

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

Criminal
Case No. 24/3822 SC/RML

BETWEEN: PUBLIC PROSECUTOR

AND: LULU SAKIAS, AMOS WARSAL AND GEORGE
ANDERSON TOA
Defendants

Before: Justice Oliver A. Saksak

Counsel: Mr Lenry Young for Public Prosecutor
Mr Frederick Loughman for Lulu Sakias and Amos Warsal
Mr Henzler Vira for George Anderson Toa

Date of Re-Arraignment: 21st July 2025

Date of Sentence: 31st March 2026

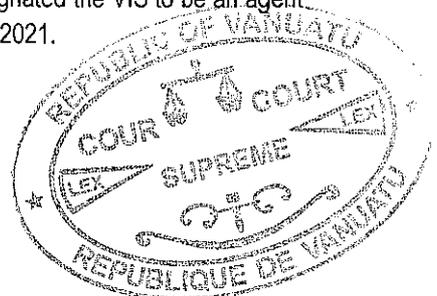
SENTENCE

Introduction

1. On 21st July 2025 when trial commenced the three defendants sought leave to be re-arraigned in relation to eight counts of misappropriation. They had initially pleaded not guilty to the charges on 18th February 2025.
2. Leave was granted and all the defendants entered guilty pleas to all eight charges against them. Paragraph 3 of the Minute dated 21st July 2025 specifies the charges and counts against each of the defendants.
3. The defendants are for sentence today on their own guilty pleas.

Background Facts

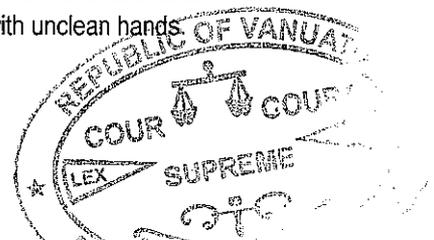
4. In June 2020 the three defendants had established the Vanuatu Immigration Solution (the VIS) as a Citizenship Development Support Program (DSP), as an agent by registering same with the Vanuatu Financial Services Commission (VFSC).
5. The Citizenship Commission (the Commission) pursuant to Section 13E of the Citizenship Act [Cap 112] established the DSP on 7th January 2019. And the Commission designated the VIS to be an agent of the DSP on 15th July 2020 and redesignated it as such on 2nd February 2021.



6. The directors and owners of the VIS are the defendants Sakias Lulu, George Anderson Toa and Amos Warsal.
7. Under the DSP arrangement, VIS was to receive moneys from foreign nationals who wished to acquire Vanuatu citizenship in the first instance and to ensure that those monies were paid into an appropriate revenue account maintained at a local commercial bank, in this case the National Bank of Vanuatu (NBV), and then to advise the Commission in order that a citizenship certificate would be issued.
8. The Development Support Account was opened for this purpose at the NBV is No. 013269001, a USD Account owned and controlled by the Ministry of Finance and the Department of Finance.
9. The VIS also has a designated USD Account with NBV No. 018654001. The defendants own and control this account.
10. The then chairman of the Citizenship Commission, Mr Ronald Warsal had conveyed and relayed information about the DSP to a Mr Koko Wang, who contacted an oversea client by the name of Cloe Yin Qiongyan, who in turn contacted Xia Shen.
11. In October 2020 Xia Shen paid 115,000 USD into VIS Account 0185654001 through Cloe, as his sub-agent. On 15th December 2020 Xia Shen transferred 19,955 USD and 54,955.10 USD to the VIS Account. And on 5th January 2021 Xia Shen again transferred the sum of 40,074.96 USD to the VIS Account. In total the sum of 114,984 USD were transferred into the VIS Account at the NBV.
12. The NBV has disclosed its records (Bank statements) showing those transfers were made.
13. However the statements also indicate that the moneys were moved from the VIS Account into the defendants personal accounts at NBV on the following dates:
 - a) 21/02/2020, 1,000.00 USD debited from VIS Account and credited to Geroge Toa's account No. 0080644001.
 - b) 21/12/2020, 1,000.00 USD debited from VIS Account and credited to Lulu's Account No. 0164336001.
 - c) 22/12/2020, 1,000.00 USD debited from VIS Account and credited to Warsal's account.
 - d) 28/12/2020, 1,000.00 USD debited from VIS Account and credited to George Toa's personal account.
 - e) 28/12/2020, 1,000.00 USD debited from VIS account and credited to Warsal's account.
 - f) 28/12/2020, 3,000.00 USD debited from VIS account and credited to Warsal's account.
 - g) 20/04/2021, 4,000.00 USD debited from VIS account and credited to Warsal's account.
 - h) 20/04/2021, 2,000.00 USD debited from VIS account and credited to George Toa's account.

Discussion

14. The defendants made admissions to these facts. The moneys were never received by the Government or the Republic. And Xia Shen never received any Certificate of Citizenship or a passport. The defendants have in their submissions submitted the State has not shown any evidence showing loss of revenue and that Xia Shen has been issued with a Vanuatu passport.
15. The only explanation the defendants have given is that Xia Shen did not honour his part of their agreement that he should pay a commission of VT 7 million. They submitted that because of that failure, they took steps to transfer portions of the moneys paid into VIS account into their personal accounts as their respective commissions. They submitted the complainant has come to Court with unclean hands.



16. Be that as it may, the offence of misappropriation does not involve a commission. Section 123 of the Penal Code Act [Cap 135] defines misappropriation as follows:

"123. Misappropriation defined

A person commits misappropriation of property who destroys, wastes, or converts any property capable of being taken which has been entrusted to him for custody, return, accounting or any particular manner of dealing (not being a loan of money or of monies for consumption)."

17. Section 125 of the Act provides:

"125. Prohibition of theft, misappropriation and false pretences

No person shall cause loss to another –

- (a) by theft;*
- (b) by misappropriation; or*
- (c) by false pretences.*

Penalty: Imprisonment for 12 years."

18. Clearly the monies paid by Xia Shen were to obtain a Vanuatu Passport. The moneys were held in trust at an account operated by the defendants. The monies were to be paid into Government revenue in return for a passport. Alternatively the monies would be returned to the payee if a passport was not issued. The monies were not for loan or for consumption.
19. When the defendants took decisions to have portions of those monies transferred into their personal accounts, they committed the offence of misappropriation of those monies. They were not entitled to do that. If they were after their commissions, they had other avenues or processes to follow to be able to get that benefit.
20. Therefore the defendants had no mitigating circumstances for their actions.
21. The offence of misappropriation is a serious offence carrying the maximum penalty of 12 years imprisonment.
22. From the facts there were aggravating circumstances such as:-
- a) A degree of planning involved despite defence submissions which I reject as untenable.
 - b) The financial loss caused to the State and to Xia Shen .
 - c) There was a serious breach of trust. The moneys were held on trust.
 - d) The offendings were repeated more than once between 21st and 22nd December 2020 and 20 April 2021 over a period of almost 4 months.
 - e) The reputation of the scheme and of Vanuatu as a country was tarnished by the actions of the defendants.
 - f) The monies were wasted and used for personal gains and advantage contrary to the purpose for which they were sent over.
23. In assessing the appropriate punishment and sentences for the defendants I have taken all these features in addition to the seriousness of the offendings. And I have also considered the cases of PP v Mala [1996] VUSC 22 as endorsed by the Court of Appeal in Apia v PP [2015] VUCA 30. I have made comparisons with the cases of PP v Bani [2019] VUSC 46, PP v Moli [2019] VUSC 153 and PP v Yanick [2012] VUSC 252.
24. These cases differ in their facts and circumstances but it is clear to me this case is more serious than the cases of Bani and Moli. I consider that the cases of Mala and Yanick are relevant and applicable to this case.



25. In my view the appropriate sentences of these three defendants are to be short custodial sentences in accordance with the principles enunciated in the Mala case. These sentences must serve as a deterrence to others, to protect monies held on trust from abuse, to mark the seriousness of the offending and to punish the offenders appropriately.

Sentences

26. I therefore sentence the defendants as follows:

- a) George Anderson Toa – For Counts 1, 4, and 8 to a start sentence of 18 months imprisonment on each count, concurrent.
- b) Lulu Sakias – For Counts 2 and 5 to a start sentence of 18 months imprisonment on each count, concurrent.
- c) Amos Warsal- for Counts 3, 6 and 7 to a start sentence of 18 months imprisonment on each count, concurrent.

27. In mitigation I reduce your start concurrent sentences by 4 months for late guilty pleas.

28. For your personal and other mitigating factors I reduce the balance of your sentences by a further 2 months.

29. That leaves your end sentences to be 12 months imprisonment. I therefore sentence you George Anderson Toa, Amos Warsal and Sakias Lulu each to an end sentence of 12 months imprisonment and these sentences will not be suspended.

30. Your end sentences of 12 months imprisonment takes immediate effect after 14 days from today, on 13th April 2026. You each have a right of appeal against these sentences if you do not agree with them.

DATED AT Port Vila this 31st day of March 2026

BY THE COURT


Hon. Justice Oliver A Saksak

