

PUBLIC PROSECUTOR

V

ANNA BANI

VINNA FREDDY

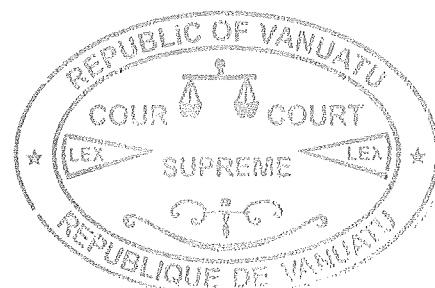
Coram: Chief Justice Vincent Lunabek
Counsel: Mr. Lenry Young for the Public Prosecutor
Mr. Francis Tasso for the Defendant

Date of Sentence: 22nd October 2019

SENTENCE

1. Anna Bani and Vinna Freddy are both charged with offences of misappropriation, contrary to section 125 (b) of the Penal Code Act [CAP 135] in the (Amended) information filed 14 May 2019.
2. On 5 September 2019, each of you entered following pleas:-
 - Defendant Anna Bani entered a guilty plea for misappropriating an amount of VT285, 200 belonging to Hotel Le Lagon causing a loss to the said Hotel; And
 - Vinna Freddy pleaded guilty to misappropriating an amount of VT389, 530 belonging to Hotel Le Lagon causing loss to the said hotel.
3. Misappropriation is a serious offence as reflected in the maximum penalty of 12 years imprisonment imposed by law. Section 125 (b) of the Penal Code provides:

"125. Prohibition of theft, misappropriation and false pretences



No person shall cause loss to another –

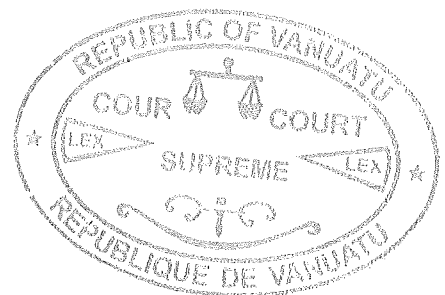
(a) by theft;

(b) by misappropriation; or

(c) by false pretences.

Penalty: Imprisonment for 12 years."

4. The following are the facts the defendants accepted upon entering their guilty pleas on the charges of misappropriation on the date of 14th September 2019.
5. **The complaint:** On 15th December 2016, Matthew Clowes, General Manager of Hotel Le Lagon (Hotel) alleged that there was a systematic failure to follow cash procedures. Cash being paid by guest was not being declared in daily posting and reconciliation. Tour desk staffs were deliberately disregarding a directive not to accept cash in the tour desk. They were deliberately losing /failing to declare cash transactions. Not all cash were misappropriated but a substantial amount over time. He said the defendants (Anna Bani and Vinna Freddy) admitted to failing to follow company procedure but claimed cash was withheld totalling VT 60,000 for one tour where guests had checked out and had not been charged. Proveau Berry (Berry) knew of the withholding of funds but he did not participate. The total amount _of money misappropriated is VT 674, 730.
6. **The auditor's findings:** On 13th January 2017, Ricky Siyaz (Regional Auditor) explained in his statement the procedure at the tour desk operators is such that:
 - Tour is either paid by cash or charged to guest room base on the issued voucher to guest.
 - Once voucher is issued to the guest, the tour desk officer has to post it to the system. If the payment is to be charged to room, the amount will be shown in the guest folio as a debit balance. If the guest had paid by cash, a debit entry of tour expense and a credit entry of cash would be showed in the guest folio.



- Tour control sheet is prepared by tour desk officer and handed over to the front desk at the end of the day. If for any day cash is received, this will be counted at the front desk and will be updated in the cashiers control sheet.

The envelope containing cash will be left at the drop box at the front office. The next morning the general cashier recounts the cash received and updates the Daily Envelop Reconciliation which is also checked against the posting in the system.

- Every next day, the income auditor prepares the tour reconciliation and verifies that all vouchers have been posted to the system.

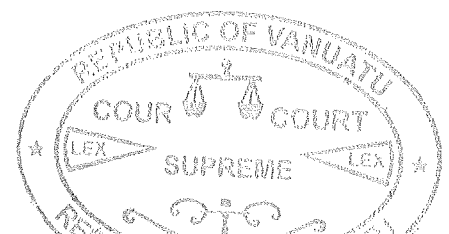
7. His audit findings, with respect to September and October 2016 were:

- It was noted that except for 8 vouchers (# 11385, 11497, 11191, 11278, 11283, 11290, 11291 and 11336), all other vouchers was not posted to the system. This amounted to VT 676, 130. He made reference to attached excel sheet.
- The total breakdowns of the total vouchers not posted are: - VT 607,130 was paid through cash, - VT 55,500 was room charge, and - No detail was stated on the voucher # 19,000, the details as per the voucher couldn't be verified to the system.

8. Furthermore, his summary findings for November 2016 show that:

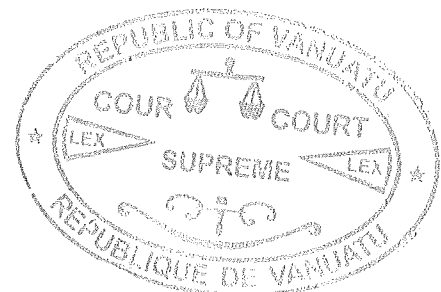
- Cash tour vouchers amounting to VT 48,800 has not been posted to the system for the month of November; and
- 1 of the cash tour vouchers amounting to VT 15,000 was posted to the system however the cash was not handed over to the front office.

9. Owen Hake (Hotel Le Lagon Internal Auditor) discovered that vouchers were not registered into the AB system. He confronted the defendant and finds out that they kept the vouchers and the money. Anna then gave him the following 38 missing vouchers. Their numbers are: 11518, 11349, 11400, 11388, 11387, 11375, 11389, 11351, 11353, 11359, 11361, 113765, 11350, 11403, 11436, 11446, 11447, 11526, 11324, 11519, 11516,

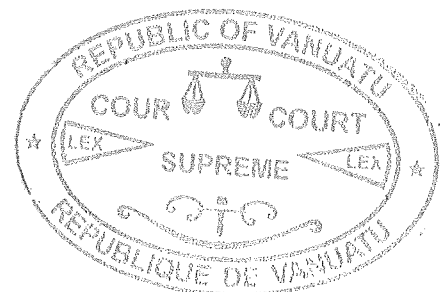


11514, 11504, 11449, 11450, 11398, 11452, 11515, 11397, 11518, 11380, 11410, 11326, 11529, 11322 and 11426.

10. Anna told him that “no money for vouchers”. He asked her, how that could be when she puts “paid cash” in the voucher. She responded “ | don’t know because it wasn't only me, three of us worked at the tour desk”. She asked him to allow her to obtain a loan from VNPF to repay the money. They had a meeting and they decided to suspend Anna from work. She hasn't repaid the money yet. He discovered that tour vouchers were mostly skipped causing numbers out of sequence and disorderly. He tried to reach her by email twice regarding this discrepancies but it was unsuccessful until he met her face to face, she admitted to him about hiding vouchers.
11. The Hotel file note dated 24" November 2016 disclosed that the General Manager and Human Resource Officer had a meeting with Anna Bani regarding her continuous used of VT 5,000 float. The meeting revealed the following discrepancies: procedures were not been followed, skipped vouchers have not been reported to accounts department and no documents admitted to certify the payments made by defendants.
12. **The other witnesses:** Robert Daniel (Hotel Account Supervisor) confirmed the discrepancies as mentioned by the Hotel Auditor Owen Hake. He had warned Anna Bani about it and asked her to fix it.
13. According to Lorita Moli (Hotel General Cashier) did not receive VT 15,000 regarding a tour that Vinna was in charged off. Vinna did not submit the cash but posted in the system. The next day she did not turn up to work. She provided the copy of daily envelope reconciliation sheet that shows the record of the said VT 15,000 under Vinna’s name.
14. Serida Sandy (Hotel operator) said the defendants turned up late to work on 7 October 2016. In their absence, she attended the tour desk to render service to two tourist couples. The couples paid VT 19,000 for hired quad bikes. She gave that money to Vinna upon her arrival.



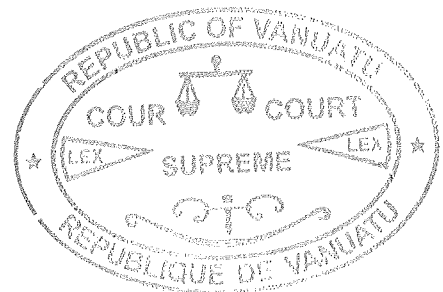
15. Serilyne Shem (Hotel Shop and Tour Operator) confirmed that the procedures at the Tour desk is that the guest paid tours with them at the front desk and they issued vouchers to the guest and then recorded in the system. Also, they need to bring the cash payments to the front desk. Person at the front desk has to sign to witness the delivery of cash at the front desk.
16. Mael Apisai (Hotel security officer) said that part of his work is to report incidents that happen in the Hotel. He approached the defendants about the issues of missing payment vouchers. They told him that they have used the money to pay for other voucher tour that one guest has checked out without paying.
17. Police Constable Josiah Enrel confirmed that base on the documentary evidence VT 285,200 was misappropriated by Anna Bani and VT 389, 530 was misappropriated by Vinna Freddy. Hence the total amount of money misappropriated by the defendants is VT 674,730.
18. **The record of interviews** - admissions: Anna Bani admits some facts in her caution statement as follows:
 - She understood the allegations of misappropriation against them.
 - They overlooked a pending voucher of VT 68,000 so they have to sale other vouchers to pay out that said voucher of VT 68,000. They do this because their salary is small to repay that.
 - She was working as supervisor looking after the tour desk. Her job was to sale tours, meeting and talking with the guest and sale items in the shop.
 - As per process, when a guest pays a tour or a room, they keep a record ona spread sheet and return the cash to the front desk.
 - They only made up their mind to pay out VT 68,000 that was overlooked. The management did not authorise them.



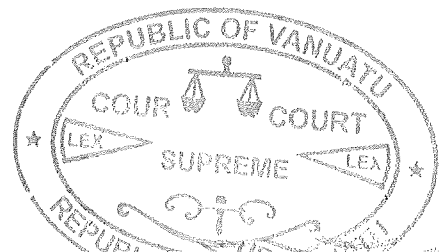
- Her expectation was that the missing vouchers wouldn't be resulted in such loss of money. Her suspension letter was in regards to VT 500.000. The vouchers didn't go missing but that they used them to pay/cover for other vouchers. She explained that the unpaid vouchers because they used the money to pay for other vouchers that they posted already.
- She told Owen Hake that they skipped some vouchers, mistaken some and they asked for more time to have them sort out.
- She admitted that it was true that she intended to obtain a loan to pay back. She said "true" that she signed the dockets vouchers of about VT 285,200 that they issued. They used the money to pay for the said pending vouchers.
- They did it to sort out what she described as "mistake" which somehow total up to VT 674,730.
- They only made up their minds to pay out the pending tour vouchers.
- She was asked that she breached the law by stealing other's money. She responded "yes, I know".
- Lastly, she said she is willing to pay back VT 285,200 with respect to the vouchers that she signed if she have the opportunity to find another job or that the Hotel re-recruit her.

19. Vinna Freddy admits the following facts in her caution statement:

- She confirmed only three of them works at the Tour Shop.
- She confirmed the procedures of work: when the guest pays for a tour, they issued a voucher to him/her and posted it in the system with a summary of the day tour and drop it at the front desk.
- It was their decision not to enter the vouchers into the system since they did a mistake with a voucher of VT 60.000.

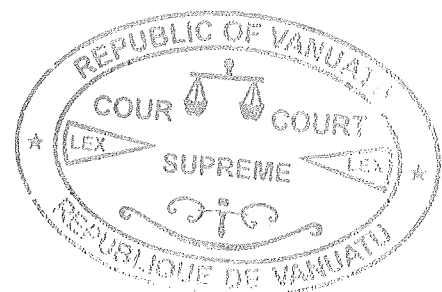


- She said they have mistaken and were using other vouchers money to pay for the mistaken and un-posted voucher of VT 60,000 which piled up to VT 739,930.
 - That they told Owen Hake that they will repay the money when they obtain a loan.
 - She acknowledged that it was not right to do that because the management did not authorise them to act that way.
 - She confirmed issuing the following numbered vouchers for various amounts of money but that she used them to pay for other vouchers: 11351, 11353, 11375, 11389, 11400, 11401, 11403, 11410, 11449, 11350, 11518, 11519, 11516, and 11517.
 - That no one authorised them to act in that way. That they acted that way because they did a mistake.
 - She agreed to repay the money to the hotel if the Hotel allows her to continue working. She asked the company to forgive them.
 - On 16" May 2017, she made an agreement to repay VT 300,000 or more to the Hotel.
20. Police Constable Josiah Enrel confirmed that the defendants and the complainant had mediation on 16 May 2017. The defendants agreed to refund the missing money. Vinna only refunded VT 2000 whereas Anna did not make any refund at all.
21. The prosecution refer the Court to following authorities: **Boesaleana –v- Public Prosecutor [2011] VUCA 39; Williams –v- Public Prosecutor [2015] VUCA 29; Giginia –v- Public Prosecutor [2017] VUCA** and **Public Prosecutor –v- Tavedey [2017] VUCA11**. The rational for these cases is that the sentence imposed in each of these cases must reflect the culpability of the Appellants (defendants) in such cases.
22. The prosecution refers to the following cases as persuasive and comparative judgments on misappropriation cases:- **Public Prosecutor –v- Mala [1996] VUSC 22, Public**



Prosecutor –v- Batty VUSC 107, Public Prosecutor –v- Kalmet [2014] VUSC 154. Following aggravating factors exist in this case: (a) amount of 674, 730 Vatu was the total amount misappropriated by the two defendants which constitute a loss for the Hotel company; there was breach of trust; the offending was repetitive; the money was used for personal purposes and there was planning in the design of the offending. The prosecution submitted that applying the sentencing approach in **PP –v- Andy [2001] VUCA 14**, the Court could impose an end sentence of 14 months imprisonment for Anna Bani and 18 months imprisonment for Vinna Freddy and both sentences to be suspended for a period of 2 years.

23. The defence lawyer submitted, on mitigation, that the Court should have regard to what the Court of Appeal said in **PP –v- Gideon [2002] VUCA 7**. The rationale for this case is that having reached the conclusion on the appropriate starting point sentence, the Court should consider what reduction should be allowed for mitigating factors. The defendants should receive full utilitarian benefit for their assistance to the police and entry of guilty pleas. The Court should also take into consideration the other mitigating factors in this case. The defence counsel refer to the cases of **Public Prosecutor –v- Moli [2009] VUSC 77** and **Public Prosecutor –v- Mala [1996]**. The defence submitted the sentence of both defendants should be suspended.
24. In the present case, the following aggravating factors exist in respect to the offending of both defendants:
- Amount of money misappropriated by Defendant Anna Bani is VT285, 200 and VT389, 530 is the amount misappropriated by Vinna Freddy.
 - Breach of trust as the Hotel Le Lagon is the employer of both defendants – Anna Bani was the supervisor looking after the tour desk and Vinna Freddy employed at the Tour shop.
 - The offending was repetitive over a short period of time (1 September 2016 to 30 November 2016).



- Financial loss caused for the hotel.
- Planning as it was reflected from the admitted facts above.

25. In this case, I consider and set 2 years as the starting point sentence inclusive of aggravating factors for both and each of the Defendants. Although, there is a difference into the amount of the money misappropriated, I sentence each of them with the same starting point sentence.

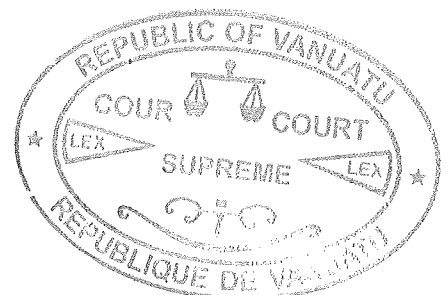
26. I give an allowance of 6 months for the following mitigating factors:-

For Defendant Anna Bani

- Educationally, a secondary school leaver.
- She lives with her husband and children in Port Vila.
- The children attend secondary and primary school.
- She is a helpful member of the community.
- She has ambition to start a small business herself.
- She is a member of Anglican Church.
- The incident happened when the families on Ambae Island faced with the crises of volcano eruption.
- She realizes her mistakes and say sorry for what she had done.

For Defendant Vinna Freddy

- She is also a secondary school leaver.
- She lives with her family at No.3 area in Port Vila.
- She helps support her two (2) brothers who attend school at Matevulu College (year 11) and USP courses at Emalus, Port Vila.
- She is a member of the Seventh Day Adventist Church.
- She had a role in the church as social coordinator for the youth of Matoa Seventh Day Adventist Church.
- She has an ambition to start a small business.

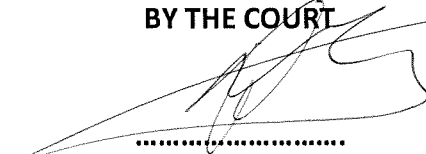


- She realizes her mistake and promises not to do such acts again in her life.
- She was very sorry for what she had done.

27. I give an allowance of one third for the guilty pleas entered by each of the Defendants at the earliest opportunity given to each by the Court.
28. Defendants Anna Bani and Vinna Freddy, your respective end sentence is 12 months imprisonment.
29. In the circumstances of this case, I consider and suspend your respective term of imprisonment of 12 months imprisonment for a period of 2 years. I take time to explain the meaning of the suspension of your terms of 12 months imprisonment for the period of 2 years to each of you. You have assured me that you understood what it means.
30. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts today.

DATED at Port Vila, this 22nd day of October, 2019

BY THE COURT



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Vincent Lunabek
Chief Justice

