

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 21/332 SC/CRML

BETWEEN: Public Prosecutor

AND: Morris Daniel
Defendant

Date: 17 May 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr S. Blessing for Public Prosecutor
Mr S. Kalsakau for the Defendant

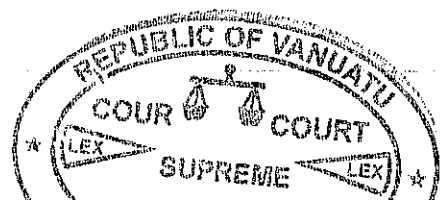
Sentence

A. Introduction

1. Mr Daniel pleaded guilty to misappropriation.

B. Facts

2. The Popovi Family operates a family trust. Mr Daniel is involved as a trustee.
3. In July 2019, the trustees decided to withdraw certain funds from the Trust for the purposes of litigation. A cheque was issued which Mr Daniel uplifted and cashed. He was to then use the funds for the purpose the trustees had determined, but instead VT 50,000 went to Chief Popovi and the balance was retained for Mr Daniel's own use.
4. Mr Daniel has spent the balance of VT 750,000 on personal matters.
5. Mr Daniel has avoided Chief Popovi since misappropriating those funds, which caused a complaint to be made to the police. When interviewed by the police, Mr Daniel accepted he had taken and used the funds for his own purposes.



C. Sentence Start Point

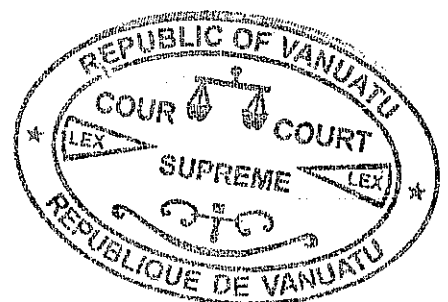
6. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
7. The maximum sentence for misappropriation is 12 years imprisonment.
8. The offending is aggravated by the following matters:
 - The breach of trust involved, in that Mr Daniel is a family representative as a trustee of the Popovi Trust;
 - The VT 750,000 taken and spent, and the fact that the funds were misappropriated in July 2019 and not been refunded; and
 - The fact that there was some pre-meditation and planning involved. Mr Daniel explained he was aggrieved at Chief Popovi not fairly sharing rental income received by the Trust, and hence he extracted some revenge.
9. There are no mitigating aspects to this offending.
10. I adopt a sentence start point of 18 months imprisonment.

D. Personal Factors

11. Mr Daniel pleaded guilty to the charge at an early stage. The evidence against him was very strong, and accordingly a guilty plea was really his only option. However, his plea indicates that he has accepted his wrong-doing, and it has also saved Court time and expense. For Mr Daniel's prompt plea I reduce the sentence start point by 4 months.
12. Mr Daniel is now 35 years old. He is in a de facto relationship with 2 children to support, aged 14 and 9. He has been a clerk with the State Law Office for the past 12 years, and is in otherwise good standing with the community. His partner also works.
13. He has no previous convictions.
14. Mr Daniel has not performed a custom reconciliation ceremony.
15. He has offered to repay the missing sum at VT 10,000 per fortnight. On that basis the admitted VT 750,000 defalcation will take over 3 years to be repaid, which effectively means the Trust has been deprived of its funds for some 5 years.
16. For Mr Daniel's personal factors, I reduce the sentence start point by a further 4 months.

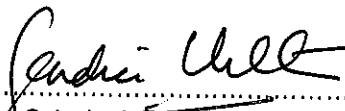
E. End Sentence

17. Mr Daniel is sentenced to 10 months imprisonment.



18. This Court has a discretion to suspend all or part of the sentence in certain circumstances. In this case, the relevant factor is that in order to pay back the funds taken, Mr Daniel needs to continue to be employed. Accordingly, for that reason, I am prepared to suspend the sentence for 2 years. Mr Daniel needs to stay offence-free for that period to ensure he does not serve the 10 month sentence imposed for this offending.
19. I accept Mr Daniel's offer to repay the Trust. He is to arrange for a recurring auto-pay facility with his Bank so that every fortnight VT 10,000 is paid directly to the Trust. The first such payment is to occur on 28 May 2021. To account for the interest the Trust has missed out on and the length of time before full reparation is completed, such fortnightly payments are to continue for 80 fortnights. The full reparation amount is set at VT 800,000.
20. As well, in order to hold Mr Daniels accountable for his dishonesty and as a deterrent to him and other members of the community who might be tempted to act in this fashion he is additionally ordered to complete 250 hours of Community Work.
21. Mr Daniel has 14 days to appeal the sentence.

Dated at Port Vila this 17th day of May 2021
BY THE COURT


Justice G.A. Andrée Wiltens

