

**PUBLIC PROSECUTOR**

**-V-**

**DIANA MISIPI**

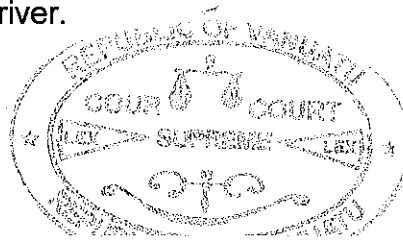
**Coram:** *Mr. Justice Daniel Fatiaki*

**Counsel:** *Mr. D. Boe for the State*  
*Mr. John L. Napuati the for defendant*

**Date of Decision:** *12 June 2015*

**SENTENCE**

1. **Diana Misipi**, you have been convicted, after trial, of the offence of **Theft** contrary to **Section 125(a)** of the **Penal Code** in that you stole the sum of VT1,145,000 from Goodies Limited whilst employed as a teller/cashier in the Goodies branch beside the ANZ bank on Friday 1<sup>st</sup> February 2013.
2. It is a concern that despite your committal in August 2013 the case has taken almost 2 years to reach this stage albeit that you have been on bail throughout that time.
3. Most of the facts are detailed in the Court's verdict and need not be canvassed again. Suffice it to say that the Court accepted the evidence of the prosecution witnesses and rejected your defence that the money was stolen by an unknown person when you left it on the counter while counting coins at the end of the days trading. Similarly the court rejected your claims of being too afraid to report the theft to the police, your supervisor, or your employer at the time, as untruthful and exaggerated.
4. **Theft** is an offence that carries a maximum sentence of 12 years imprisonment. It is undoubtedly a serious offence which consistently attracts a custodial sentence where there has been a breach of trust involved in the commission of the offence.
5. In the present case Diana Misipi, you are a mature wife and mother of 30 years of age with 4 children – 2 attending school and 2 still at home with the youngest still breastfed at 4 months of age.
6. Relatively speaking you are well educated having completed year 12 at school and attained a Certificate in Secretarial Work from the Vanuatu Institute of Technology. You also have entrepreneurial skills which you utilise in running a small retail shop, nakamal and a family security business with your husband (**GS Security**) who is also a bus driver.



7. You also mentioned in your evidence in court that you and your husband have a business of drying and selling dry kava grown locally and also harvested from your family land at Pentecost Island. Your family also had a general retail shop called "**Buleguru Store**" at Namaram village in Central North Pentecost that you have been sending cargo to, including, on 4 February 2013 (ie. 3 days after the offence was committed).
8. To the probation officer you said you were sorry for your offending which was the result of "*greed*", and you promised never to re-offend. You also expressed your willingness to perform a custom reconciliation ceremony to your employer and you offered to repay the stolen money in monthly installments of VT30,000. Although the offered amount would take in excess of 3 years to fully repay your employers, I am confident that a compensation order is within you and your husband's means and ability to pay.
9. I accept that this is your first criminal conviction which is a punishment in itself. There is also little likelihood of you ever gaining similar paid employment in future. But that is not unusual in cases such as yours where an employee of previous good character has succumbed to temptation and stolen money from her employer and been sent to prison (see: Public Prosecutor v. Leah Tureleo [1995] VUSC 16; Public Prosecutor v. Georgette Ralovu [2003] VUSC 53 and Public Prosecutor v. Patricia Rasu [2005] VUSC 24).
10. Your offence is also aggravated by the following factors highlighted in the prosecution's submissions:
  - (a) This was a gross breach of your employer's trust in that you were a cashier/teller handling large sums of local and foreign currency on a daily basis;
  - (b) There was a degree of additional deception involved in the theft in that you initially tried to deflect suspicions by involving an innocent colleague in your dishonesty;
  - (c) The sum stolen was large being in excess of VT1 million and was taken in one lump sum;
11. In this latter regard the former Chief Justice said in Public Prosecutor v. Mala [1996] VUSC 22:

*"In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. ... the Court should nevertheless pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered, but it may in many cases provide a useful guide. Where the amount involved cannot be described as small but are less than 1 million vatu or thereabouts, terms of imprisonment ranging from the very short up to about 18 months are appropriate. Cases involving sums of between about 1 million and 5 million vatu will merit a term of about two to three years' imprisonment. Where greater sums are involved, for example those over 10 million vatu, then a term of three and a half years to four and a half years would be justified.*



*The terms suggested are appropriate where the case is contested.  
.... It will not usually be appropriate in cases of serious breach of trust  
to suspend the sentence. As already indicated, the circumstances of  
cases will vary almost infinitely."*

(my underlining)

12. I have also been referred by the prosecutor to sentences imposed by this Court in past cases involving bank officers and government employees stealing much larger sums over a period of time which I have considered including, Public Prosecutor v. Adams [2008] VUCA 208; PP v. Benjamin, Paul & Tau [1994] VUSC 13; PP v. Maki Mento [2010] VUSC 75; and PP v. Sharon Melanie Frank [2012] VUSC 159.
13. Defence counsel in his submissions relies on the last case of PP v. Sharon Melanie Frank where a suspended sentence of 18 months imprisonment and a monthly compensation order of VT20,000 was imposed on a female bank officer who stole a sum of VT3,464,563 over a period of 2 years and had "*just delivered a baby*" after pleading guilty but before sentencing. Whilst I accept the presence of a nursing infant is a common element, the present case is easily distinguished on the facts and on the defendant's plea of not guilty.
14. Be that as it may, defence counsel writes in concluding his sentencing submission:

*"All in all we agree with the prosecutions submissions that the imposition of imprisonment sentence is inevitable in all Theft cases. However, as submitted by the prosecutions that any imprisonment term be suspended as in PP v. Sharon's case referred to above as the amount is less than that of Sharon's and the baby is just 4 months old. Furthermore, is the accused is to go to jail her ability to pay back the accused will be greatly affected".*
15. For future reference, I draw counsel's attention to the case of Public Prosecutor v. Doriri [2011] VUSC 2 and the cases referred to in it which are more closely related to the present case in that they involved mothers with young/infant children and where this court imposed a partially suspended sentence of 18 months imprisonment.
16. In the present case prosecuting counsel suggests a "*... starting point of 4 years imprisonment*" and "*... an end sentence of 24 months to 30 months ...*". No attempt was made however, to explain or account for the significant reduction of almost 2 years from the "*starting point*" which, in any event, I consider errs on the high side.
17. Having said that, I am satisfied that the following features although not amounting to mitigation are relevant factors in assessing the defendant's culpability (see: Step 1 of the Andy approach [2011] VUCA 14):
  - This was a single offence committed on one day by the defendant acting alone;



- The offence did not involve an elaborate paper trail or cover-up;
  - There was not a multiplicity of innocent victims; and
  - The sum involved, **VT1,145,000** is within the “*second category*” identified in Public Prosecutor v. Mala [1996 VUSC 22 (*ibid*) as meriting “... a term of about two to three years imprisonment”;
18. In light of the above and having regard to the concession of defence counsel, I consider that a starting sentence of 24 months imprisonment is appropriate. From that starting point I deduct 6 months in recognition of the defendant’s hitherto unblemished record and the lengthy delay of almost 2 years since the defendant was first committed in August 2013 and the start of the defendant’s trial on 22 May 2015 (*see in this regard: Doriri* (*ibid*) and Public Prosecutor v. Edmond [2011] VUSC 323).
  19. The final sentence I arrive at is one of 18 months imprisonment which is wholly suspended for 2 years pursuant to Section 57 of the Penal Code. Diana Misipi what this sentence means is that you will not have to go to prison today, nevertheless, the sentence remains in existence as a punishment and as an ever present-reminder and deterrent.
  20. However, if you behave yourself and stay out of trouble for the next 2 years then you will not have to serve this prison sentence, but if, you are convicted of an offence within the next 2 years then you will immediately go to prison to serve this sentence of 18 months imprisonment in addition to any other sentence you may receive for your re-offending.
  21. In addition and consistent with your offer to the probation officer in your pre-sentence report, I impose a sentence of **Compensation** and order you to repay the sum of VT1,145,000 to Goodies Limited by way of monthly installments of VT32,000 under the supervision of the Probation Services and commencing from 1<sup>st</sup> July 2015.
  22. If you do not agree with this sentence you may lodge an appeal to the Court of Appeal within 14 days.

**DATED at Port Vila, this 12<sup>th</sup> day of June, 2015.**

**BY THE COURT**

  
**D. V. FATIAKI**  
 Judge.

