

**BETWEEN:** Public Prosecutor

**AND:** Kim Sun  
Defendant

**Before:** Judge Oliver A Saksak

**Counsel:** Mr Simcha Blessing for Public Prosecutor  
Ms Stephanie Mahuk for the Defendant

**Date of Plea:** 7<sup>th</sup> November 2023

**Date of Sentence:** 14<sup>th</sup> December 2023

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## SENTENCE

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### Introduction

1. The defendant Kim Sun pleaded guilty to 3 charges laid under section 2 (3) of the Currency Declaration Act ( count 1), Section 170 and section 68 (1) (b) and (2) of the Customs Act No. 1 of 2013. And she is here for sentence today.

### The Law

2. Section 2 of the Currency Act states:

*"2 Obligation to declare*

*(1) Not Applicable...*

*(2) Not Applicable...*

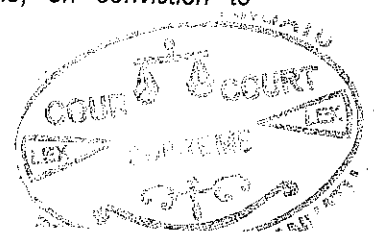
*(3) Any person who fails to declare currency in the prescribed amount to an authorised officer commits an offence and is liable on conviction to a fine not exceeding VT5, 000,000 or forfeiture of the currency under section 9."*

3. Section 170 of the Customs Act states:

*" Offences in relation to declaration*

*A person who:*

- a) *Makes a false declaration under this Act, or*
- b) *Knowingly produces or delivers to a custom officer a false or forged declaration, r*
- c) *Knowingly produces or delivers to a customs officer a declaration that is incorrect in any material particular, commits an offence punishable, on conviction to*



*imprisonment for a term not exceeding 6 months or to a fine of not exceeding VT 5,000,000 or both."*

4. Section 68 provides for offences in relation to importation or exportation of prohibited goods as follows:

*"(1) A person who:*

*a.....N/A,*

*b. exports, or transports with intent to export, goods from Vanuatu that is prohibited to be exported from Vanuatu by regulation made under section 66, or*

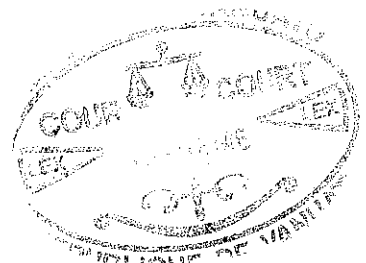
*(2) A person who commits an offence against paragraph 91) (b), (d) or (f) is liable on conviction a fine not exceeding VT 10,000,000."*

### **Facts**

5. On 19<sup>th</sup> December 2022 the defendant was to board a flight out of Vanuatu to travel to Korea. She completed a departure card declaring that she did not have cash in her luggage over VT 1,000,000.
6. When however her bag was scanned, cash in the amount of USD 60,000 equivalent to VT 7,229,509 was found concealed in three separate books found in her bag.
7. The cash was seized by custom officers at the has remained in their custody.
8. The defendant admitted the three offences at first available opportunity.

### **Submissions**

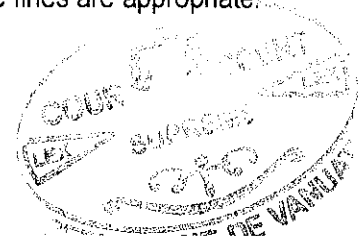
9. The State submitted on the case authority of Jimmy Philip v PP [2020] VUCA 40 that the appropriate sentences should be fines of VT 350,000 for the offences in Counts 1 and 2 and VT 400,000 for the offence in Count 3.
10. Ms Mahuk submitted in response and on the case authority of PP v Yao [2016] VUSC 21 that the defendant's offendings fall within the lowest range of the scale therefore the offence in Count 1 warranted a fine of VT 25,000. In Count 2 a fine of VT 30,000 and in Count 3, a fine of VT 50,000 is appropriate.



11. Counsel also submitted the Court should consider other sentencing options such as a total discharge under section 55, or an order to be sentenced if called upon ( section 56), or an order to impose substituted or alternative penalty of community work to fine ( section 58A), or a fine ( Section 58c).
12. The State submitted that the money seized by custom officers should be confiscated by the Court in the absence of any evidence by the defendant showing where the money originated from and what it was going to be used for.
13. Ms Mahuk also submitted however that the money seized should be returned to the defendant on the basis of the order dated 8<sup>th</sup> May 2023 in Civil Case 23/292 between the defendant as claimant and the Director of Customs as Defendant.
14. Defendant Counsel made submissions characterizing the offending of the defendant in paragraphs 5 and 6 on page 3 of her written submissions making clear explanations about the origins of the money and why it was being brought over to Korea in such a manner.

### **Considerations**

15. Considering that the three (3) separate provisions of the law were contravened by the action failure or omission of the defendant, which carry maximum penalties of fines of VT 5,000,000 and VT 10,000,000, these are serious offences.
16. As such the suggestion that a total discharge or an order to be sentenced if called upon ( section 55 and 56) are not appropriate options.
17. The circumstances of the offences and the defendant warrant that a sentence of fines be imposed.
18. The defendant might have had good intentions as explained by her legal counsel in the submissions to bring cash of more than VT 1,000,000 to Korea, however when she failed to declare as required the law, and deliberately concealing the money in books, she had made a declaration to custom officers on her travelling date, knowing that declaration to be false or untrue, she had an evil intention to evade or transgress the legal provisions of the Currency Act and the Customs Act. She had committed three statutory offences in one act. That is a serious matter that warrants a custodial sentence or fines. But in her case fines are appropriate.



19. And for the sentence to achieve a general deterrence to her and the travelling public, to mark the seriousness of the offending, the public condemnation of her action and to punish her appropriately, the fines as proposed by her lawyer are far too low.
20. Accordingly I convict the defendant and sentence her as follows;-
- a) For the offence in Count 1- I sentence her to pay a fine of VT 150,000.
  - b) For the offence in Count 2- She is sentenced to a fine of VT 150,000.
  - c) For the offence in Count 3- She is sentenced to a fine of VT 200,000.
21. Her total fine is VT 500,000 payable within 14 days from the date hereof. In the event of default, she will be imprisoned for a period of 3 months.
22. As to whether or not the money seized should be confiscated or returned to the defendant, I accept the defendant's submissions that it has not been shown or established by the State that the money is or are proceeds of crime. The money in my view was seized lawfully on reasonable grounds and suspicion under section 5 of the Currency Declaration Act. It was an act done in good faith.
23. Secondly the order for its return made on 8<sup>th</sup> May 2023 stands and has not been challenged. The moneys seized should therefore be returned to the defendant but only after she has paid off the VT 500,000 fines imposed on her today.
24. That is the sentence of the Court. The defendant has a right of appeal against the sentence if she so chooses.

**DATED at Port Vila this 14<sup>th</sup> day of December 2023**

**BY THE COURT**

  
**Oliver .A. Saksak**

**Judge**

