

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**V.**

**JOHN YANICK**

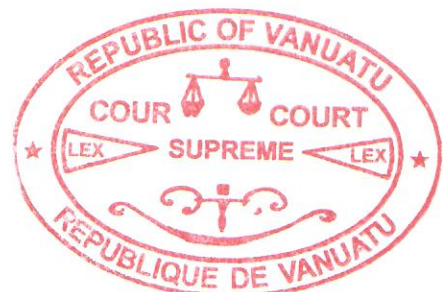
**Mr Justice Oliver Saksak**

**Mr Simcha Blessing for Public Prosecutor  
Miss Jane Tari for the Defendant.**

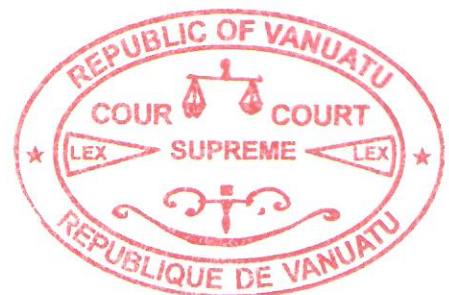
**Date of Hearing: 5<sup>th</sup> December 2012  
Date Sentence: 10<sup>th</sup> December 2012**

## **SENTENCE**

1. You were charged with one count of misappropriation Contrary to Section 125 (b) of the Penal Code Act Cap 135 (the Act). On 14<sup>th</sup> November 2012 you freely admitted committing the offence. Accordingly conviction was recorded against you.
2. The offence of misappropriation is a serious one because Parliament has set the maximum penalty at 12 years imprisonment.
3. The facts presented by the Prosecutor to which you have conceded are as follows:-

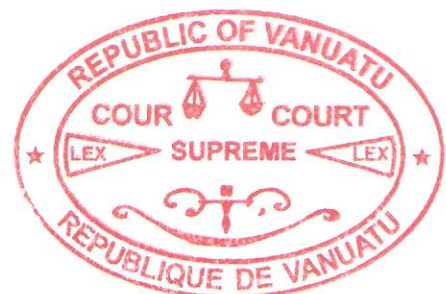


- “1. The Defendant met one Ray Melterel of Atchin sometime during February 2012 on board the M.V. Rosalie as they were bound for Malekula. While on the ship the Defendant convinced Ray Melterel that he was selling solar panel sets and that he was going to Malekula to promote and sell his products. The Defendant showed Ray Melterel a copy of a brochure depicting the products and prices of the products he was promoting and selling.
  
2. The Defendant convinced Ray Melterel to go to his village and community on Vao Island and collect money from people who were interested in buying the solar products he (the Defendant) was promoting. The Defendant told Ray Melterel that once he received the money he would send the products to Malekula for the respective purchasers. The Defendant gave Ray Melterel a receipt book in which he could record sales and issue receipts. At all material times the Defendant had no such business and was at all material times intending to defraud people who were conned by him including Ray Melterel.
  
3. On Vao Island Ray Melterel promoted, in good faith, the products the Defendant was promoting. On various different dates from when he arrived in Malekula sometime in February 2012 up until around 12 April 2012 Ray Melterel collected VT20,000 each from the following 44 people: Nambo Abel,



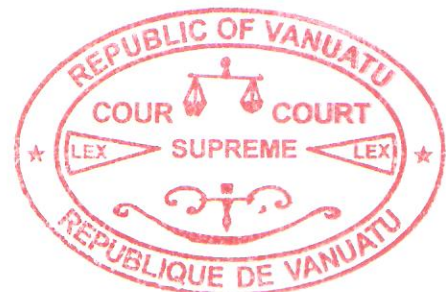
Belosak Aniseto, Jean Bosco, Bue George, Melterovo Bernard, Tevano Ringo, Marie Augustine, Melteras Lina, Marie Viane, Melteras Louise, Melteror Dioda, Teilem Tate, Tevano Konsak, Batick Baolo, Melteror Fabiano, Basilio Kevy, Malturheim Imbert, Tevanu Olive, Lilyor Firme, Melteror Mory, Peltronio Marie-Andonia, Tevanu Olivier, Kai Herve, Malao Annie, Belbong Jean-Paul, Basilio Sugene, Tevanu Alberick, Belosath Jaen-Bosco, Liliord Joel, Meltenoven Hilarion, Belbong Hugo, Meltenovan Joape, Betsesai Cyprien, Melteras Julien, Tevanu Casimir, Molunturala Ildever, Betsesai Marie-Chanel, Basilio Astride, Tevanu Deni-Jeanne, Melteras Charlem, Meltelili Jules, Meltemacsan Alona, Melturheim Justin and Tevanu Raoul.

4. The VT20,000 collected by Ray Melterel from the 44 people on Malekula came to a total of VT880,000. Ray Melterel put in VT20,000 of his own money, thus adding up to VT900,000, and sent it as a cash transfer to the Defendant via the National Bank of Vanuatu (NBV) on 12 April 2012. The Defendant collected this VT900,000 from the NBV in Santo on the same day after being informed by Ray Melterel. The Defendant promised Ray Melterel that he would send them their products soon and on other occasions made excuses regarding the delay.





5. Despite telephoning the Defendant numerous times in regards to the solar products and the money sent, the Defendant did not send any solar products to Ray Melterel or others nor did he return any money he received. The matter was subsequently reported to the police thus leading to the investigation and arrest of the Defendant on Santo”.
6. From those facts it is obvious to the Court that you deliberately set up a scheme which was a scam to rob people of their money. Nowhere have you disclosed where the solar panels you promised to sell were coming from. You said you were going to Malekula to promote and sell your products. But that is not the truth. You are not a solar panel manufacturer. You are a fisherman and a baker. You are from Tanna and going to Vao Island and trying to promote something which you knew would never happen. You used someone by name of Ray Melterel as your agent so your identity would not be known. You have stated in your Pre-Sentence Report that most of your victims did not know you. That is exactly what you wanted it to be, so you could take their money and run and they would not be able to get you. But you were seriously mistaken. You were caught and charged, and have admitted your actions. Under these circumstances I consider that the appropriate penalty for you is to send you to prison, and the starting point for your offending is to be two years imprisonment.



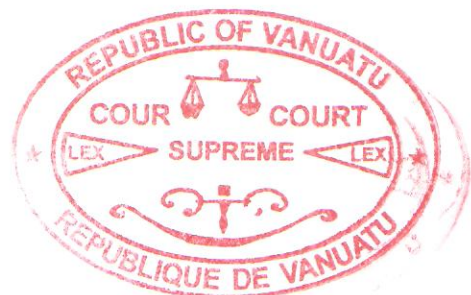
7. Your offending was made serious for the following aggravating features –

- (a) Your position of trust over other people's moneys and breaching that trust.
- (b) Converting other peoples' money and wasting them for your own selfish use, amounting to an unjust enrichment.
- (c) Your in-ability to refund or repay those moneys.
- (d) Your previous conviction and blemished criminal past.

For these features, I consider there should be an uplift of 1 year. This brings the total sentence to three years imprisonment.

8. I now consider your mitigating factors. Defence Counsel submitted five factors but I consider that only two are relevant which are –

- (a) Your cooperation with the police; and
- (b) Your early guilty plea.



9. Accordingly to Public Prosecutor v. Gideon [2002] VUCA 7 you are entitled to 1/3 reduction for your guilty plea. Coupled with the other factor of cooperation with the police, it is my view you should be entitled to a total of 1 year and 4 months reduction from your total of 3 years imprisonment term. Accordingly, I so order. This means that your remaining imprisonment term is to be 20 months which is 1 year and 8 months.
10. I therefore sentence you to imprisonment for a period of 1 year and 8 months. This sentence will not be suspended due to your previous criminal convictions for theft.
11. The sentence serves the following purpose :-
- (a) To mark the seriousness of your offending;
  - (b) To mark public condemnation of your actions;
  - (c) To deter yourself and others from such actions; and
  - (d) To punish you appropriately.
12. Both Counsel have submitted and urged that Court to follow the case of Public Prosecutor v. Mala [1996] VUSC 22. However that case is not binding on this Court. With respect the sentencing range set out in that case are far too low. I consider that the circumstances surrounding your offending





although a lesser amount was involved, they place your offending on the higher end of the scale than Mala's case.

13. Restitution has been suggested by Counsel but this is declined as you do not have the means to meet any restitution order.
14. Your term of imprisonment commences today 10<sup>th</sup> December 2012. You will be eligible to apply for parole after having served half of your 1 year 8 months imprisonment term.
15. You have a right of appeal within 14 days from the date hereof, if you so choose.

**DATED at Luganville this 10<sup>th</sup> day of December 2012.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge.**

