

**PUBLIC PROSECUTOR - v - ROGER ISHMAEL**

**Coram:** V. Lunabek CJ

**Counsel:** Mr Leon Malatungun for the Public Prosecutor  
Mr Andrew Bal for the Defendant Roger Ishmael

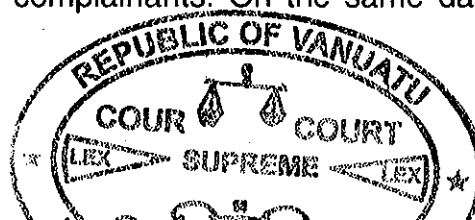
**SENTENCE**

Roger Ishmael, this is your sentence. On 18 December 2009, you pleaded guilty to Theft, contrary to section 125(a) of the Penal Code Act [CAP.135]. Your sentence was adjourned pending the outcome of the trial you were facing with another accused in respect to other offences in the Information. You are 60 years of age. You came from the Island of Malekula. You live at Fresh Wota, Port-Vila.

The complainants of the case against you are Jack Subi and Jimmy Kauna both of Tanna Island. Jack Subi resides at Ohlen Freshwing in Port-Vila and Jimmy Kauna resides at Etas area in Efate.

The brief facts are that Jack Subi and Jimmy Kauna wanted to purchase a truck. They have an amount of Vatu 680,000. They went to the Bank (ANZ) and attempted to arrange for a loan but the Bank authorities informed them that they cannot deposit the amount of VT680,000 for a loan of a truck. That amount is too small. They heard about the fact that you, Roger Ishmael, you have a lending scheme. They arranged to see you and so they called on you to assist them to buy a truck.

You met with them for the first time at Anchor Inn on 8<sup>th</sup> October 2008. On the next date 9 October 2008, you met again with the complainant and you brought with you Leimara Jimmy to assist you with the arrangements of purchasing a truck for the complainants. On 9 October 2008, you were not part of the discussions between Leimara Jimmy and the two (2) complainants. On the same date of 9



October 2009, she gave that money of Vatu 680,000 to you. You admitted that fact. You also admitted that you got your business account at Bred Bank. You obtained quotations from different car dealers in town. You could not purchase a truck because the money is too small. In your business, you do not have enough money to lend or purchase a truck. The complainants were aftering you until you admitted to them that you had used their money of VT680,000 by lending it to other people in your business lending scheme. Both complainants attempted to help you by aftering other people who owed your business lending scheme money. However, it was not successful. They lodged their complaint to the police. The police arrested you and you admitted to the police that you have used the money in your lending scheme and that you will refund the complainants' money (VT680,000).

Section 125(a) of the Penal Code Act is the prohibiting section. It imposes a maximum penalty of 12 years imprisonment. Theft is a serious offence as reflected in the maximum penalty imposed by law.

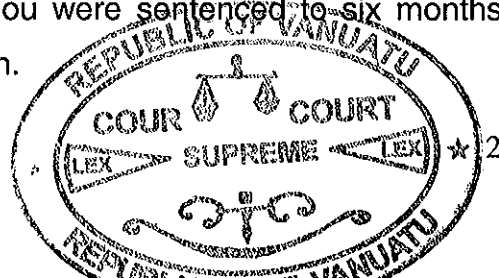
When I sentence you, I condemn in the strongest terms your behaviour. It is wrong for you to setting up a business lending scheme to steal money from the people who look upon you for assistance. Apart from your offending, I treat this aspect as an aggravating feature of your offending. This type of offending warrants an imprisonment sentence.

The next question would be an imprisonment sentence for how long? I will come back to this question later.

I have also perused and considered the pre-sentence report filed by the probation office on 13 January 2010. The report shows that you are a married man with five children of which three were adopted.

You are a deacon at the SDA Church. You are a member of Atchin Community living in Port-Vila.

You are unemployed and you depend mostly on your wife's employment as a housemaid to supplement your income. You have been convicted on some minor offences of assault and one count of theft. You were sentenced to six months imprisonment and ordered to pay compensation.



You are ready to perform a custom ceremony with the complainants. You say you are prepared to make compensation to the victims (complainants) of Vatu 680,000. The Court accepts your offer for compensation although, you do not have enough financial means.

You have been presented as someone without personal and direct means to pay for compensation at all. However, the report reveals you have coconut and cocoa plantations on the Island of Malekula. You must start to pay the amount of compensation of Vatu 680,000 to the victims. If you fail, your children would pay off the amount of the compensation after undertaking is obtained from your children to pay the amount off. The Court would obtain the undertaking from your children if and when it is required to do so.

After I consider the aggravating factors and the mitigating ones, and on balance, I sentence you to 15 months imprisonment and suspend it for a period of 2 years.

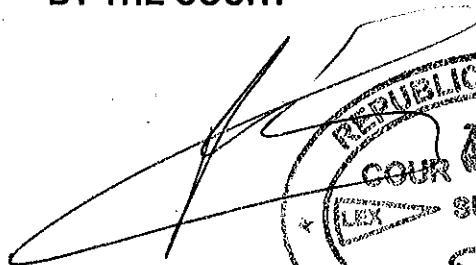
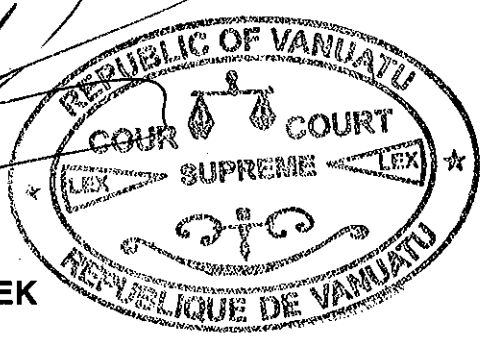
During the suspension period of imprisonment sentence, you shall not re-offend. If you re-offend, your sentence of imprisonment shall be re-activated.

You are therefore sentenced to 15 months imprisonment suspended for 2 years and you are also ordered to pay compensation of the sum of VT680,000 at a rate to be organised by your probation officer with you after your sentence today.

You have 14 days to appeal your sentence if you are unsatisfied with it.

**DATED at Port-Vila this 19<sup>th</sup> day of March 2012**

**BY THE COURT**

**Vincent LUNABEK**  
**Chief Justice**