

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

V.

**NOEL FAENOLAVE
ALFRED MASENG
ALFRED MALIU**

Coram: Mr Justice Oliver A. Saksak

Counsel: Ms Linnes Moli for the Public Prosecutor
Mr Daniel Yawha for the Defendants

Date: Thursday 3rd April, 2003.

SENTENCE

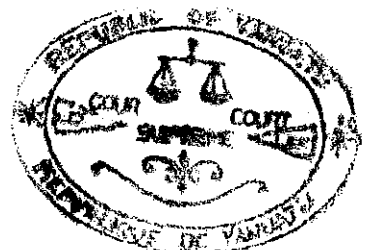
Based on the evidence presented to the Court, the prosecution has proved beyond reasonable doubt that the three defendants are guilty of the following offences:-

1. **Noel Faenolave**

- Count 1 - Charged for false pretence under section 125(c) of the Penal Code Act [CAP.135] (the Act)
- Count 2 - Theft under section 125(a) of the Act.
- Count 4 - Misappropriation under section 125(b) of the Act.
- Count 8 - Theft, section 125(a).
- Count 9 - Misappropriation, section 125(b).

2. **Alfred Maseng**

- Count 5 - Aiding and abetting Misappropriation under sections 30 and 125(b) of the Act.



Count 7 - Receiving property dishonestly under section 131 of the Act.

Count 10 - Aiding and abetting Misappropriation under sections 30 and 125(b) of the Act.

3. **Alfred Maliu**

Count 3 - Charged with aiding and abetting Misappropriation under sections 30 and 125(b) of the Act.

The Court therefore convicts all three defendants in respect of the charges against each of them.

In sentencing the defendants I disregard their past record of previous convictions. Noel Faenolave's last conviction was for forgery in August 1995 for which he was fined VT10.000 and paid VT5.000 in costs. Alfred Maseng's last conviction was in 1989 for intentional assault for which he was fined VT2.000. Alfred Maliu has a long history of convictions back to 1980. His last conviction was in March 1994 in relation to a traffic offence.

I take into account the fact that all three defendants are the sole bread-winners in and for their respective families. That they each support their children at schools and other relatives' children to attend schools in Vanuatu. I take into account the contributions each of the defendants has made towards the political, social and economic developments of Vanuatu. They each hold reputable positions in the community. I take into account the ages of Alfred Maseng and Alfred Maliu and the physical health of Alfred Maliu.

It is with regret and misfortune that these leaders should allow their reputations to be marred by the commission of these criminal offences.

The aggravating factors that the Court takes into account to impose jail terms and a heavy fine is the fact that Noel Faenolave and Alfred Maliu as Chairman and Ex-Officio member of the VCMB, had abused their positions of trust. To deter others from so acting, the Court is of the view that terms of imprisonment should be imposed on Noel Faenolave and Alfred Maseng. However those jail terms should be



suspended. For Alfred Maliu, the Court is of the view that a rather heavy fine should suffice. Accordingly the Court imposes the following sentences.

1. On Alfred Maliu –

Count 3 - For aiding and abetting misappropriation, he is sentenced to pay a fine of VT30.000 to be paid within 14 days from today or in default, imprisonment for 2 months.

2. On Alfred Maseng –

Count 5 - For aiding and abetting misappropriation – 2 months imprisonment.

Count 7 - For receiving property dishonestly – 1 month imprisonment to run concurrently with count 5 making a total of 2 months.

Count 10 - For aiding and abetting misappropriation – 2 months imprisonment to be made consecutive to the sentences for Counts 5 & 7, making a total of 4 months imprisonment.

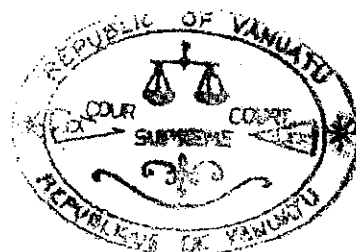
This term of imprisonment is suspended for a period of 2 years from today. This suspension is made under the provisions of the Suspension of Sentences Act [CAP.67].

There will be a restitution order against Alfred Maseng in respect of VT5.000 he admitted to receiving from Noel Faeolave. He is ordered to repay VT5.000 to Noel Takau, via the Court Registry on or before 15th April, 2003.

3. Noel Faenolave –

On Count 1 – For false pretence - 4 months imprisonment.

On Count 2 – For theft – 4 months imprisonment concurrent to Count 1.



On Count 4 – For Misappropriation – 4 months concurrent.

Total = 4 months
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On Count 8 – For theft - 5 months

On Count 9 – Misappropriation – 5 months concurrent.

Total = 5 months
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But I order that these 5 months be served consecutively with the 4 months for Counts 1, 2 & 4. These thefts related to two incidents committed in just one day apart. The Overall total sentence for Noel Faenolave is 9 months imprisonment. Like Alfred Maseng, this term of imprisonment is suspended for 2 years.

There will be a restitution order against Noel. He is ordered to repay the sum of VT81,367 to Noel Takau via the Court Registry. Payments will be made in 2 instalments as follows:-

- (a) End of April, 2003 - VT40,683.
- (b) End of May, 2003 - VT40,684.

Should any of the defendants wish to appeal, you may do so within 14 days.

DATED at Luganville this 3rd day of April, 2003.

BY THE COURT



OLIVER A. SAKSAK
Judge

