

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal
Case No. 21/260 SC/CRML

BETWEEN: Public Prosecutor

AND: Suzanne Kalo
Defendant

Date: 31 March 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr S. Blessing for Public Prosecutor
Ms L. Bakokoto for the Defendant

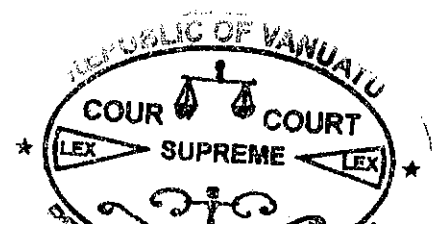
Sentence

A. Introduction

1. Ms Kalo pleaded guilty to 7 representative charges of misappropriation. She accepted the summary of facts as true and correct and was accordingly convicted.

B. Fact

2. Ms. Kalo worked at Bank South Pacific ("BSP") in Port Vila for 7 years from 2011 as a bank teller.
3. Between January 2016 and June 2018, she stole almost VT 4.2 million from six individual BSP client amounts without approval.
4. The manner in which she achieved this is not set out in the summary of facts, nor was she questioned about this by the Police. However the formal complaint by BSP set out that bank staff had interviewed her and were advised by Ms Kalo that she drew the funds from clients' accounts through accessing her till. She was taken through the BSP clients' accounts and identified each of her defalcations which were in the order of amounts up to VT 250,000 at a



time. The defalcations were concealed by credits to the accounts, by the credits ended up not matching the debits.

5. It is unclear what the money was used for, but it is clear that reparation is not possible.

C. Sentence start point

6. The sentence start point is to be arrived at by considering the maximum sentence for their type of offending and factoring in the aggravating and mitigating aspects of the offending.

7. The maximum sentence for misappropriation is a sentence of 12 years imprisonment.

8. The aggravating factors to this offending include:-

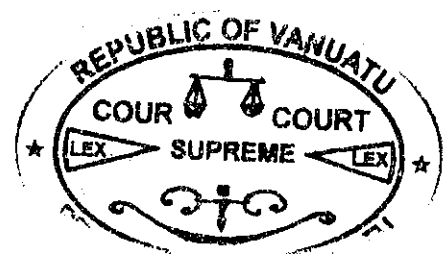
- The value of funds taken;
- The repeat nature of the offending;
- The improbability of any reparation;
- The breach of trust, Ms Kalo was a trusted and experienced employee, whose integrity should have been exemplary;
- The misappropriations occurred over a 30 month period; and
- The attempts made to conceal the offending.

9. There are no mitigating aspects to the offending.

10. The starting point I adopt for the offending on a global concurrent basis is five years imprisonment.

11. I acknowledge that the precedent authority most often quoted for this type of offending, namely *PP v. Mala* [1996] VUSC 27 sets out several sentencing levels in relation to amounts taken. The sentence start point I have adopted is higher than that indicated in *Mala's* case. The reasons for that are that this offending involved representative charges, and the actual thefts number far more than the 7 charges. As well, Ms Kalo has breached her position of trust with her employer and there is no realistic prospect of reparation. In my view the amount taken is but one basis on which to assess the appropriate sentence start point. These additional aggravating factors must also be considered.

12. Ms Bakokoto referred to the authority of *PP v Sewere* [2018] VUCA 57 as being helpful in setting the sentence start point and also in support of her submission that the end sentence should be

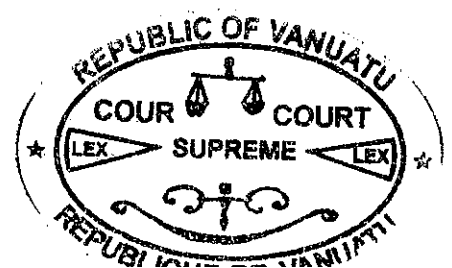


suspended. I distinguish the *Sewere* case from this matter. Not only are there more aggravating factors reflected in Ms Kalo's case, but I consider the fact of suspension to be particularly lenient and of no precedent value. I note that the appeal was brought by the Public prosecutor. The fact the Court in *Sewere* was considering reparation, made it more likely suspension was appropriate. However, the lengthy period over which the reparation ordered was to be made illustrates the likely futility of such long-term arrangements.

13. In this case, Ms Kalo advised the Court that her partner would support the family from his earnings, while she attended to gardening which would enable her to pay VT 15,000 per fortnight by way of reparation. In my view, this is unrealistic. To be able to earn VT 15,000 per fortnight net of expenses is problematic and does not take into account variations of climate and other factors. Even if able to earn that amount, to make full reparation would require over 12 years of such payments. I am sentencing on the basis of reparation not being available.

D. Mitigation

14. Ms Kalo pleaded guilty at the first available opportunity. She had previously made a full admission to the Police; and prior to that to her employer.
15. It may be that BSP would have eventually discovered the full extent of the offending, but it is clear that Ms. Kalo assisted the BSP to identify the BSP clients involved and the individual suspect transactions involved.
16. In Vanuatu the maximum discount available for a prompt plea is up to 33%. In Ms Kalo's case, I am satisfied that the full available discount is appropriate given her assistance prior to the police involvement.
17. Ms. Kalo is now 36 years of age, with no previous convictions. She resides with a de facto partner; and together they have 4 children, one of whom is still particularly young and breast-feeding.
18. Ms Kalo is currently unemployed. She will find it difficult to find further gainful employment given her admitted dishonesty to her previous employer.
19. There has not been a custom reconciliation ceremony. Ms. Kalo has indicated that she is prepared to partake if the victims will allow that to occur.
20. Ms Bakokoto has advised the Court that the funds were used in the course of dealing with ill family members. That is not accepted, as the amount taken is far too large to be explained away by this. Further, it is clear that Ms Kalo continued to work at BSP while taking the money, so it difficult to see how any costs to her were accrued. Not even her time in caring for these family members greatly impacted her ability to work.



21. Ms Bakokoto further submitted that a discount should be allowed for delay. She submitted the police were remiss in not dealing with the case sooner, as the bank provided full details but it took 2 years before Ms Kalo was charged. Ms Bakokoto was unable to explain how this fact, which the Court accepts as being correct, amounted to mitigation. The reality is that Ms Kalo must have been looking over her shoulder from the very occasion she helped herself to funds that did not belong to her. There is no possibility after the bank became aware of the issue that Ms Kalo could have thought she would not be prosecuted. I do not see this factor as being mitigatory.

22. For Ms Kalo's personal factors, I further reduce the sentence start pint by 4 months.

E. End Sentence

23. Ms. Kalo is sentenced to 3 years imprisonment as from today. I impose that sentence in respect of all 7 charges concurrently.

24. There is no possibility of suspending the sentence. This matter is serious, involves numerous dishonest act by a person in a position of trust, and without reparation. All these factors militate against suspension. The priority sentencing considerations must be deterrence and holding Ms Kalo accountable for her gross dishonesty.

25. Ms. Kalo has 14 days to appeal the sentence if she disagrees with it.

Dated at Port Vila this 31st day of March 2021
BY THE COURT

Justice G.A. Andrée Wilters
Justice G.A. Andrée Wilters

