

PUBLIC PROSECUTOR – vs – GRAHAM SHEM

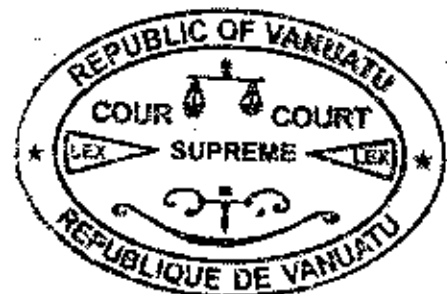
Coram: Justice Oliver A. Saksak

*Counsel: Mr. P. Wirrick for Public Prosecutor
Mr. F. Laumae for Defendant.*

*Date of Hearing: 7th May 2013
Date of Sentence: 5th August 2013*

SENTENCE

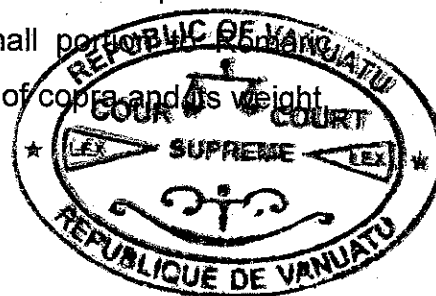
1. Graham Shem you were charged with one count of Uttering Forged Documents Contrary to Section 141 of the Penal Code Act [Cap 135] (the Act). The charge was a representative charge relating to your actions which commenced from 6 October 2011 until 17 November 2011. During this period on 37 separate occasions you carried copra for sale to the premises of Coconut Oil Production Santo Limited (the COPSL). On each visit Romaric Liatlatmal (RM) gave you Delivery Documents which he had forged with false weights and amounts. RM was charged separately and was accordingly convicted and sentenced by this Court earlier.
2. On each Delivery Document RM wrote the name "Graham", "Graham Ipayato" or "Graham Malo" which on your admission, refers to you. You then took the Delivery Documents to the Cashier of COPSL for cash. Cash was given corresponding to the amounts stated in the Documents. The total amount paid out in cash was VT1,408,520.



3. What makes your offending serious was the fact that you repeated the action 37 times. Had the matter not been discovered on 18 November 2011, you would have continued doing it and the amount of loss to the COPSL would have increased substantially.
4. Your actions were a joint criminal enterprise with Romaric Liatlatmal. The prosecutions could have charged you with complicity under section 30 of the Act so that on conviction you could be punished as an accomplice and with the same sentence as Romaric Liatlatmal. However the prosecutions did not do that.
5. They chose however to lay a charge under Section 141 of the Act and it is for that offence that you must be punished. There is no penalty prescribed under the Act for this offence. But the Interpretation Act [Cap 132] in section 36 (3) provides that -

“(3) Where an Act of Parliament omits to prescribe a penalty for an offence created by the Act for a contravention of the Act, the penalty shall be a fine of VT5,000 or imprisonment for 1 year or both.”

6. It is the view of the Court that the circumstances of your offendings repeated for 37 times warrant a custodial sentence.
7. The Prosecutions submitted that the Court should follow the sentencing guideline used in the case of Public Prosecutor v. Tom Jack Mael & Others; Criminal Case No: 75 of 2009. That case is distinguished on its facts. The defendants in that case benefitted from their criminal enterprise by receiving certain amounts of money which were clearly identified. In your case the prosecutions have not shown what amounts you received for your part in the criminal enterprise with Romaric Liatlatmal. But it can be inferred by the Court from the facts that as you were the seller of the copra you brought in, you would have received, and retained a larger portion of the cash price for the each delivery document. And you gave only a small portion to Liatlatmal in return for his part of falsifying the amount of copra and its weight.




It therefore appears you were the one who benefitted a great deal more than Romaric Liatlatmal.

8. Under those circumstances the Court hereby convicts you and sentences you to imprisonment for a period of 12 months.
9. The purpose of imposing this penalty is to –
 - (a) Mark the gravity of your offending.
 - (b) Mark public condemnation of your actions.
 - (c) Deter you and others from committing this type of offences.
 - (d) Punish you adequately for your offendings.
10. In mitigation of sentence you are entitled to 1/3 reduction for your guilty pleas. That brings your maximum sentence down by 4 months to 8 months. I consider that a further reduction of one month be made for your willingness to reconcile showing remorse and for being a first time offender. That brings the sentence down to 7 months in total.
11. You are therefore sentenced to a total of 7 months imprisonment commencing from today 5th August 2013.
12. You have a right of appeal against your sentence within 14 days if you so choose.

DATED at Luganville this 5th day of August 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

