

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

Criminal
Case No. 20/441 SC/CRML

BETWEEN: Public Prosecutor

AND: Luisana Agnes Mock
Defendant

Date: 9 March 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mr D Yawha for the Defendant

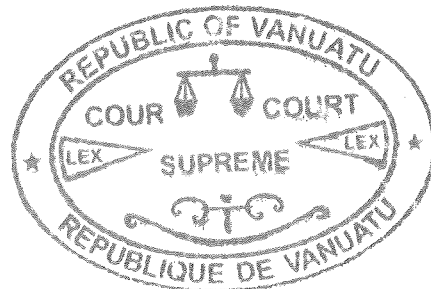
SENTENCE

A. Introduction

1. Ms Mock pleaded guilty to one charge of obtaining by deception. The maximum sentence for that offence is a term of 12 years imprisonment. It is a very serious offence. I did not take pleas to 2 further charges which were laid but which dealt with the same offending under different sections of the criminal law – I treated them as having been *nolle prosequi*'ed.

B. Facts

2. Ms Mock was recruited from Fiji to come and work as the General Manager of the Espiritu Hotel in Luganville on an attractive salary package, which included accommodation and meals at the hotel. She came with her partner, who was employed to be the head Chef.
3. Ms Mock commenced working at the hotel on 4 April 2019.



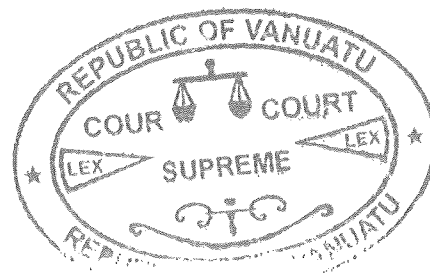
4. Over the period of 27 May 2019 to 20 October 2019, she stole a total of just over VT 1.5 million from her employer.
5. The method used was only possible due to inside-knowledge of the hotel's systems. A large number of cash invoices were cancelled, and re-entered into the hotel's accounting processes (by way of concealment) as room charges instead - but they never passed on to customers as that would alerted clients and staff. Ms Mock simply retained the cash for her own purposes.
6. When first asked in October 2019 about the preponderance of cancelled cash charges, Ms Mock blamed other staff. That caused the hotel's management to interrogate innocent members of staff, all of whom denied any wrong-doing. Ultimately Ms Mock was suspended and asked to return in 2 days to follow up, once the reconciliations had been completed.
7. Ms Mock, on her return 2 days later, was asked if she had anything to say before the incriminating evidence against her was revealed. Ms Mock then confessed and apologized – she agreed to repay the missing funds in 10 days and to then leave the hotel. However, no payments by way of reparation have been received.

C. Aggravating/Mitigating Factors to the Offending

8. The aggravating factors to the offending are that this was quite deliberate, and done with some forward planning and inside-knowledge. Ms Mock commenced to steal from her employer less than 2 months after commencing her employment – knowing that her employer was shortly travelling overseas for 3 months. The magnitude of the offending is aggravating; as is the fact that the offending involved a gross breach of trust. There is no possibility of reparation.
9. There are no mitigating factors to the offending.
10. The start point that I adopt as appropriate for this offending and for Ms Mock's criminal culpability is 4 years imprisonment.

D. Personal Factors

11. I was asked by counsel to deal with sentencing immediately, as Ms Mock's immigration status required that. She was due to return to Fiji this week as her work visa was due to expire on 3 April 2020. The request, plus the fact that she was from overseas with competent counsel representing her, persuaded me to not call for a Pre-Sentence Report.
12. Ms Mock is separated from her husband with whom she has 2 children, one at University the other still at school. Her partner in Vanuatu, has also been terminated from his employment as a Chef at the hotel, and



he had already left by the time she was charged. I accept that she has no previous convictions in Vanuatu or elsewhere.

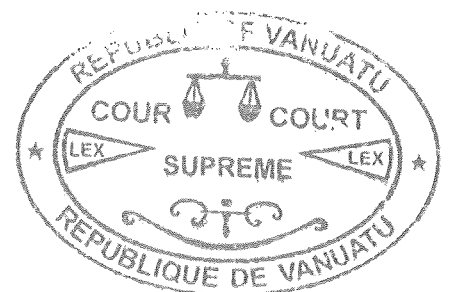
13. It was submitted that Ms Mock's admissions and apology, coupled with her plea of guilty indicated her remorse. I consider it reflects rather better the situation she finds herself in. The complete absence of any reparation, explained by having to remit funds for her children studying in Fiji, is a clear sign that there is no true remorse in this case – more a regret of not having been able to return to Fiji before the offending was discovered.
14. I note also, that Ms Mock's first reaction to her employer was to blame others – which caused other members of staff to be questioned. That is not true remorse.
15. The final factor I can take into account is Ms Monk's plea, which was given at the earliest possible opportunity. However, not only had Ms Monk made admissions to her employer, but there was video evidence of her altering the books in the manner alleged - which would have been very difficult to explain away. The strength of the evidence against Ms Monk was therefore telling in her decision to plead. I allow a discount, for the saving of Court time and expense as a result of the guilty plea, of 25%.

E. Sentence

16. The end sentence that I impose on Ms Monk is one of 3 years imprisonment.
17. The sentence does not in any way take into account Ms Mock's immigration status. The two cannot be linked. Once the sentence for her criminal offending in Vanuatu has been served, she can be repatriated forthwith to Fiji. The idea that she might be able to avoid her sentence due to her immigration status is a novel and incorrect assumption.

F. Suspension

18. The law provides a discretion to suspend all or part of the sentence, pursuant to section 57 of the Penal Code, namely where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender".
19. Even taking into account the desirability of keeping offenders in the community, so far as practicable and consistent with the safety of the community, suspending sentences should only be done in exceptional cases – not in every case where the sentence is of a short term.
20. Mr Mock's case involves offending that was committed deliberately, in the knowledge that it was wrong. It is a charge with a maximum term of 12 years imprisonment – in other words it is a very serious matter. Ms Mosk's dishonest conduct towards her unsuspecting and trusting employer is grave, and merits a condign response.




21. The principles of sentencing that have most applicability to this case are to hold Ms Mock accountable for her dishonest conduct and to deter her and others from acting in a similar fashion in future.
22. In these circumstances, suspending all or part of the sentence is simply inappropriate.

G. Conclusion

23. Mr Mock has 14 days in which to appeal this sentence if he does agree with it.

DATED at Luganville this 10th day of March 2020

BY THE COURT


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Justice G.A. Andrée Wiltens

