

BETWEEN: Public Prosecutor

AND: Mary Lae

Defendant

Dates of Plea: 22nd April 2024

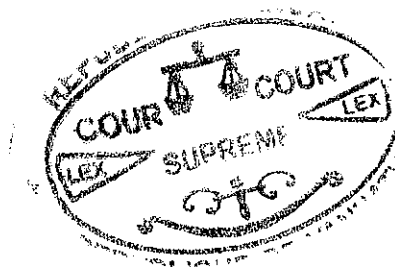
Date of Sentence: 29th April 2024

Before: Justice Oliver A Saksak

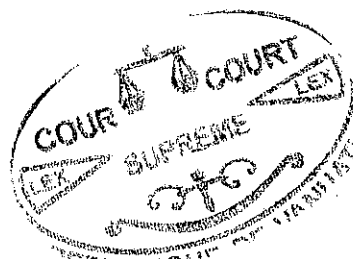
**Counsel: Ms Florence Sewen for Public Prosecutor
Mr Reggie Melsul for the Defendant**

SENTENCE

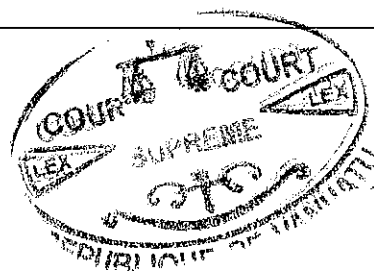
1. Mary Lae pleaded guilty to one count of misappropriation contrary to section 125 (b) of the Penal Code Act [Cap 135] and is here for sentence today.
2. On 28th December 2021 Kiwi store gave the sum of VT 1,520, 000 to the defendant to order and purchase their cargo from HXM store in Port Vila. She took the money as the agent of HXM store here in Tanna. The money was to have been deposited into HXM Store's Bank account at the National Bank with appropriate information or advice to HXM Store to prepare and pack the cargo required. Also on 28th December 2021 Martha Nalau gave VT 400,000 to the defendant to order cargo from HXM.
3. The moneys were never deposited as instructed and the Manager of HXM store started making telephone calls to the defendant from 28 December 2021 until 4th January 2022 requesting her to deposit the money. Only on 11th January 2022 that the defendant called the Manager and explained that the money was misplaced on 3rd January 2022 at Bill Iapson Store when she went to buy a new bag to replace her old torn bag. It was later on 26th January 2022 that the defendant told Jimmy Ialsi the owner of Kiwi Store that she had lost the money at Bill Iapson shop. Earlier in January 2022 she informed Martha Nalau that she had lost the money at Bill Iapson Store. The total amount of money lost was about VT 1,943,400.



4. From the defendant's statement to the Police she admitted collecting moneys from Kiwi Store, Martha Store and W&J Store. The sum she said she collected was VT 1,866,660. However the owners of the three stores said in their police statements the amounts they gave to the defendant were VT 1,520,000 (Kiwi Store), VT 400,000 (Martha Store) and VT 23,400 (WYJ store), the total being VT 1,943,400 and not VT 1,473,180 as per the particulars of the offence.
5. Further the defendant stated to the Police that after discovering on 3rd January 2022 that the moneys were misplaced at Bill Iapson's Store, she returned to the Store on 4th January 2022 and asked for their assistance to put up a public notice at NBV calling on any person who took the money to return them to the defendant.
6. The result of the notice was that on 11 January 2022 an unknown person returned to her the sum of VT 1,036,660. She stated that VT 866,660 is still missing but that she had paid back VT 125,600. She promised to repay the total amount outstanding by instalments.
7. The sum of VT 1,036,660 returned by the unknown person has been recovered by the Police and paid over to the complainant. The balance remaining is 906,740 and not 866,660 as she stated in her police statement.
8. By the defendant's own admission of guilt, she is convicted and sentenced.
9. The maximum penalty for misappropriation is 12 years imprisonment.
10. There are no mitigating circumstances.
11. The aggravating features of the offending were-
 - a) Lack of a duty of care, resulting in a large sum of money lost in her care and responsibility.
 - b) Three customers were involved.
 - c) The delay in delivery of cargoes.
 - d) The delay in reporting the alleged loss until first week and last week of January 2022, about some 4 weeks later.
 - e) There was a degree of dishonesty involved inferred from the unknown person who returned the moneys or part of it.



12. Considering these factors the appropriate punishment is to be a custodial sentence.
13. Applying the principles set out in PP v Mala [1966] VUSC 22 I convict and sentence the defendant to a start sentence of 3 years imprisonment.
14. In mitigation, first I reduce her sentence by 1/3 for her guilty plea which is 12 months, leaving the balance to be 2 years imprisonment.
15. Next, I take into account her accepting responsibility for the loss and her willingness to repay the balance by instalments of VT 10,000 per month. Her pre-sentence report shows she had re-paid up to VT 450,000 already. From the outstanding of VT 906,740, the balance remaining for her to repay shall be VT 456,740.
16. In addition, I consider her character and personal history as contained in her pre-sentence report and the delay of over 2 years in prosecuting her case.
For all those factors I deduct a further 10 months from her balance of 2 years leaving her end sentence to be 14 months imprisonment.
17. I consider that in the circumstances of the case, and the nature of the offending of the defendant, that a suspension is warranted under section 57 of the Penal Code Act [Cap 135].
18. I therefore sentence the defendant to an end sentence of 14 months but suspended for a period of 2 years from the date of this sentence.
19. That means the defendant will not go to prison today but will remain in the community and be offence free for a period of 2 years. If she commits any further offences for which she would be charged and convicted, she will go to prison for 14 months.
20. Further I Order that the defendant repays the outstanding sum of VT 456,740 to HXM within the period of 2 years of her suspended sentence.



21. That is the sentence of the Court on the defendant. If she wishes to appeal the sentence, she must do so within 14 days from the date of this sentence.

DATED at Isangel this 29th day of April 2024
BY THE COURT


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Hon. Oliver A Saksak
Judge

