

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

Criminal
Case No. 19/384 MC/CRML

PUBLIC PROSECUTOR

V

NERRY ANDREW ULAS

Date of Sentence: 24 September 2019

Before: Senior Magistrate Moses Peter

*In Attendance: Ms. Laura Lunabek for the State, Ms. Linda Bakokoto for
the defendant*

SENTENCE

1. Defendant Nerry Ulas, you last appeared in court on 11th June 2019 and pleaded guilty on all counts on offence of obtaining money by deception.
2. The charges are styled as follows:

Count 1

Obtaining Money by Deception contrary to section 130B of the Penal Code Act CAP 135]

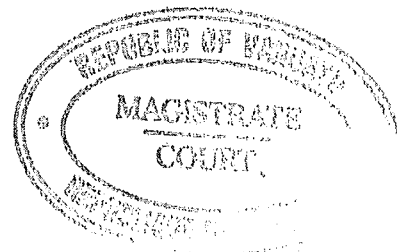
Nerry Andrew Ulas in October 2016 on Santo Island by deception when you asked an amount of money and promised that you would make Janet Kavika go and work for the RSE scheme in New Zealand, you obtained for yourself the amount of VT 30,500 from Janet Kavika."

Count 2

Obtaining Money by Deception contrary to section 130B of the Penal Code Act CAP 135]

Nerry Andrew Ulas in October 2016 on Santo Island by deception when you asked an amount of money and promised that you would make John Toe go and work for the RSE scheme in New Zealand, you obtained for yourself the amount of VT 87,000 from John Toe."

Count 3



Obtaining Money by Deception contrary to section 130B of the Penal Code Act CAP 135]

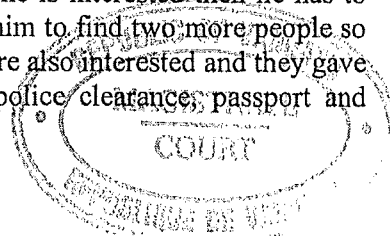
Nerry Andrew Ulas in 2016 on Santo Island by deception when you asked an amount of money and promised that you would make Albert Karae go and work for the RSE scheme in New Zealand, you obtained for yourself the amount of VT 33,000 from Albert Karae."

Count 4

Obtaining Money by Deception contrary to section 130B of the Penal Code Act CAP 135]

Nerry Andrew Ulas in November 2016 on Santo Island by deception when you asked an amount of money and promised that you would make David Karae go and work for the RSE scheme in New Zealand, you obtained for yourself the amount of VT 25,500 from David Karae."

3. Today you appear for sentencing on the charges after time was allocated for sentencing submissions to be filed by both counsels.
4. The facts related a number of similar criminal events where you approached several persons holding yourself as an agent for Regional Seasonal Employment Scheme (RSE).
5. You then asked them to pay several amount of money to you so that you could send them to New Zealand to participate on the seasonal employment scheme.
6. From Janet Kavika you obtain VT 30,500
From John Toe you obtain VT 87,000
From Albert Karae you obtain VT 33,000
From David Karae you obtain VT 25,500
7. It is clearly reported in the brief of facts submitted by the Prosecution that each of these complainants have filed complaint in the Police Department because you did not sent them to New Zealand for employment even though they had paid money to you as requested.
8. The brief of facts submitted by the Prosecutor shows that you met the first complainant Janet Kavika at Pepsi area in Luganville, Santo at around October 2016. You told her you wanted to go and work in RSE scheme in New Zealand but you need two more people and if she is interested she may join but that she give you VT 8,000 for a new passport, VT 5,500 for police clearance and medical checkup. You then asked for another VT 3,500 because you said the first medical checkup was not in order. On another occasion, you asked her again to give you VT 13,500 for her visa. The first complainant said she gave you total sum of VT 30,500. After paying all monies requested you told her to find her way to Port Vila by 5th of February 2017 as she will be signing the contract on 13th February 2017 followed by briefing with the Agent on the 14th of February 2017. Despite all the efforts, the First Complainant never went to New Zealand.
9. The second complainant John Toe said he met you in November 2016 at Pepsi area in Luganville. You said you are collecting names of people interested to go and work in New Zealand. You then ask him if he is interested then he has to give you VT 8,000 for a new passport. You told him to find two more people so he spoke with his two other family member who are also interested and they gave you several amount of money being for their police clearance, passport and

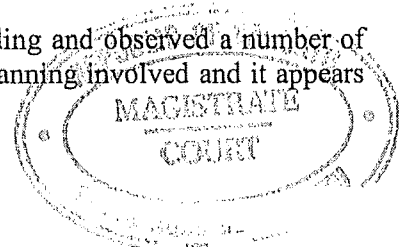


medical check –up. You told them to find their way to Port Vila to sign contract on 5th February 2017 and to attend briefing with the agent on 13th of February 2017 before they leave for New Zealand on 14th of February 2017. The total money given was VT 87,000 including airfare cost for each of the three family members to Port Vila. Despite their efforts to travel to Port Vila, none of them was sent to New Zealand for employment.

10. The same scenario happened on the third and fourth complainant who are also residing at Pepsi area in Luganville. Total money given to you by Albert Karae amounts to VT 49,380 including airfare cost to Port Vila.
11. You used the same scheme to entice another person namely David Karae telling him to be the lucky person as you will fit him in the final space that was left for fruit picking in New Zealand. He gave you total sum of VT 25,500.
12. You were arrested after the police received the complaints and when cautioned by the police, you elect to remain silent.
13. The penalty for offence of Obtaining Money by Deception is 12 years imprisonment. Be mindful that your offending is serious as reflected in the penalty prescribed by law.
14. It is surprising that you can convince the heart and mind of those people majority of whom are men to give up their hard-earned money to you just because they believe in your scheme as a means to earn significant money to improve their livelihood.
15. Behind you, none of the things you said exists, all there was was you and your attitude of selfishness and greed.
16. It appears you persist in approaching these complainants demanding more money from them. This led them to believe that you are truly a responsible person sending people to participate in the RSE scheme. It surprises me that being a woman you can be as tricky as such to make these people believe in your lies.
17. I have been assisted by both counsels on a number of case authorities in both Supreme Court and Magistrates' Court setting out factors that were considered in sentencing.
18. In *Public Prosecutor v Merak Kalengor [2018] VUSC 218*; *Apia v Public Prosecutor [2015] VUCA 30*; *Public Prosecutor v Willie [2013] VUSC 83*; *Public Prosecutor v Bong [2019] VUCA 40*; *Public Prosecutor v Kalwat [2018] VUMC 1*; the defendants are charged with related offences including obtaining money dishonestly. The factors taken into account by the court include amount of money so obtained and other factors personal and circumstantial to the offender.
19. In *Apia v Public Prosecutor*, the court of appeal held that:

“Where the amounts involved cannot be described as small but are less than vt 1 million or thereabouts, a term of imprisonment ranging from the very short to about 18 month is appropriate. Cases involving sums of between about Vt 1 million and Vt 5 million will merit a term of about 2 to 3 years imprisonment. Where greater sums are involved, for example Vt 10 million a term of 3 ½ years to 4 ½ years would be justified”

20. The total amount of money obtained from the complainants amount to VT 176,000. This is considerable amount of money to obtain from people in a dishonesty fashion.
21. The court considered the culpability of the offending and observed a number of aggravating factors. There was some degree of planning involved and it appears



the offending occurred over a period of time involving several unfortunate people who had to give significant amount of money to you. In addition to all monies paid to you, some of the complainant paid for their transport to come to Port Vila to attend briefing and to sign agreement with their agent only to find out that your scheme never existed.

22. By considering the court of appeal in case of *Apia v Public Prosecutor*, and in totality of the charges, I set a starting point of 14 months imprisonment. I make no addition, as there was no report showing your past criminal record.
23. I make a deduction of 2 months taking into account your expression of remorse through your efforts to repay some of the complainants their money. This deductions also reflect the delay in prosecuting your case in court.
24. I make a further 1/3 reduction of 4 months for your early guilty plea for saving courts time and resources had this matter advanced to trial hearing.
25. Your end sentence is 8 months imprisonment.
26. While the court considers the principles for which a sentence will aim at achieving, it is imperative to acknowledge that the court is encouraged to have regard to possibility of keeping offenders in the community if is practicable and consistent with safety of the community.
27. It appears your husband is currently working under the Seasonal Workers Program in Australia leaving you solely responsible for taking care of the children at the same time working as a house girl at Bellevue area.
28. I have therefore accepted to suspend your sentence for 12 months. In event that you are further convicted for any other offences, this sentence will automatically be activated and you will serve the full sentence together with any other sentences imposed on you for your reoffending.
29. In addition to the suspended prison sentence I order community work sentence of 100 hours.
30. You must report in person to the Probation Officer in the Correctional Department as soon as possible and not later than 72 hours from now.
31. For completeness, you are ordered to compensate the Complainants for their loss in the sum of VT 175,000 in 3 months from date of this judgment failing which the court will impose imprisonment sentence pursuant to section 58ZD of the Penal Code Act [CAP 135].
32. Your counsel Ms. Linda Bakoko shall furnish to court a compensation report by end of January 2020 confirming such amount ordered has been paid in full by you.
33. You have 14 days to appeal to the Supreme Court if you are not satisfied with this sentence.

DATED at Port Vila this 24th day of September 2019

BY THE COURT

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MOSES PETER MAGISTRATE
 Senior Magistrate

