouma Gardens, he employed 14 Ni-Vanuatu whom he paid a salary of more than



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VT3,000 per month. From the salary slip VNPF deductions are always shown but physically these were never paid into employees account at VNPF.

The factual process is simple. In VNPF Office, there is a document known as Contribution Schedule which is sent out to each employer registered with VNPF before the end of each month. In this document VNPF asks the Employer to fill in the required necessary details and return such form to VNPF with payment of contributions.

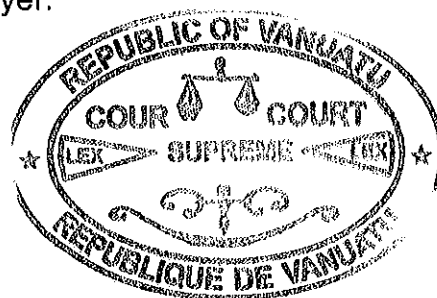
When these contributions schedules forms are not returned then VNPF issues notice to the Employers in question asking them to produce mainly payroll records and make payments. Once an Employer is defaulted in contribution payment then surcharge is automatically incurred at 5% of the contribution amount in respect of unpaid contribution month multiply remain unpaid.

In the present case, the Defendant, Dick Eade, of Teouma Gardens failed to turn up with the documents requested and failed to pay contributions for his employees from 2003 to 2008. The failure of the Defendant has caused him to breach VNPF Act for which he is being charged and had pleaded guilty to each and all of 109 counts.

The 109 counts against the Defendant represent a period of criminal conduct extending from 2003 to 2008. It is some 5 years of failing to comply with the requirements of the VNPF Act in relation to 14 employees.

Under the VNPF Act, the provisions referred to above which the Defendant fails to comply with mandate those requirements.

In mitigation, your counsel submitted that the Court must take into account of your guilty plea; the fact that you are a first time offender and you have a long history and record of being a good employer since 1990 when you bought the Teouma Gardens as a business from Mr Rusty Russ. So, for 19 years, your counsel said you have shown yourself to be a good employer.



Your counsel informed the Court that you admitted at the first opportunity your guilt in relation to the offences you committed; you cooperate fully with the VNPF management and the prosecution. You are willing to re-finance all monies outstanding. You provided through your counsel all steps you have taken to re-finance the monies outstanding.

When I sentence you I take into account of all what your counsel told the Court about. I take into account that you are 67 years old. You came from New Zealand and you have 5 children. From 2003 to the date of your guilty pleas, your counsel informs the Court that you manage the Teouma Gardens and you are financially responsible for 9 Ni-Vanuatu and no longer 14 employees. You contribute abundantly to various communities in Vanuatu in different forms. I take all that into considerations.

In the event of failing to comply, then, Section 50(1) of the VNPF Act provides in each case a maximum penalty to be imposed of a fine of VT100,000 or imprisonment for 6 months or to both such fine and imprisonment.

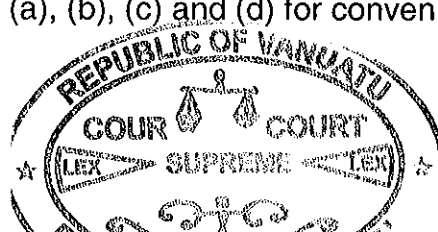
An offence under Section 50(2) of the Act set the maximum penalty to a fine not exceeding 200,000VT or to a term of imprisonment not exceeding 1 year, or to both such fine and imprisonment.

In this case, the total amount owing and requested by the prosecution for the relevant offences and for the period referred to in the charges in accordance with Sections 26(1), (2); 50(1)(c), (e), (i); 50(2); 58 of the Act are as follows:

- (a) VT1,598,350 outstanding surcharges
- (b) VT 980,781 outstanding contributions
- (c) VT 500,000 for prosecution costs.

Offences in violation of the provisions of the VNPF Act [CAP.189] are serious offences. Offences under ss. 26 and 50 of the Act are not only serious but dishonest offences.

The offences are grouped under categories (a), (b), (c) and (d) for convenience.



In category (a) i.e. 1 count of failure to pay contributions after having made deductions to the employees wages, contrary to Sections 26(1) and 50(2) of the Act, the Defendant is to pay a fine of VT100,000 and 3 months imprisonment suspended for 2 years, concurrent.

In category (b) i.e. 36 counts of failure to produce payroll records, contrary to Sections 58(c) and 50(1)(i), the Defendant is to pay at a rate of VT30,000 fine per count which is totalling VT1,080,000 and 3 months imprisonment suspended for 2 years, concurrent.

In category (c) i.e. 36 counts of failure to pay contributions, contrary to Sections 26(1) and 50(1)(e) of the Act, the Defendant is to pay at a rate of 30,000 Vatu fine per count which is totalling VT1,080,000 and 3 months imprisonment suspended for 2 years, concurrent.

In category (d) i.e. 36 counts of failure to pay surcharge, contrary to Sections 26(2) and 50(1)(e) of the Act, the Defendant is to pay at a rate of VT20,000 fine per count which is totalling VT720,000 and 3 months imprisonment suspended for 2 years, concurrent.

The prosecution is entitled to the costs of VT200,000.

In summary, the Defendant is ordered to pay:

1. VT 980,781 outstanding contributions;
2. VT1,598,350 outstanding surcharges;
3. VT2,980,000 for fines
4. VT 200,000 for prosecution costs;

VT5,759,131 (TOTAL)

METHOD OF PAYMENT AND SEQUENTIAL ORDERS

The Defendant is to pay the above sum in the following manner:



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1. VNPF contributions and surcharges

The VNPF contributions and surcharges are totalling VT2,579,131.

The Defendant is to pay Vatu 50,000 for contributions by tomorrow Wednesday 7 October 2009. The Defendant shall pay the outstanding balance of contributions and surcharges (of VT2,079,131) at the rate of VT50,000 per month until the end of February 2010 i.e. 28 February 2010. On 1 March 2010, the Defendant shall pay the remaining balance by a lump sum payment.

2. Fines and costs

The fines and costs are totalling VT3,180,000. The Defendant is to pay VT50,000 per month and he must start payment after final settlement of the VNPF contributions and surcharges until final settlement of the fines and costs or 6 months imprisonment in default.

3. The Defendant shall not leave Vanuatu until fines and costs are paid.

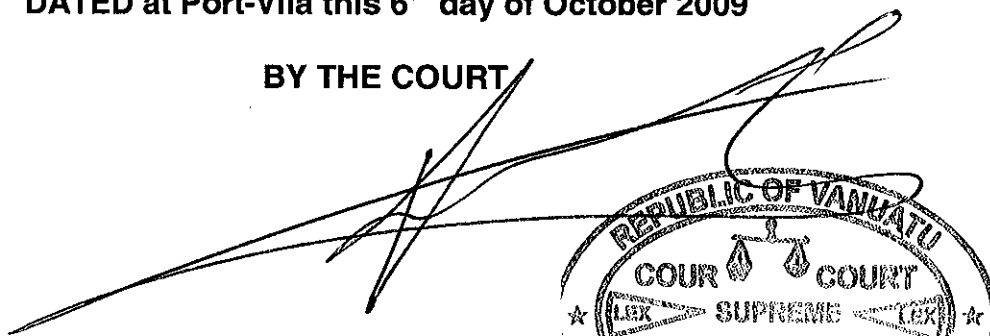
4. I make order that the passport of the Defendant must be surrendered to this Court by the date of this Order until expiration of the Defendant's sentence. No further application by the Defendant for a new passport.

5. Liberty to apply subject to sufficient notice to the other side.

6. The Defendant has 14 days to appeal if he is not happy with his sentence.

DATED at Port-Vila this 6th day of October 2009

BY THE COURT



Vincent LUNABEK
Chief Justice

