

PUBLIC PROSECUTOR

V

JOHN KALWAT

Coram: Moses Peter

Appearances: Smithy Obed for the State
Defendant appear in Person

SENTENCING

UPON HEARING Defendant John Kalwat plead guilty on the charge of Obtaining Money by Deception contrary to section 130B (1) of the Penal Code Act [CAP 135];

AND UPON HEARING Mr. Obed on behalf of the State on the brief facts of the case as follows:

- On or around 2006, the complainant namely James Chiaka who hails from Tanna Island enquired on a piece of land at Erakor Half Road Area and was at some point approached by the defendant introducing himself as the custom owner of the said land.
- That followed onto a time when the defendant met with the complainant and said he is selling the land at an amount of VT 600,000 and that if the amount is paid to him, he will secure a lease title under the name of the complainant.
- On 23rd January 2006, the complainant paid VT 600,000 to the defendant in the presence of the complainant's brother namely Joshua Chiaka.
- On 9th December 2015 the complainant became aware that the land was in dispute and therefore could not be registered under his name.
- The complainant then approached the defendant to refund him his VT 600,000 but to no avail.
- The complainant then lodged a complaint in the Police Department hence this court proceeding.

AND UPON FURTHER HEARING the defendant John Kalwat on his personal particulars and circumstances of offending, it is deposed that:

- He admitted the facts given by the State.



- He has 5 hectares of land which is registered under his name and he intends to sublease parcel of the land to the complainant for the consideration of VT 600,000.
- He plotted the boundary of the land he was going to give the complainant but he then changes his mind and sold the entire 5-hectare land to the National Housing Corporation for a consideration of VT 16 Million.
- During that transaction, the complainant was never informed that his land had been sold.
- When the complainant became aware and confronted him, he told him he will refund his money once he can secure some benefits from the land he had sold.
- He said he was going to give the complainant another land but he refused and demand that he must refund him his money.
- He said on his financial capacity now he can comfortably repay the complainant VT 50,000 monthly or more if the circumstances permit until the full amount of VT 600,000 is satisfied.

THE COURT IS SATISFIED THAT:

- The offence is serious as reflected in the relevant legislation. A maximum penalty of 12-years imprisonment.
 - You fail to consider that the complainant's hard earning for the amount of money and used it to satisfy your personal gain without giving him the land he wanted.
 - You made no effort to register the sublease and your greed could have been the reason thereof because you wanted to sell the whole 5 hectares of land to National Housing Corporation for more money (16 Million Vatu).
 - Even though the NHC paid you by instalment it does not stop you from using the money to refund the complainant his money.
 - The complainant has been victimized by your action for more than a decade and you take no issue with it.
 - You are a leader in a home let alone a community and everyone look up to you.
 - A high level of trust is embedded in you by all people under you.
 - That trust and respect is breached by you on someone who considers you a trustworthy person to make dealings with.
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- This is an indication that money and greed can undermine your values and clear conscience.
 - A sentence I will impose on you now will be one that reflects the personal circumstances of your offending and will also mark the seriousness of the offence and show public disapproval of this offences in the community.
 - I took into account your submission that an amount of VT 50,000 can be paid by you monthly until the full amount of VT 600,000.

IT IS THEREFORE ORDERED THAT:

1. Conviction is hereby entered for your offending in respect to the charge.



2. You are ordered to a fine of VT 30,000.
3. You must pay your fine and produce receipt of payment in court no later than 30 days from today failing which you will serve 3 months imprisonment.
4. You are also ordered to refund the complainant VT 600,000 in 3 months from today failing which the complainant may seek an enforcement hearing from the court.
5. You have 14 days to appeal if not satisfied with this sentence.

DATED at Port Vila this 27th day of March 2018

BY THE COURT



MOSES PETER
Senior Magistrate

