

PUBLIC PROSECUTOR

V

DANKEN HINGE

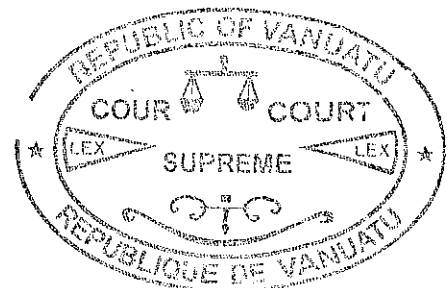
Before: *Justice Oliver A. Saksak*
Counsel: *Simcha Blessing for Public Prosecutor*
Gregory Takau for the Defendant

Date of Plea: *3rd April, 2018*
Date of Sentence: *3rd October, 2018*

SENTENCE

1. Danken Hinge on 3rd April 2018 you pleaded guilty to 18 Counts as follows –

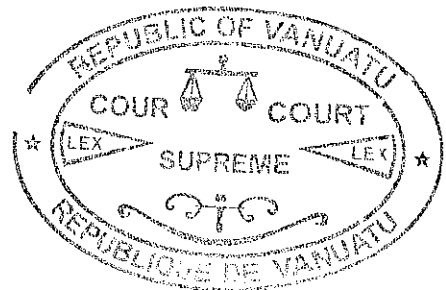
- (a) Count 1 – Unlawful Entry – Section 143, Penal Code Act [CAP. 135]
- (b) Count 2 – Theft – Section 125(a)
- (c) Count 3 – Forgery Section 140
- (d) Count 4 – Theft – Section 125(a)
- (e) Count 5 – Forgery – Section 140
- (f) Count 6 – Theft – Section 125(a)
- (g) Count 7 – Theft – Section 125(a)
- (h) Count 8 – Forgery – Section 140
- (i) Count 9 – Theft – Section 125(a)
- (j) Count 10 – Forgery- Section 140
- (k) Count 11 – Theft – Section 125(a)
- (l) Count 12 – Forgery – Section 140
- (m) Count 13 – Theft – Section 125(a)
- (n) Count 14 – Forgery – Section 140



- (o) Count 15 – Theft – Section 125(a)
- (p) Count 16 – Forgery – Section 140
- (q) Count 17 – Theft – Section 125(a)
- (r) Count 18 – Forgery – Section 140
- (s) Count 19 – Theft – Section 125(a)

2. The offence of theft carries a maximum penalty of 12 years imprisonment and the offence of forgery carries a maximum of 10 years imprisonment. The offence of unlawful entry into a dwelling house used for human habitation is 20 years imprisonment.
3. Your offendings started on 14 March 2016 when you entered into the office of the Youth challenge and stole electronic equipment, a cheque book and cash of VT216,150 belonging to Youth Challenge Vanuatu.
4. On 21 March 2016 you forged the signature of Shirley Abraham on ANZ Bank cheque and stole the sum of VT221,575.
5. On 25 March 2016 you did the same thing and cashed VT1,500,000.
6. On 30 March 2016 you repeated your action and cashed VT189,560, VT90,000, VT75,000, VT115,000, VT394,900 and VT5,000,000.
7. The total amount you stole through forgery was VT7,802,185.
8. In addition to that is the sum of VT1,053,338 which are costs of the electrical equipment you stole. These are listed in the Brief of Facts as –

- 1 Cash Box Safe – VT75,000
- 2 HP Laptops – VT140,000
- 2 HP Laptops – VT119,000
- 1 Laptop Bag – VT5,600
- 1 View sonic Projector – VT76,001
- 1 View sonic Projector Case – VT8,999
- 1 New N-Computer – VT85,987



1 Sonic Projector – VT50,000
 1 Dell PC Computer – VT94,001
 1 Intel Celeron PC – VT75,000
 1 New Hard drive – VT22,000
 1 Assus PC Computer – VT85,000
VT837,188

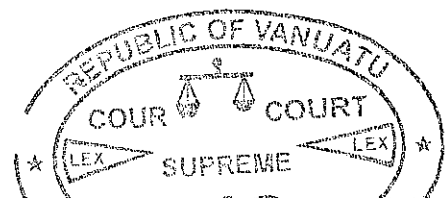
9. The overall total amount of money you have stolen is VT8,639,373. That is a lot of money that Youth Challenge Vanuatu is now deprived of. All these were stolen over a period of 16 days from 14 march 2016 to 30 March 2016. Your offendings were repeated and there was a certain degree of planning on your part. You had a position of trust at the time but you abused that trust. You wasted the stolen monies selfishly on yourself. At investigation you tried to lude yourself. You stole from your very own employer by taking advantage of your position at the time.

10. Taking those aggravating features into account together with the seriousness of the offences you have committed, I could not agree less with the Prosecution that your offendings warrant custody sentences to mark –

- (a) The seriousness of your offendings.
- (b) The disapproval and condemnation of the Court and the public of your unlawful actions,
- (c) A deterrence of you and other like-maled persons,
- (d) Protection for the public and financial institutions,
- (e) Adequate punishment for you.

These principles are well settled in case law such as R v. Radich [1954] NZLKR 80 – 87 cited in PP v. Kalosil [2015] VUSC 149 and R v. Grant [1997] 93 Acrim. R. 314. The cases cited by the Prosecution.

11. The principle of proportionality is also well established in the case of PP v. Kalosil and Others. You have committed one charge of unlawful entry, ten



charges of theft and eight charges of forgery. You must be punished appropriately for these serious offences.

12. I have seen the comparative cases cited by the Prosecution in relation to unlawful entry and theft such as PP v. Killion and Others [2004] VUSC 17, PP v. Saki [2010] VUSC 1013, and PP v. Tabinok [2017] VUSC 151. The cases in support of forgery are Williams v. PP [2015] VUCA 29, PP v. Liathlatmal [2013] VUSC 6, and PP v. Samuel [2010] VUSC 13.

To maintain consistency, I adopt these cases.

13. I have seen submissions from defence counsel only this morning. Counsel concedes to the case authorities referred to by the Prosecution. I accept the mitigating factors raised by Counsel in reducing your sentence. I accept his submission that these should be restitution order in addition to an imprisonment term.

14. I therefore convict you on each of the 19 Counts and sentence you as follows-

(a) Count 1 – Unlawful entry – 6 years imprisonment as starting sentence.

(b) Count 2 – Theft – 6 years imprisonment.

These two terms of imprisonment will be served concurrently.

(c) Count 3 – Forgery – 6 years imprisonment

(d) Count 4 – Theft – 6 years imprisonment.

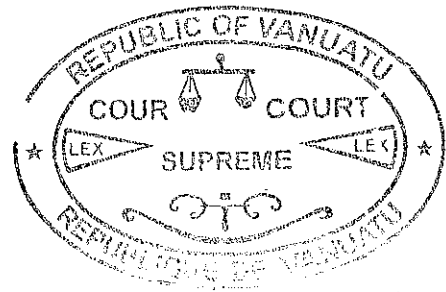
~~These 2 terms of imprisonment will be served concurrently but I order that~~
these 6 years be served consecutively with the 6 years imprisonment for Counts 1 and 2.

(e) Count 5 – Forgery – 6 years imprisonment

(f) Count 6 – Theft – 6 years imprisonment

(g) Count 7 – Theft – 6 years imprisonment

These 3 terms of imprisonment are to be served concurrently for a total of 6 years imprisonment. I order that these 6 years be served consecutively with the 12 years imprisonment for Counts 1, 2, 3 and 4.



- (h) Count 8 – Forgery – 6 years imprisonment
- (i) Count 9 – Theft – 6 years imprisonment
- (j) Count 10 – Forgery – 6 years imprisonment
- (k) Count 11 – Theft - 6 years imprisonment
- (l) Count 12 – Forgery- 6 years imprisonment
- (m)Count 13 – Theft - 6 years imprisonment
- (n) Count 14 – Forgery – 6 years imprisonment
- (o) Count 15 – Theft – 6 years imprisonment
- (p) Count 16 – Forgery – 6 years imprisonment
- (q) Count 17 – Theft – 6 years imprisonment
- (r) Count 18 – Forgery – 6 years imprisonment
- (s) Count 19 – Theft – 6 years imprisonment

These 12 terms of imprisonment will be served concurrently but I order that these 6 years imprisonment be added to the 18 years imprisonment for Counts 1, 2, 3, 4, 5, 6 and 7.

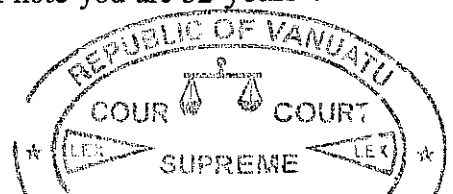
15. Altogether your starting sentence shall be 24 years imprisonment.

16. The reason for imposing consecutive sentence is that you offended repetitively on different dates as follows –

- (a) For Unlawful entry and theft in Counts 1 and 2 it happened in a package on 14 March 2016.
- (b) For Counts 3 and 4 they happened on 21 March 2016.
- (c) For Counts 5, 6 and 7 they happened on 25 March 2016.
- (d) For Counts 8, 9, 10, 11,12,13, 14, 15, 16, 17, 18 and 19 they occurred on the same date being 30 March 2016.

In my view the principle of proportionality cannot be achieved in your case unless consecutive sentences are imposed for the different dates your offendings were repeated.

17. I will now consider reducing your starting sentence. I have read and considered the factors contained in your pre-sentence report. I note you are 32 years old



and father of 4 children. You are the only bread winner in the family. You have had a good education and achievement. You have had good employment since 2007. You a skilled person with good relationship with your relatives and community. You are a member of the Christian Outreach Centre, a smart and motivated person. You have an unblemished record. You cooperated well with the police during investigations. You are will to perform custom reconciliation although you have not performed any yet. And it appears you are prepared to make some repayments to the victim organisation. For all these factors I deduct 6 years from the 24 years leaving the balance at 18 years.

18. I apply the third step of Kal Andy's Case by allowing a further 1/3 reduction for your guilty plea at first opportunity. This means that a further 6 years are deducted from 18 years.

19. Your end Sentence is therefore 12 years imprisonment.

20. You are therefore sentenced to an end Sentence of 12 years imprisonment.

21. Your sentence is back dated to 3 April 2018 when you were remanded in custody following your guilty pleas.

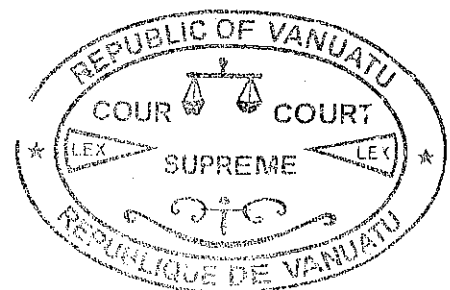
22. That is the Sentence of the Court. You have a right of appeal against this Sentence within 14 days if you do not agree with it.

Restitution Order

23. Pursuant to Section 58 ZD of the Penal Code Act [CAP. 135] I hereby order that you make full restitution of –

(a) All cash moneys you stole being the sum of VT8,586,035 of which you used VT3,592,035 for your personal benefit and VT4,994,000 is frozen at the Naional Bank of Vanuatu to Youth Challenge Vanuatu.

(b) The VT4,994,000 frozen at the National Bank of Vanuatu be released directly to the Youth Challenge Vanuatu.



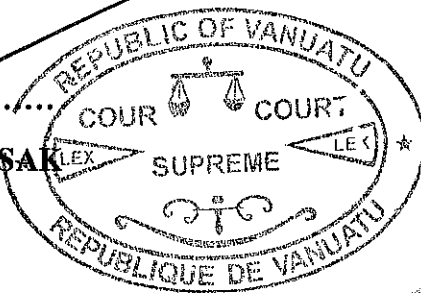
- (c) The remaining VT3,592,035 shall be repaid by you while you are serving your sentence and be completed within 2 years after you have been released on Parole on your half sentence.

- (d) All the equipment listed under paragraph 8 shall be returned to the Youth Challenge Vanuatu or the rightful owners by the Police after 14 days from the date hereof.

DATED at Port Vila this 3rd day of October, 2018.

BY THE COURT

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OLIVER A. SAKSAK
Judge

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR" and "COURT" are positioned on either side of the scale, with "SUPREME" below it. The words "LEX" and "LEX" are written on the left and right sides of the scale's base, respectively. A small star is located on the right side of the seal.