

**PUBLIC PROSECUTOR -v- TOM JACK MAEL  
FREDERICK MAEL  
MORRIS AVOCK**

**Coram:** *Chief Justice Vincent Lunabek*

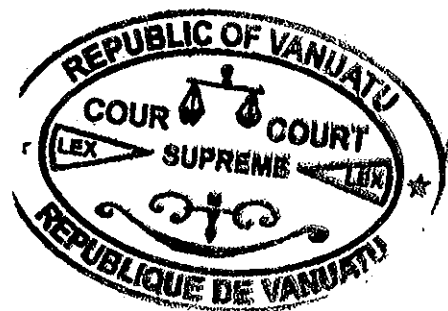
**Counsel:** *Mr Tristan Karae for the Public Prosecutor  
Mr Ronald Warsal for Defendants: Frederick Mael & Morris Avock  
Mr Andrew Bal for the Defendant Tom Jack Mael.*

## **SENTENCE**

This is the sentence of the three Defendants: Tom Jack Mael, Frederick Mael and Morris Avock. The three Defendants conspired and set up a fraudulent scheme to obtain money from the Vanuatu National Provident Fund (VNPF) in the years 2003 and 2005. The scheme consisted of lodging fraudulent death certificates and letters to the VNPF claiming that both Defendants Frederick Mael and Morris Avock were already died and that Defendant Tom Jack Mael is to receive the death benefits and savings from both Frederick Mael and Morris Avock in respect to the VNPF accounts. The VNPF was persuaded by the false death certificates and letters and released the sums of VT220,000 and of 232,835 VT being the savings and death benefits of the VNPF members Morris Avock in 2003 and Frederick Mael in 2005. The total amount defrauded from VNPF Scheme was VT452,835. The VNPF lodged a complaint against the three Defendants and they were charged in an Information dated 23 December 2009.

On 12 February 2010, the three Defendants entered guilty pleas in the following way:

Defendant Tom Jack Mael pleaded guilty to:



- Two counts of Obtaining Property by False Pretences, contrary to section 125(c) of the Penal Code Act [CAP.135] (Counts 1 and 2);
- Two counts of Forgery, contrary to section 140 of the Penal Code Act [CAP.135] (counts 3 and 4);
- One count of Uttering Forged Documents, contrary to section 141(a) of the Penal Code Act [CAP.135] (count 5);
- Two counts of Obtaining Money by False or Misleading Statements, contrary to section 130C of the Penal Code Act [CAP.135] (counts 6 & 7);

Defendant Frederick Mael pleaded guilty to:

- One count of Obtaining Property by False Pretences, contrary to section 125(c) of the Penal Code Act [CAP.135] (Count 1);
- One count of Forgery, contrary to section 140 of the Penal Code Act [CAP.135] (counts 3);
- One count of Uttering Forged Documents, contrary to section 141(a) of the Penal Code Act [CAP.135] (count 5);
- One count of Obtaining Money by False or Misleading Statements, contrary to section 130C of the Penal Code Act [CAP.135] (count 6);

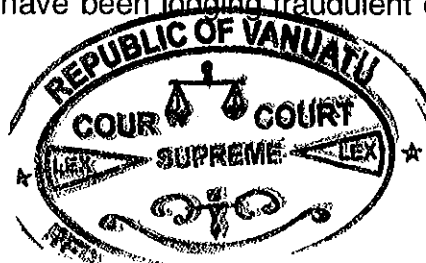
Defendant Morris Avock pleaded guilty to:

- One count of Obtaining Property by False Pretences, contrary to section 125(c) of the Penal Code Act [CAP.135] (Count 2);
- One count of Forgery, contrary to section 140 of the Penal Code Act [CAP.135] (counts 4);
- One count of Obtaining Money by False or Misleading Statements, contrary to section 130C of the Penal Code Act [CAP.135] (count 7);

The summary of the facts are as follows:

The complainant in this matter is the Vanuatu National Provident Fund (VNPF) Manager of Contributor Services Department.

The complaint is made against the three Defendants (Tom Jack Mael, Frederick Mael and Morris Avock), alleging that the Defendants have been lodging fraudulent death



certificates and letters to the VNPF claiming both Frederick Mael and Morris Avock are deceased and that Tom Jack Mael is to receive the death benefits and saving from both Frederick and Morris Avock respective VNPF accounts.

Brief facts in relation to the Defendants Tom Jack Mael and Frederick Mael:

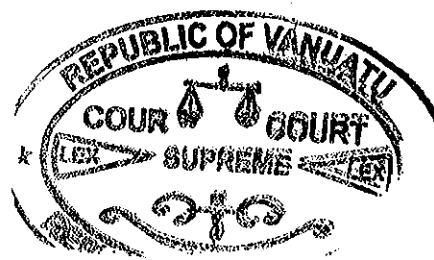
The complaint was made to the police on the 23<sup>rd</sup> of January 2007 by the VNPF Manager of Contributor Services Department.

In 2005 Fredrick Mael and Tom Jack Mael conspired to defraud the VNPF after Frederick Mael had approached Tom Jack Mael and asked if Tom Jack could help him with drawing up letters to get VNPF to release monies from his VNPF account, so that he could use the monies to build his house at Salili area in Port-Vila.

On or before the 28<sup>th</sup> of February 2005 Tom Jack Mael and Frederick Mael produced an extract from the death register for the year 2004 claiming that the Defendant Frederick Mael died on the 25<sup>th</sup> of August 2004. A VNPF application form was lodged claiming entitlements of Death Claim No.4252/05. It was lodged by Tom Jack Mael and Frederick Mael. They both forged the signature of Frederick Mael's father which Tom Jack Mael signed the Death Claim form on behalf of Frederick Mael's father and himself as a witness to the claim.

There were also letters written by both Defendants to the VNPF. In a letter dated the 17/02/05 both Defendants wrote to VNPF stating that Frederick Mael's mother died and used and forged the signature of Chief Simon Hokau. The second letter was issued on the 19/03/05 by both Defendants who wrote to VNPF stating that Fredrick Mael does not have a wife and has no children and again they used and forged the signature of Chief Simon Hokau.

On or about the 1<sup>st</sup> April 2005, the Vanuatu National Provident Fund, acted upon the documents and information produced by both the Defendants believing it to be genuine and thus released payments in the amount of VT232,835 which included death benefit in a withdrawal cheque No.13823 which was deposited into Tom Jack account at ANZ Bank in Vila.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Frederick Mael admitted in his statement on the 16<sup>th</sup> of November 2007 that Tom Jack Mael helped him by writing letters and lodging death claims to the Vanuatu National Provident Fund to release sums of VT232,835 from Frederick's VNPf account. The Defendant also admitted that the letters from Chief Simon Hokau were written by Tom Jack Mael without the Chief's knowledge.

Tom Jack Mael admitted in his statement on the 16<sup>th</sup> November 2007 that he was approached by Frederick Mael with the idea to defraud VNPf in releasing the sums in his VNPf account. Tom Jack Mael admitted he wrote up and signed the letters as if they were from Chief Hokau himself. Tom Jack Mael further admitted that he went and cashed the money and gave VT100,000 to Frederick Male and held VT132,000.

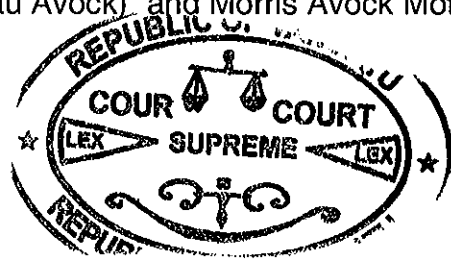
Brief facts in relation to the Defendants Tom Jack Mael and Morris Avock:

The complaint was made to the police on the 1<sup>st</sup> of February 2007 by the VNPf Manager of Contributor Services Department.

In 2003, Tom Jack Mael and Morris Avock conspired to defraud the VNPf after Morris Avock and Tom Jack Mael heard that it was easy to lie to the VNPf in order for a member to remove monies from his VNPf account. So then Morris Avock and Tom Jack Mael on that day planned to make a letter to VNPf to fake Morris Avock death in order for the VNPf to release Morris Avock death benefits and savings, as Morris Avock wanted to use the money to pay for school fees.

On or before the 20<sup>th</sup> of November 2003 Morris Avock went to Sea front to meet with Tom Jack Mael and Tom Jack Mael had prepared a letter dated the 20/11/2003 to the VNPf on behalf of Morris Avock father and mother that the Defendant Morris Avock died on the 21<sup>st</sup> of October 2003. Both Defendants then forged the signature of Morris Avock father which was signed by Tom Jack Mael, and also Tom Jack Mael signed as a witness to the death claim.

On the 18<sup>th</sup> December 2003, the VNPf released Morris Avock death benefit and savings in the name of Morris Avock father (Hokau Avock) and Morris Avock Mother



(Lein Savual) which were two separate withdrawals cheques dated the 18/12/03. Both Defendants then wrote a letter to the VNPF to have both withdrawal cheques deposited in Tom Jack Mael account to ANZ Bank. Both Defendants then wrote a letter to ANZ Bank on the 27/12/2003 stating that Morris Avock father and mother authorizing the ANZ Bank to put Morris Avock monies in Tom Jack Mael account at ANZ Bank in Vila. On or about the 29/12/03 VNPF deposited monies from Morris Avock VNPF account to Tom Jack Mael account in the sum of VT220,803.

After the successful withdrawal of the VT220,803 the Defendant Tom Jack Mael gave VT80,000 to Morris Avock. The Defendant Morris Avock thought that VNPF gave only 80,000 to them so he gave VT30,000 as commission to Tom Jack Jael not knowing that Tom Jack Mael had already got his share of VT170,803.

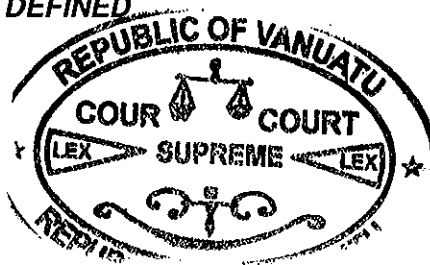
After the incident the Defendant Morris Avock went to VNPF after he was caught by one of the VNPF staff in town. At the VNPF office he confessed that he and Tom Jack Mael carried out the fraud because Morris Avock was short in school fees and Morris Avock used the money to pay for school fees and drink kava. He admitted been given only VT80,000 and he gave VT30,000 to Tom Jack Mael as commission.

On or about the 22/11/2007 both Defendants were brought to the police station where they admitted to the allegation of defrauding the VNPF in releasing Morris Avock death benefits and savings. They both also admitted that they forged the signatures of Morris Avock's father (who was at that time deceased) and mother who had no knowledge of the letter made by both Defendants on the letters and death claim which were lodged to the VNPF on the 20<sup>th</sup> of November 2003.

Obtaining property by false pretences, forgery, uttering forged documents and obtaining money by false or misleading statements are prohibited by the criminal law of Vanuatu as part of offences against property.

The relevant provisions of the Penal Code Act [CAP.135] dealing with those offences are sections 124; 125(c); 130C(a); 139; 140 and 141. They are set out below:

***"OBTAINING PROPERTY BY FALSE PRETENCES DEFINED***



124. Every person obtains property by false pretences who, by a false pretence, that is to say, any representation made by words, writing or conduct, or a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false, or does not believe to be true with intent to defraud, either directly or indirectly, obtains possession of or title to anything capable of being stolen or procures anything capable of being to be delivered to any person other than himself.

#### **PROHIBITION OF FALSE PRETENCES**

125. No person shall cause loss to another-

....

(c) by false pretences.

Penalty: Imprisonment for 12 years."

#### **"OBTAINING MONY ETC BY FALSE OR MISLEADING STATEMENTS**

130C. A person must not, with intent to obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever, make or publish, or concur in making or publishing, any statement (whether or not in writing):

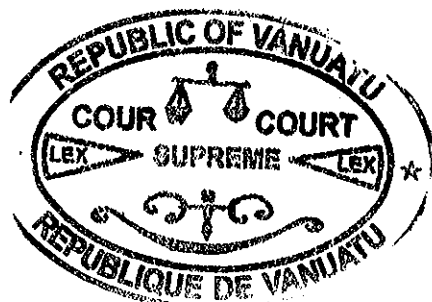
(a) which he or she knows to be false or misleading in a material particular; or

(b) which is false or misleading in a material particular and is made with reckless disregard as to whether it is true or is false or misleading in a material particular.

Penalty: Imprisonment for 12 years."

#### **"FORGERY DEFINED**

139.(1) Forgery is making a false document, knowing it to be false, with the intent that it shall in any way be used or acted upon as genuine, whether within the Republic or not, or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within the Republic or not.



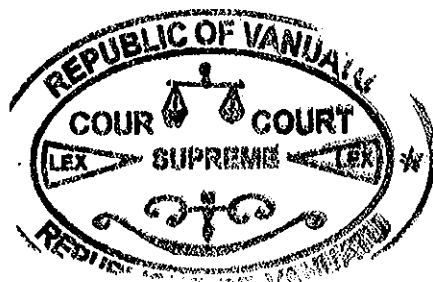
- (2) For the purposes of this section, the expression "making a false document" includes making any material alteration in a genuine document, whether by addition, insertion, obliteration, erasure, removal or otherwise.
- (3) For the purposes of this section the expression "false document" means a document-
- (a) of which the whole or any material part purports to be made by any person who did not authorize its making;
  - (b) of which the whole or any material part purports to be made on behalf of any person who did not authorize its making;
  - (c) in which, though it purports to be made by the person who did in fact make it or authorize its making, or purports to be made on behalf of the person who did in fact authorize its making, the time or place of its making, whether either is material, or any number or distinguishing mark identifying the document, whether either is material, is falsely stated;
  - (d) of which the whole material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person; or which is made in the name of an existing person, either by him or by his authority, with the intention that it should pass as being made some person, real or fictitious, other than the person who makes or authorizes it.
- (4) It is immaterial in what language a document is expressed or in what country or place and whether within or beyond the Republic it is expressed to take effect.
- (5) The crossing of any cheque, banker's draft, post office money order, postal order or other document the crossing of which is authorized or recognized by law, is a material part of such document.


#### **PROHIBITION OF FORGERY**

140. No person shall commit forgery.

Penalty: Imprisonment for 10 years.

#### **UTTERING FORGED DOCUMENTS**



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141. *No person, knowing a document to be forged, shall-*

(a) *use, deal with, or act upon it as if it were genuine;*

(b) *cause any person to use, deal with, act upon it as if it were genuine.*

*Penalty: 5,000VT fine or imprisonment for 1 year or both fine and imprisonment."*

(Section 36(3) Interpretation Act [CAP.132])

In their submissions, the prosecution refers to the following cases:

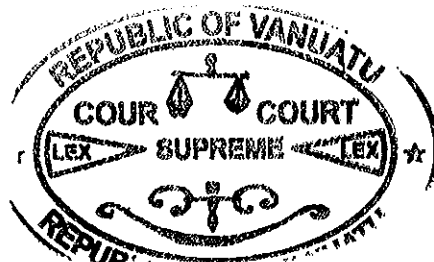
- Public Prosecutor v. Mala [1995] VUSC 22, Criminal Case No. 042 of 1995;
- Public Prosecutor v. Leo [2008] VUSC 62, Criminal Cases Nos.70, 723, 74, 75, 76, 77 and 78 of 2007;
- Public Prosecutor v. Adams [2008] VUCA 28, Criminal Appeal Cases Nos.11, 12, 13, and 14 of 2008.

In the present case, the following aggravating factors exist:

- The period over which the fraud have been perpetrated by the Defendants (Tom Jack Mael and Morris Avock in 2003 and Tom Jack Mael and Frederick Mael in 2005).
- All Defendants have previous convictions.
- The impact on the offences on the public and the public confidence towards the complainant institution (VNPF).
- There was pre-meditation in carrying out the offences.

Defendant Tom Jack Mael is facing the most charges and is the most deeply involved of the Defendants. He is sentenced to 24 months imprisonment on each count of obtaining property by false pretences; 24 months imprisonment on each count of forgery; 10 months imprisonment on one count of uttering forged documents and 24 months imprisonment on two counts of obtaining money by false or misleading statements.

Defendant Frederick Mael is sentenced to 24 months imprisonment for obtaining property by false pretences; 24 months imprisonment for forgery; 10 months for





uttering forged documents and 24 months imprisonment for obtaining money by false or misleading statements.

Defendant Morris Avock is sentenced to 24 months imprisonment for obtaining property by false pretences; 24 months imprisonment for forgery and 24 months imprisonment for obtaining money by false or misleading statements.

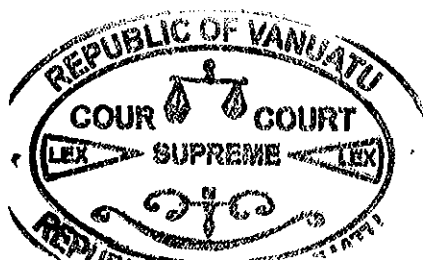
The following submissions are made for and on behalf of each of the Defendants by their respective counsel in mitigation.

Defendant Tom Jack Mael is 48 years of age. He is from Paama Island. He lives in Port-Vila at Fresh Wota 5 with his wife and children. He has a business. He has two (2) previous convictions of unlawful entry and theft and served 4 months imprisonment in 1983. He pleads guilty at the first opportunity given to him by the Court. From the total amount of VT452,385 stolen, he had used 307,385 Vatu. He is willing to repay the money and he is willing to make a first payment of 25,000 Vatu and 15,000 VT at the end of each month until the amount of VT307,385 is fully paid.

Defendant Frederick Mael is 40 years old. He is from Paama Island. He has 7 children and he is widow father. He is an elder of Neil Thomas Ministry Church. Three of his children are in school. He is sorry for his wrongdoing. He had minor previous convictions. He is willing to repay VT95,000 he had used out of the total amount of Vatu stolen. He is willing and ready to make a first payment of VT15,000 and 5,000 Vatu until the amount of VT95,000 is fully paid.

Defendant Morris Avock is 45 years of age. He is married and has 4 children. He pleaded guilty at the first opportunity given to him. He is a Deacon of Glory Church of Ohlen Fresh Wind. His wife is unemployed. Two of his children are still attending secondary school. He is willing to repay the amount of VT50,000 he had used out of the total amount stolen. He is ready to make a first payment of 10,000 Vatu and 5,000 Vatu at the end of each month until the amount of VT50,000 is fully paid.

After the proper exercise of the balance between the aggravating and mitigating factors, each Defendant is sentenced as follows:



Defendant Tom Jack Mael's sentence is reduced to 20 months imprisonment on all counts of obtaining property by false pretences, forgery, obtaining money by false or misleading statements and 8 months for uttering forged documents (counts 1, 2, 3, 4, 5, 6 and 7).

Defendant Frederick Mael's sentence is reduced to 20 months imprisonment on counts of obtaining property by false pretences, forgery, obtaining money by false or misleading statements and 8 months for uttering forged documents (counts 1, 3, 5 and 6).

Defendant Morris Avock's sentence is reduced to 20 months imprisonment on counts of obtaining property by false pretences, forgery, obtaining money by false or misleading statements (counts 2, 4 and 7).

I consider compensation and upon submissions from counsel, I decide to make order for compensation against each Defendant in addition to other sentences imposed on the Defendants in this case.

I consider also whether the imprisonment term of each Defendant should be suspended. I decline to do so for Defendant Tom Jack Mael as he is the most Defendant involved in this scheme. The sentences of Defendants Frederick Mael and Morris Avock will be suspended.

This is the final order for sentence:

Defendant Tom Jack Mael is ordered to serve 20 months imprisonment on each of the two counts of obtaining property by false pretences (counts 1 & 2), contrary to section 125(c) of the Penal Code Act [CAP.135]; 20 months imprisonment on each of the two counts of forgery (counts 3 & 4), contrary to section 140 of the Penal Code Act [CAP.135]; 20 months imprisonment on each of the two counts of obtaining money by false or misleading statements (counts 6 & 7), contrary to section 130C of the Penal Code Act [CAP.135] and 8 months imprisonment for the offence of uttering forged documents (count 5), contrary to section 141(a) of the Penal Code Act



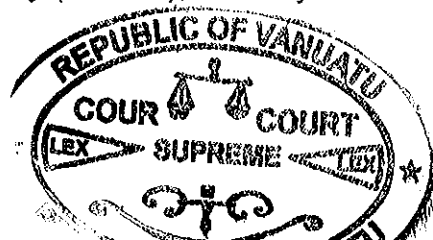
[CAP.135]. Defendant Tom Jack Mael shall serve his sentences concurrently. This means that he shall serve a total of 20 months imprisonment. 4 months imprisonment shall be deducted to Tom Jack Mael's term of imprisonment to reflect the time he has already served in custody during his remand since 26 October 2009 to 12 February 2010 when he was bailed out. Tom Jack Mael's warrant of imprisonment is for 16 months to commence on Tuesday 30 March 2010.

In addition, Tom Jack Mael shall repay the total amount of 307,385 Vatu he had used out of the total amount of 452,385 Vatu stolen. Tom Jack Mael shall pay by Monday 29 March 2010, a first payment of 25,000 Vatu and he shall repay 15,000 Vatu at the end of each month starting from July 2011 until the total amount of 307,385 Vatu is fully paid.

Defendant Frederick Mael's sentence of 20 months imprisonment for obtaining property by false pretences (count 1), contrary to section 125(c) of the Penal Code Act [CAP.135]; 20 months imprisonment for forgery (count 3), contrary to section 140 of the Penal Code Act [CAP.135]; 20 months imprisonment for obtaining money by false or misleading statements (count 6) and 8 months imprisonment for uttering forged documents (count 5), contrary to section 141 of the Penal Code Act [CAP.135] are all concurrent and reduced to 16 months imprisonment to take account of the time he had already spent in custody. That imprisonment term is suspended for a period of 2 years. Defendant Frederick Mael shall perform 100 hours community work under section 58G of the Penal Code Act [CAP.135] on each and all counts concurrently.

In addition, Defendant Frederick Mael to repay the amount of 95,000 Vatu he had used out of the total amount of 452,385 VT stolen. Defendant Frederick Mael shall pay VT15,000 by Monday 29 March 2010 to the Vanuatu National Provident Fund (VNPF) and he shall pay 5,000VT at the end of each month until the amount of 95,000 Vatu is fully paid.

Defendant Morris Avock's sentences of 20 months imprisonment for obtaining property by false pretences (count 2), contrary to section 125(c) of the Penal Code Act [CAP.135]; 20 months imprisonment for forgery (count 4), contrary to section 140



of the Penal Code Act [CAP.135] and 20 months imprisonment for obtaining money by false or misleading statements (count 7), contrary to section 130C of the Penal Code Act [CAP.135] are all concurrent and reduced to 16 months imprisonment to take account of the time he has already spent in custody. That term of imprisonment is suspended for a period of 2 years. Defendant Morris Avock shall perform 100 hours community work under section 58G of the Penal Code Act [CAP.135] on each and all counts concurrently.

In addition, Defendant Morris Avock shall repay the amount of Vatu 50,000 he had used out of the total amount of 452,385 Vatu stolen. Defendant Morris Avock shall make a first payment of 10,000 Vatu by Monday 29 March 2010 to the VNPF and he shall pay VT5,000 at the end of each month until the amount of VT50,000 is fully paid.

The Defendants shall make the repayments of VT452,385 directly to the Vanuatu National Provident Fund (VNPF). The VNPF shall manage the repayments process of the amount of Vatu 452,385 by the above-named Defendants as ordered and directed in this sentence.

Each and all three defendants have 14 days to appeal if they are dissatisfied with their sentence.

**DATED at Port-Vila this 19<sup>th</sup> day of March 2010**

**BY THE COURT**

  
Vincent LUNABEK  
Chief Justice

