

PUBLIC PROSECUTOR

– v –

**JIMMY TANGARASI
MANDELA MALAPA
OBED RAKOM**

Coram: V. Lunabek CJ
Counsel: Ms Tabisa Harrison for Public Prosecutor
Mr Francis Tasso for Defendant

Date: 2 October 2014

SENTENCE

Defendants, Jimmy Tangarasi, Mandela Malapa and Obed Rakom, you all appear today to receive your respective sentence.

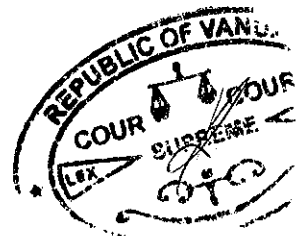
You are each charged with one count of forgery, contrary to section 140 of Penal Code.

On 2 September 2014, you each entered a guilty plea on the offence as charged against each of you in the criminal information dated 5 December 2012.

The facts of your offending are provided by the prosecution in the prosecution's brief of facts.

Each of you accepts the facts as provided by the prosecution. They are as follow:

1. The complainant Mr Calo Maraki is the administrator of the Council of Chiefs of Mele village (hereafter referred to as CCM) and was 48 years of age at time of the offending. CCM manage all projects of the community. His primary responsibility as administrator of CCM is to manage community projects.
2. The first accused is Jimmy Tangarasi. You are from Woraisiviu village Pele Island. You were 21 years of age and you resided at Seaside Tongoa at the time of the offending. You were unemployed when you were arrested by the police but were formerly employed by CCM at the time of the offending.
3. The second accused is Mandela Malapa. You are from Mele village, Efate. You were 21 years old and resided at Mele village at the relevant time. You were also unemployed when you were arrested by the police but were employed by CCM as a handy man at the time of the offending.



4. The third accused is Obed Rakom. You are also from Mele village, Efate and were a resident of the village at the time of the offending. You were unemployed at the time of arrest and were previously employed by CCM as a constructor. You were 18 years at the relevant time.

5. Factual background of the offending.

CCM secured a project to build a Varea (Traditional Hut) at the residence and office of the President of the Republic of Vanuatu sometime in 2010. You were then employed by CCM to construct the same.

6. You commenced work on 8th of June and your employment ended on the 26th of August 2012. You received your salary at the end of every week, you were provided cheques and it was your responsibility to cash the cheques. Johnny Tangarasi and Obed Rakom you both received a weekly salary of VUV8,600 and Mandela Malapa, you received a weekly salary of VUV1,600 as you only worked on Fridays.
7. Jimmy Tangarasi, you offended sometime between the 28th and 29th of July 2010. The complainant issued you a cheque (cheque no.0000145) in the amount of VUV 8,600. You altered the amount on the cheque by inserting the number 0 after the number 8 and inserted the letter "y" after the word "eight". The original amount thus changed to VUV 80,600. You then instructed a relative of yours a Mrs Florida Patrick to cash the cheque at Bred Bank. Mrs Patrick cashed the cheque and forged your former girlfriend's name at the back of the cheque.
8. Mandela Malapa, you received your cheque on the 23rd of July 2010. The original cheque (cheque no.000088) that was proffered to you by the complainant was in the amount of VUV 1,600. You changed the amount payable to VUV 4,600 by inserting and "F" before the word "One to make the amount in words number "1" to make the amount in digits appear as VUV 4,600". You personally cashed the cheque at Bred Bank the very same day.
9. Obed Rakom, you offended in very much the same way sometime between the 28th and 29th of July 2010. The complainant issued you your cheque (cheque no. 0000135) on the 28th of July 2010 which bore an original amount of 8,600. You inserted the number "1" before the number "8" to make the amount in digits appear as VUV18,600. You cashed the cheque that same day.

10. Investigation, arrest and Preliminary Inquiry

Investigation ensued subsequent to Mr Carlo Maraki's complaint to the Bank and the police noted irregularities with the bank account of CCM. You were arrested by the Tactical Response Unit of the Vanuatu Police Force on the 24th of September 2010 in as much as you were approached earlier by the Fraud Unit but you resisted arrest.



11. You were interviewed under caution on the 25th of September 2010. You made full admissions to the police of the allegations.
12. Investigations continued up until the 28th of December 2011 when the file was listed for plea at Magistrate's Court on the 19th of September 2012 but was enlarged to the 11th of October 2012 for preliminary inquiry on the 11th of October 2012 upon application by the prosecution counsel.
13. You failed to attend court on the aforementioned date and the matter was further adjourned to 24 October 2012. The matter was committed to the Supreme Court on the 24th of October 2012.

When I consider your sentencing, I have read and considered the submissions made by the Public Prosecutor, the authorities referred in their submissions. I have also considered the submissions made by your lawyer and the authorities he relies upon in support of his submissions on behalf of each of you. I have also perused and considered the reports provided by the Prosecution office in respect to each of you.

The offence of forgery is a very serious offence of dishonesty. It carries a maximum penalty of 10 years imprisonment.

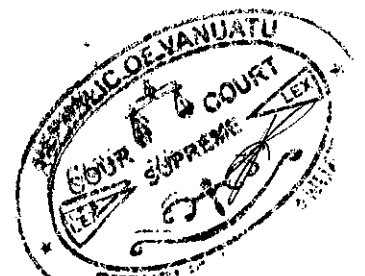
The court, on behalf of the society, condemns in the strongest terms your offending. These types of offending warrant an imprisonment sentence. I note that you have been committed this offence in 2010 and I do not know why you have not been tried earlier and it is now 4 years. If I had sentenced each of you in 2010 I would have imposed on each of you a term of imprisonment sentence. Each of you must now understand that I will not impose on each of you an imprisonment sentence. However, you are warned that the next time you commit this type of dishonest offending, you will be directly sent to prison.

I now deal with your individual situation in turn.

Jimmy Tangarasi

Jimmy Tangarasi, you are now 28 years of age. You were 24 at the time of offending in 2010. The report shows that you intended to commit the offence due to the ignorance by the Mele Trust Company to assist you with your individual cost for the work place injury (as the nail went through your fingers and you were admitted to the hospital) you received during the construction of a Nakamal. You stated that although you knew that forging a cheque is a serious offence, you only wanted to compensate yourself with the money owed to you by the Mele Trust Company to meet the medical expenses for your injury.

I do not accept your way of self-compensation as you cannot do justice to yourself. You ended up breaking the law. The way forward is for you to talk and tell the people who are responsible for Mele Trust Company to pay for your medical expenses when you worked for the trust company instead of you taking the law into your hand. I also consider the delay it has taken to prosecute your case, your guilty plea at the first opportunity and the fact that you are a first time offender.



I sentence you to 300 hours community work. In addition, it is reported that the management of Mele Trust Company would like you to refund or compensate Mele Trust. I note that you are now unemployed and you stated that you are not capable of refunding the money fully but you will be paying an amount by instalment payment. I take it that you have no financial means to repay the full amount of VT80,600 you received out of your offending. However, you seem to say that you will be able to pay an amount of compensation to Mele Trust Company by instalment payment with the assistance of your family. You say you can pay VT20,000. You ask your lawyer to inform the Court of this and your lawyer does so.

You are ordered to pay a compensation amount of VT20,000 to Mele Trust Company. The payment shall be paid by instalment of 5,000VT per month commencing 30 October 2014.

Mandela Malapa

You are from Mele village and you reside at Mele village with your parents. You are now 24 years of age and you were 20 years old in 2010 at the time of offending. You maintain a good relationship with your family and live under the community care of Chief Malakawa. You maintain a good relationship with your chief and community work as well as important ceremonies, social activities and community meetings organised by your chief. This is confirmed by your chief as stated in the report. You attended primary and secondary schools from year 7 to year 10. You have skills in building constructions, weaving Natangura leaves, basic computer and gardening. Your ambition in life is to start a chicken farm and tourism business of your own.

You are in a defacto relationship and have a son. You attend to your son's school fees with little you make working for a construction company and doing gardening. You are in good health. You consume kava and cigarette on regular basis but you do not consume alcohol.

You are a first time offender. You have no previous convictions. It is stated that the main contributing factor to your offending was peer pressure as you told the writer of the report that you were pressured by your other co-offenders to commit this offence. There might be some element of peer pressure but I note that you were 20 years old at the time of your offending as you stated you worked hard but the pay cheques were less so you and others intended to forge the cheques.

You have expressed insight to your offending. You showed remorse by speaking in a guilty low tone of voice when you informed the writer that you felt sorry for what you did. You stated you shall move on with this guilty mind for the rest of your life. You state you will not re-offend again in the future. You say that you are willing to repay the complainant (Mele Trust Company) the total amount (vatu 4,600) you had unlawfully obtained by instalments.

The court requires your counsel to speak to you on your financial capacity if a compensation order is to be considered. Your lawyer confirms by writing (a note dated 2 October 2014) confirming you have the financial capacity to compensate the victim at any time from now on if the Court orders you to do so. You also tell your lawyer to inform the court that you have no problem of handling this situation yourself.



You are sentenced to 100 Hours of community work and you are also ordered to repay back to the Mele Trust Company Vatu 4,600 you have fraudulently taken from Mele Trust Company by 30 October 2014.

Obed Rakom

You are 20 years old and originate from Mele village on the southern part of Efate Island. You had completed your grade six at the Mele Primary School. You had skills in carpentry. You have an ambition to build a permanent house in the future for your family.

You are currently living in a good home environment. In addition, you have a good relationship with your family members, your chief Malakawa and the members of your community. You have two brothers and two sisters, and you have good relationship with both of them as well.

Mr Elom Rakom, your father confirmed that he has a good relationship with you. It is stated you always behave in a good manner. In addition you also comply well with instructions given by your parents at home and the community.

You are an ordinary member of your community at Mele village. You are reported to be in good health. You do not consume alcohol, kava or smoke cannabis or cigarette.

You are unemployed. You rely on your parents to generate the sources of your income. You are currently looking for a job. You state that when you find a decent job, you would work hard to support your parents.

You are a first time offender and you do not have previous convictions.

You do not dispute the Summary of Facts as produced by the Public Prosecution.

You told the writer of the report that you are really sorry for your illegal action. You expressed your remorse towards your offending by looking at the writer patiently and speaking in a low guilty tone of voice.

You said that you did commit this offence because you needed the money. You said that, you were not pressured by your co-offenders. You said that you commit this offence according to your own will. You promised the writer that you have realised your wrongdoing and you would not commit similar offence in the future or any other criminal offence again.

It was assessed that your main contributing factor of your offending is peer pressure by other co-offenders.

Mr. Philip Malas and Mr. Kalmarie both confirmed that your illegal action had impacted on the Mele Trust Company to place itself on a debt position.

Both confirmed that the Mele Trust Company suggested that you compensate the company. They said that you must pay back the money to the company.



The Mele Trust management confirmed that they are willing to accept compensation by you and your co-offenders in instalments. You also confirmed that arrangements can be made for yourself and your co-offenders to compensate the victim, the Mele Trust Company.

Your lawyer confirms in his written note of today's date (2 October 2014) that you are willing to compensate the Mele Trust Company for your offending. You now work as a security officer at night hours and you get paid VT14,000 every week. You confirm that with that security job, you have the financial capacity to compensate the victim. It is reported your Father is willing to assist you to compensate the victim.

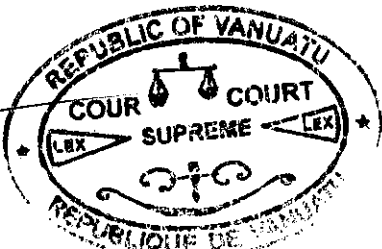
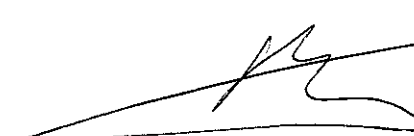
You are sentenced to 200hours community work. In addition, you must repay the amount of VT18,600 you had fraudulantly taken from the Mele Trust Company's Bank Account by 30 October 2014.

Summary of sentences:

1. Jimmy Tangarasi
 - 300 Hours community work
 - Ordered to pay a compensation amount of VT20,000 to Mele Trust Company.
 - Payment by way of instalments of 5,000 Vatu per month starting on 30 October 2014 until the total compensation amount of VT20,000 is paid.
2. Mandela Malapa
 - 100 Hours community work
 - Repay the amount of vatu 4,600 to Mele Trust Company by 30 October 2014.
3. Obed Rakom
 - 200 Hours community work
 - Repay Mele Trust Company Vatu 18,600 by 30 October 2014
4. You have each 14 days to appeal your respective sentence if you are unsatisfied with it.

DATED at Port-Vila this 2 day of October 2014

BY THE COURT



**Vincent LUNABEK
Chief Justice**