

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

**JETHRO MOLI**

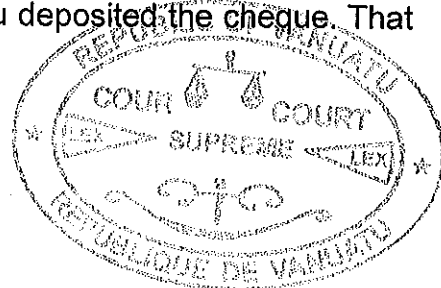
**Mr Justice Oliver A. Saksak**  
**Mrs Anita Vinabit – Clerk**

**Mrs Kayleen Tavoia – Public Prosecutor**  
**Mr Christopher Tavoia – For the Defendant**

**Date of Plea: 26<sup>th</sup> March 2009**  
**Date of Sentence: 27<sup>th</sup> March 2009**

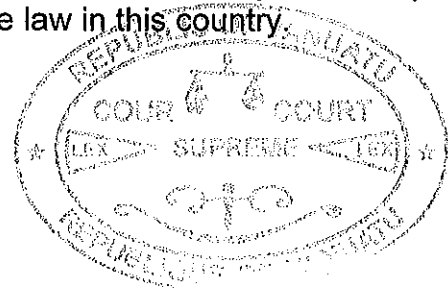
## **SENTENCE**

1. Jethro Moli you pleaded guilty yesterday to 4 counts of (a) Thefts x 2 counts contrary to section 125(a), and (b) misappropriation x 2 counts contrary to section 125 (b) of the Penal Code Act Cap 135. One count of obtaining money fraudulently laid under Section 127 of the Act was withdrawn against you because it is time barred by Section 15 (b) of the Act.
2. The maximum penalty for theft and misappropriation are 12 years imprisonment. The length of these prison terms indicate these offences are serious.
3. In assessing your sentences today I have taken in consideration what the Public Prosecutor and the defence counsel have said in their oral submissions in light of the Same Day Report prepared by the Probation Officer, Mr Taga.
4. You are a man of some standing in the community with the position of chairman of the Walaha Ward Council of Chiefs. You committed these offences back in July and September 1996 before you were appointed into your current position. Nevertheless, a bank officer trusted you enough to place a cheque of VT470.528 into your hands for you to see that the moneys were paid to fifteen (15) persons who were entitled to the money being their shares in the former Air Melanesia Ltd. You placed the cheque into your bank account and withdrew the sum of VT370.000 on 4<sup>th</sup> July 1996 on the same day as you deposited the cheque. That



money was never paid to the 15 people who were rightly entitled to them. Then on 19<sup>th</sup> September 1996 you withdrew VT100.000 but again the money was never paid to the 15 shareholders, 5 of whom have passed away.

5. When you pleaded guilty yesterday, you admitted liability for the loss of VT470.528 by theft and misappropriation.
6. The aggravating features of your case are that you stood in a position of trust and you abused it. Secondly, you used deceptive means in achieving that. Thirdly, you knew all along that you have misused these share holders' money and have pretended you were not responsible causing considerable delays of some 12 years and denying these 15 people their right to their money. Fourthly, you have not taken any steps within those 12 years to make good your faults by paying back any of those moneys.
7. Today I have heard an Article 5 argument by your lawyer that the prosecution has failed considerably by not ensuring you were prosecuted for these offences within a reasonable time.
8. This argument is untenable . It is your right to a fair hearing within a reasonable time against the rights of 15 elders, 5 of whom have died who were entitled to their money from 4<sup>th</sup> July 1996. Their rights far outweigh your right. Rights are not absolute rights. The opening words of Article 5 of the Constitution state that ***"fundamental rights and freedoms of individuals are subject to respect for the rights and freedoms of others...."***
9. Further Section 15 of the Penal Code Act provides for time limitations during which certain offences must be prosecuted. For offences punishable by imprisonment for more than 10 years – 20 years. Your offendings carry a maximum imprisonment of 12 years. According to Section 15(a) the expiry date would be in 2017. If you were called to plead in 2016, the Court would agree it is an unreasonable time. If there were some delays in the prosecution of your, case, the Court does not accept it is entirely the fault of the prosecutor's office. Some delays must be attributed to yourself and to your Counsel's office. Therefore, the argument of delay is irrelevant for consideration as a mitigating factor.
10. You have a history of criminal convictions although none of them is recent and directly relevant to your offending in this case. Nonetheless they indicate your attitude and behavior towards the system and the law in this country.



11. The Court must therefore punish you in a way that ensures that –

- (a) You are punished adequately for the wrongs you have committed;
- (b) The public disapproves of your offending being a position of trust and standing in the community;
- (c) To deter you from further repeat of your offending; and
- (d) To deter others from this offending.

12. For the reasons given above, the Court considers the most appropriate sentences to be imposed should be custodial, but suspended and made into supervision order together with a compensation order.

13. The sentences are as follows:-

Count 2 – Theft – You are sentenced to 2 years imprisonment suspended for 2 years on supervision under Section 58G of the Penal Code Act as amended.

Count 3 – Misappropriation – You are sentenced to 2 years imprisonment suspended for 2 years on supervision.

Count 4 – Theft – You are sentenced to 2 years imprisonment suspended for 2 years on supervision.

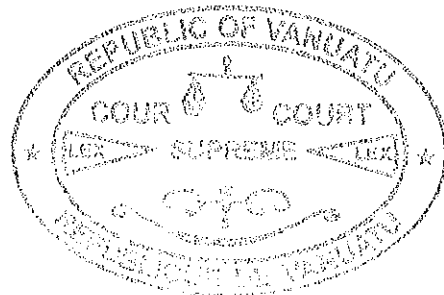
Count 5 – Misappropriation – You are sentenced to 2 years imprisonment suspended for 2 years on supervision.

These sentences run concurrently.

14. Further there will be a compensation order as follows:-

Within a period of 2 years of your suspended sentences you are hereby ordered to repay the sum of VT470.528 to the Walaha Community Association in the following manner –

- (a) First installment of VT235.264 to be paid to the Island Court Clerk at Ambore on or before 31<sup>st</sup> August 2009;



(b) Second installment of VT235.264 to be paid on or before 31<sup>st</sup> March 2010.

15. Finally, failure to make repayments within the time specified above may result in your suspended sentences being reactivated automatically, upon notice thereof by the Public Prosecutor.

DATED at Ambore this 27<sup>th</sup> day of March 2009.

PUBLISHED: Luganville, 31<sup>st</sup> March 2009.

BY THE COURT



**OLIVER A. SAKSAK**  
Judge

