

BETWEEN: Public Prosecutor

AND: Flora Kalsal
Defendant

Date: 17 March 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr T. Garae for Public Prosecutor (absent)
Mr L. Moli for the Defendant

SENTENCE

A. Introduction

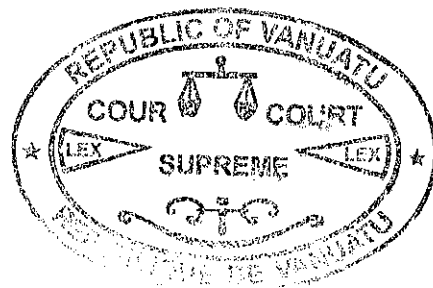
1. Ms Kalsal has pleaded guilty and accepted the summary of facts relating to a single charge of misappropriation. The maximum sentence for such offending is a term of 12 years imprisonment.

B. Facts

2. Ms Flora Kalsal was, in August 2014, promoted to an Accounts Receivable Clerk position by the Ifira Wharf and Stevedoring Company. Ms Kalsal has been employed by that company in other positions since 2001.
3. Between March 2015 and June 2016, she misappropriated VT 3,881,190 from the company by (i) altering the company's accounting documentation and thereby banking less cash than she had received; and (ii) not depositing cash received for a lengthy period but using those company funds for her own purposes in the meantime.
4. Ms Kalsal admitted this offending after an internal audit discovered discrepancies within the accounts. She was then dismissed.
5. She later also made admissions when questioned about this matter by the police.

C. Aggravating Factors of the Offending

6. There are aggravating factors to the offending:



- This is a clear breach of trust by a long-standing and valued employee;
- The offending took place over a 9 month period;
- The scale of the offending is aggravating – over VT 3.88m was misappropriated;
- Ms Kalsal's actions were planned and somewhat sophisticated, involving the use of her inside-knowledge of the company's procedures to conceal her defalcations; and
- In reality, there is no prospect of reparation.

D. Mitigating Factors of the Offending

7. There are none.

E. Start Point

8. I set the start point for Ms Kalsal's criminal culpability, as required to be identified by *PP v Andy* [2011] 14, at 4 years imprisonment.

F. Personal Factors

9. Ms Kalsal is 54 years of age. She is single, and a mother to 5 children.

10. She has no previous convictions.

11. There has been no custom reconciliation ceremony.

12. Ms Kalsal has offered to repay the amount misappropriated, at the rate of VT 5,000 per fortnight. In order to make full reparation at that rate, it would take something in the order of 30 years. It is simply unrealistic to impose such an onerous obligation. I note also that her former employer does not wish such a reparation order to be made.

13. For her personal factors Ms Kalsal is entitled to a reduction from the sentence start point of 3 months.

14. The final matter of mitigation is Ms Kalsal's guilty plea. I do not regard that as an indication of true remorse but it is an indication that she accepts her wrong-doing. By entering the plea when she did, Ms Kalsal has spared the Court a long drawn-out Court process – to prove misappropriation can be a lengthy and tricky proposition. In the circumstances, I am prepared to further reduce the start point by the maximum available in Vanuatu of one-third of the sentence to take into account Ms Kalsal's early plea.

G. End Sentence

15. Taking all of those matters into account, the end sentence that must be imposed is one of 2 years 6 months imprisonment.

H. Suspension

16. The Court has a discretion, in the right circumstances, of suspending all or part of a sentence. However, this offending is blatant, deliberate and dishonest. It is very serious. It would be sending the community the wrong message to suspend all or any of this sentence, as the principal sentencing principle involved in this matter

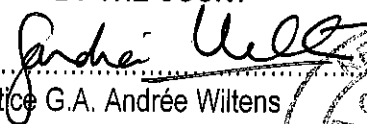


aside from holding Ms Kalsal accountable must be to deter Ms Kalsal and other members of the community from behaving in this fashion in the future.

I. Other

17. Ms Kalsal has 14 days to appeal this sentence if she disagrees with it.

Dated at Port Vila this 23th day of March 2020
BY THE COURT


Justice G.A. Andrée Wiltens

