

PUBLIC PROSECUTOR – VS – LIVO SALERUA

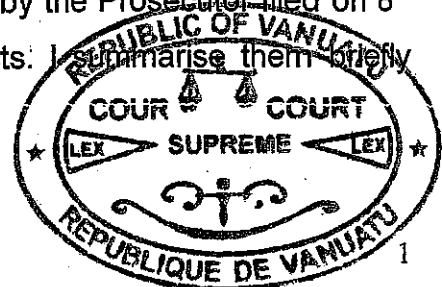
Coram: Mr. Justice Oliver A. Saksak

Counsel: Mr. P. Wirrick for Public Prosecutor
Mrs. M. P. Vire for the Defendant

Date of Hearing: 14th May 2013
Date of Sentence: 4th June 2013

SENTENCE

1. Livo Salerua you are charged with one count of misappropriation contrary to section 125(b) of the Penal Code Act Cap 135 (the Act).
2. When the case was first called for plea on 14th November 2012 you pleaded not-guilty to the charge and the case was adjourned to 20 November 2012 for Mention. On 20th November you were not present in Court and the case was adjourned to 11th February 2013 for trial. The trial was vacated on that date due to the judge attending a workshop in Port Vila. On 22 February 2013 the case was called but you were again not in Court on that date and the trial was adjourned to 3 April 2013 by formal notice issued on 12th March 2013. On 3rd April 2013, you were present in Court without Counsel and requested a further adjournment. The Court granted an adjournment to 12th April 2013. On 12th April both yourself and your Counsel were present and Counsel sought leave for re-arraignment. Leave was granted and when the charge was re-put, you pleaded guilty as charged.
3. You should understand that misappropriation is a serious offence as Parliament has set the maximum penalty at 12 years imprisonment.
4. The facts are set out in the written submissions by the Prosecutor filed on 8th May 2013. You accept and concede those facts. I summarise them briefly only as follows:-



"During the Presbyterian General Assembly held at Tangoa Island on 10th September 2012, the then Prime Minister Sato Kilman handed over an envelope to Chief Norman Mele Livo. The Prime Minister announced publicly that there was cash in the sum of VT1 Million in the envelope which was given to be used for projects that would benefit the whole Community of Tangoa Island.

Chief Norman Mele and other Community Leaders then passed on the envelope to the defendant and specifically instructed him to keep the money safe for the benefit of the Community.

The defendant took the money and deposited them into his personal bank account at the BRED Bank. Over a period of time the defendant withdrew moneys until the total amount given was depleted."

5. Clearly a custodial sentence is called for in your case to ensure –
- (a) A deterrent effect on yourself and the public.
 - (b) Public condemnation for your offending.
 - (c) That the gravity of your offending is demonstrated.
 - (d) That adequate and appropriate punishment is imposed.

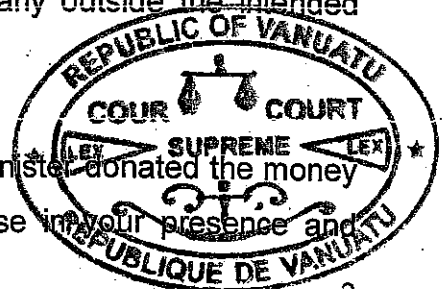
You are therefore convicted and sentenced to imprisonment for a term of 18 months (1 year and 6 months) as the starting point.

6. The facts presented disclosed the following aggravating features that warrant an uplift –

- (a) The Vt1Million donated by the Prime Minister were public funds from the public purse to be used on projects for the benefit of the whole Community.

Your pre-sentence report reveals that you withdrew moneys at your own pleasure and will and spent most of it for political campaigns during the Sanma Provincial elections. Such use was clearly outside the intended purpose for which the moneys were donated.

- (b) A clear trust was established when the Prime Minister donated the money to the Chief and publicly announced its purpose in your presence and



hearing. That trust was placed in you when the Chief and Leaders handed over the money to you for safe-keeping. However, that trust was breached by you when without authorisation by the Chief and Leaders you withdrew the funds at your pleasure and will and spent them as if they were your own moneys.

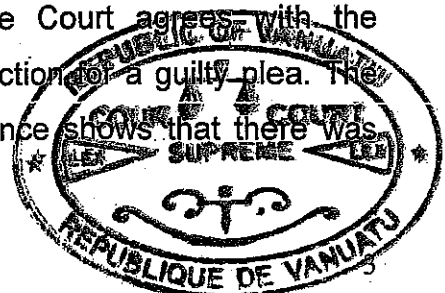
- (c) The sum of VT1Million is substantial but they were all used up and contrary to the specified purpose for which they were donated.

For these aggravating features there will be an uplift of a further 12 months (1 year) to your starting point of 18 months. That brings the total up to 2 years and 6 months imprisonment.

7. I now consider whether your sentence of 2 years and 6 months should be reduced in light of your mitigating factors. Counsel listed 9 mitigating factors on your behalf as follows:-

- (a) No previous conviction.
- (b) Cooperation with police.
- (c) Cooperation with the Community and making public confession before the Church and Community Leaders.
- (d) Taking responsibility to repay the funds misappropriated.
- (e) Being remorseful.
- (f) Current employment at Tata Secondary School as Boarding Master.
- (g) Being a widower with 6 children to support.
- (h) Making significant contributions to the Community.
- (i) Guilty plea.

8. I note your pre-sentence report dated 15th April 2013 which support and confirm the factors in (c), (d), (e), (f), (g) and (h). In the absence of the Prosecutions providing any record of your previous convictions, the Court accepts the factor in (a) and (b) as well. The Court agrees with the Prosecutions that you are not entitled to any reduction for a guilty plea. The history of your case at paragraph 2 of this sentence shows that there was undue delay in the guilty plea.



9. The Court accepts that you are entitled to a reduction for the remaining mitigating factors. I consider that a general reduction of 8 months should be made from your total sentence of 30 months (2 years and 6 months). Accordingly, that reduction is made. You are left with the balance of 22 months (1 year and 10 months) imprisonment.

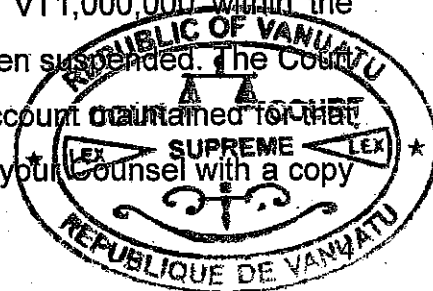
10. I further consider that the balance of your sentence should be suspended for the following reasons –

- (a) You are a widower with 6 children to care for and support.
- (b) You are in gainful employment with a school with children whose interests should not be prejudiced by your incarceration.
- (c) With your employment you are capable of making good the losses you caused through misappropriation.
- (d) You have taken appropriate steps by paying back some VT70,000.
- (e) Some Community Leaders and members have spoken in your favour and highly of your contributions to the Community.

11. I therefore Order that your sentence of 1 year and 10 months imprisonment be suspended for a period of 2 years from the date of this Sentence. You must understand that you must not commit any offences within these 2 years for which you would be charged and convicted. If you do, your sentence will be activated automatically and you will go to prison to serve your 22 months sentence. This suspension is made pursuant to section 57 of the Act.

12. Finally, it is necessary in the Court's opinion that a restitution order is made against you to repay the full amount of VT1,000,000 which you took and misappropriated. This should restore Community confidence back in yourself and harmony within your Community which appears to be divided over your actions.

I therefore Order you to repay the full amount of VT1,000,000 within the period of 2 years during which your sentence has been suspended. The Court suggests that for every deposit you make into the account maintained for that purpose by the Community Chiefs, you must furnish your Counsel with a copy



of the document showing that deposit. And Counsel is required to provide copies of any such document to the Court and to the Prosecutions. Two years commence today being 4th June 2013 and ends on 5th June 2015. If after 5th June 2015 you fail to pay the full amount, you will be sent to prison at the rate of 1 week for every VT1,000 that remains unpaid by you.

This Order is made pursuant to Section 58 ZD of the Act.

13. That is the Sentence of the Court. You have a right of appeal against sentence within 14 days if you so choose.

DATED at Luganville this 4th day of June 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

