

PUBLIC PROSECUTOR

-V-

CHEN JIAN LIN

Coram: Justice D. V. Fatiaki

Counsel: Mr. S. Blessings for the State
Mr. K. Loughman for the Defendant

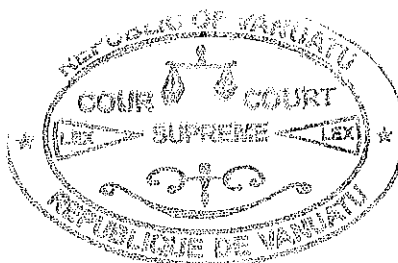
Date of Sentence: 22 October 2013

SENTENCE

1. On 8 October 2013 the defendant was convicted for an offence of Bribery contrary to **section 51 (1) (r) (i)** of the **Value Added Tax Act** [CAP. 247] (hereafter "VAT") Such an offence carries a maximum penalty of a fine not exceeding VT1 million or imprisonment of up to 10 years or both.
2. The brief facts of the case which the defendant admitted was as follows:

"On 10 March 2013 René Laurent went to Yao Supermarket and purchased items worth VT15,000. When he paid for the goods he noticed that the cashier did not enter the transaction in the cash register till as she should have, so he rang and informed his wife who was the manager of the Audit Unit in the VAT section of the Department of Customs and Inland Revenue ('DCIR'). She arrived soon after and confirmed from the till register that her husband's transaction had not been entered.

While she was conversing with the cashier the defendant approached her and offered her a VT5,000 note which she refused. The transaction was then entered in the till register and she left the shop after warning the defendant that they would be penalized the following day. As she was reversing her vehicle to leave, the defendant approached her and again offered her the VT5,000 note which she again refused. The defendant then dropped the note into her car and said: "sorry sorry ... no come tomorrow".



3. The VT5,000 note was retrieved from the car and subsequently tested for finger prints but none could be recovered due to excessive moisture.
4. The VAT records of "Yao Supermarket" was checked and confirmed that in December 2012 a similar offence under the VAT Act had been committed by the same cashier and a spot fine of VT40,000 had been imposed and paid. No prosecution ensued.
5. The next day, officers of the VAT Unit returned to "Yao Supermarket" and a spot fine of VT70,000 was imposed and paid immediately. An official receipt was issued and again no prosecution ensued against the delinquent cashier.
6. A complaint was lodged with the police and during a caution interview the defendant frankly admitted dropping a VT5,000 note into the VAT officers' car because: "... he was scared as (the VAT officer) explained that he will be penalized, therefore he offered her money to stop her from penalizing him".
7. In **Groupe Nairobi (Vanuatu) Limited v. Government** [2009] VUCA 35 the Court of Appeal described the basic scheme of the VAT Act as follows:

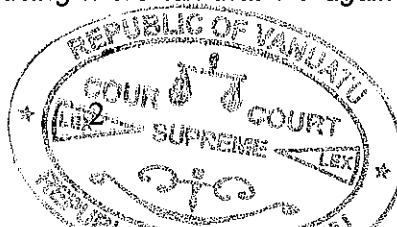
"The long title to the VAT Act and s.10(1) identify the purpose of the VAT Act, which is to impose VAT and to provide for its collection for the use of the State. Relevant to the circumstances of this case, VAT is payable by any registered person on account of any supply of goods and services made in Vanuatu in the course of carrying on a taxable activity, with the amount of tax being assessed by reference to the value of the supply. Subject to a number of qualifications not presently relevant, a taxable activity means any activity (personal, professional, corporate or otherwise) carried on continuously or regularly and including the supply of goods and services to any other person for a consideration (s.4(1))"

8. The long title of the VAT Act further states that it is:

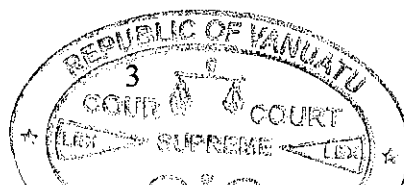
"Act to impose a value added tax which will provide a more equitable taxation system and to provide for its collection."

9. In the words of the VAT officer explaining the effect of not recording a VAT payable transaction:

"I told them that the sale includes 12.5% vat and the business is collecting on behalf of the government and the money is to provide services to the country but by not entering the sale in the machine the business men are collecting tax from us but are putting in their pocket and not returning it to the government. By cheating the government less revenue is collected and if not enough, the government may look into increasing or introducing more tax that we again ni-Vanuatu will have to pay."



10. The relative ease with which the provisions of the VAT Act can be ignored is well-illustrated by this case, and, were it not for a law abiding and knowledgeable customer, would have gone undetected with the consequent loss of government revenue. That is also a concern.
11. By way of mitigation defence counsel outlined that the defendant is 50 years of age and came to Vanuatu 2 years ago to work as a salesman/agent at "Yao Supermarket" in Port Vila. He is married and has two grown-up children who live overseas. The underlying wrongdoing in this case was the failure on the part of the cashier to enter a transaction in the cash register till for which a spot-fine of VT70,000 was imposed and paid. The missing transaction was also registered in the till record and therefore, counsel submits, there has been no loss occasioned to Government revenues.
12. Furthermore counsel submits, the defendant never denied offering the VAT officer the VT5,000 note and he frankly admitted his actions and fully cooperated with police inquiries. He pleaded guilty at the first opportunity and is a first time offender. Defence counsel urges a fine of between VT50,000 – 100,000 as an appropriate penalty. Alternatively, if imprisonment is imposed counsel urges it be wholly suspended.
13. Prosecuting counsel whilst accepting the defendant's cooperation with VAT and police inquiries and his guilty plea at the earliest opportunity, nevertheless, highlights an aggravating feature in the case namely, the persistence of the defendant in offering the VT5,000 note to the VAT officer on two (2) occasions and then throwing the note into the officer's car as she was driving off. For his part prosecuting counsel sought a deterrent sentence of between 1 to 2 years imprisonment and a fine of VT50,000 – 100,000.
14. The offence of bribery of public officials has been likened to a cancer eating away at the fabric of society and the economy. It is an offence which is difficult to detect and preys on human weakness. More often than not, the offender is motivated by greed and illicit profit.
15. A person who offers a bribe to a public official disrespects not only, the official concerned but also the law that is being enforced for the public good. If such practices become widespread the law itself will be brought into disrepute through non-enforcement and government will be denied much-needed revenue.
16. This Court is mindful that the public interest demands that public officials perform their duties with scrupulous honesty and integrity and that anything and anyone that seeks to pervert or divert public officials from diligently performing their duty must be deterred and condemned in the strongest possible terms.
17. Conversely, a public official who resists or refuses a bribe should be commended for not succumbing to the temptation of easy money.



Indeed such honesty should be rewarded as should informers of VAT offences.

18. Bribery is a serious offence. It is difficult to establish as it relies on the honesty and integrity of the person who is offered the bribe. It is rarely committed openly or witnessed by independent observers. Whatsmore bribery is commonly perceived as a "*victim-less*" crime causing injury to no-one. For those reasons, when a case has been successfully proved the Court has a duty to treat it seriously by imposing a deterrent penalty.
19. When asked if he had anything to say to the Court before passing sentence the defendant said: "*I don't want to be imprisoned*". Although lacking any semblance of remorse, it reflects an appreciation of the seriousness of his offending and a realization on the defendant's part that a sentence of imprisonment is a distinct possibility.
20. I am satisfied that in all cases involving the bribery of public officials the overriding sentencing consideration must be punishment and deterrence. The court has a duty to send a strong and consistent message that bribery will not be tolerated and anyone caught offering a bribe to a public official can expect a prison sentence whatever the nature and value of the bribe offered.
21. In similar vein in **Public Prosecutor v. Zheng Quan Chi** [2002] VUSC 81, Coventry J. in imposing a suspended sentence of 6 months imprisonment, a fine of VT1,5 million and prosecution costs of VT130,000 on a defendant after convicting him for an offence of Bribing a Custom Officer said:

"anyone who bribes or attempt to bribe a customs officer or public officer must expect prison. Bribery and corruption cannot be accepted in any shape or form."
22. In this case given the maximum sentence provided in the VAT Act and the singular aggravating feature, the appropriate starting figure I arrive at is a sentence of 3 years imprisonment which is reduced by 12 months for mitigating factors including, the defendant's cooperation with the VAT Unit and the police and this being his first offence. From that reduced sentence of 2 years I deduct a further 8 months in recognition of the defendant's guilty plea at the earliest opportunity making a final sentence of 16 months imprisonment.
23. I turn next to consider defence counsel's submission for a wholly suspended sentence and I remind myself of the requirements of **section 57** of the **Penal Code**. In that regard I am satisfied that there was a misguided sense of loyalty and protectiveness on the part of the defendant towards the younger female co-worker in his foolish attempts to bribe the VAT officer concerned. I am also mindful that the defendant had nothing to gain personally from his actions and furthermore, a "*spot-fine*" was imposed and paid by the defendant's employer. There was also no attempt to deny or conceal the offence on the defendant's




part and his advancing age and fear of imprisonment is likely to deter him from any further offending in what has, up till now, been a relatively blameless life.

24. In all the circumstances, I am able to suspend the defendant's sentence of imprisonment for a period of 2 years-let this be a lesson and a reminder. The defendant is also warned that any re-offending in the next 2 years will immediately result in his having to serve this sentence of 16 months imprisonment, in addition, to any other penalty that may be imposed for his re-offending. Whether that happens or not, is a matter entirely within the defendant's control, but, if he re-offends within the next 2 years then he can expect no further leniency from the Court.
25. In addition, I impose a fine of VT100,000 to be paid within 30 days and, in default of which, the defendant is ordered to perform 400 hours of community work under the supervision of a probation officer over the next 2 years.
26. Finally, in exercise of the Court's powers under **Section 58ZC** of the **Penal Code** [CAP. 136] I order confiscation of the VT5,000 note the subject matter of the charge in this case.
27. The defendant is advised that he has 14 days to appeal against this sentence if he does not agree with it.

DATED at Port Vila, this 22nd day of October, 2013.

BY THE COURT


D. V. FATIAKI
Judge.

