

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

Criminal Case No.28 of 2013

PUBLIC PROSECUTOR

-V-

ROSE WILLIE

Coram: Justice D. V. Fatlaki
Counsel: Mr. T. Karae for the State
Mr. H. Vira for the defendant
Date of Sentence: 21 June 2013

SENTENCE

1. On 4 June 2013 the defendant was arraigned on an information which charged her jointly with Tom Ezekiel on two counts of Obtaining Money Deception contrary to section 130B of the Penal Code.
2. The defendant pleaded guilty to both counts and was convicted after admitting the facts outlined by the prosecutor as follows:

"On the 24th of December 2012 Willie Dick made a formal complaint at Port Vila Police station against the defendants Tom Ezekiel and Rose Willie;

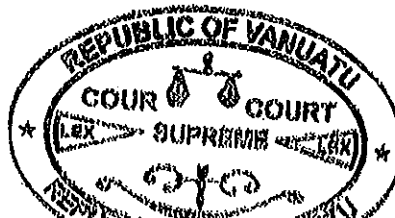
*...
The offence occurred sometimes between the month of January and December 2012. The defendants made a false scheme and told people that they are sending men and women to work in New Zealand;*

.... Rose Willie would go out and tell people that she is working for a man named Andrew and that Andrew is an agent and sends people to New Zealand for picking. When in actual fact Andrew is the false given name for the defendant Tom Ezekiel.

... Rose used this name to make false awareness and collected money from people. in one instance the defendant Tom told Rose to get money from a man by the name of Charlie. 'Charlie' could not pay so Charlie returned to Tanna and there he gave Rose phone number to the complainant Willie Dick.

In March 2012, the complainant contacted the defendant Rose and asked if they are sending people to go and work in New Zealand. She told him she works for a man named Andrew and their agent is real.

The defendant Rose Willie also instructed the complainant to make awareness to people in Tanna about their agent. She also told the complainant that anyone



interested should pay a fee of VT15,000 for visa. About 84 people paid the sum of VT15,000 which makes up a total of over VT1,200,000.

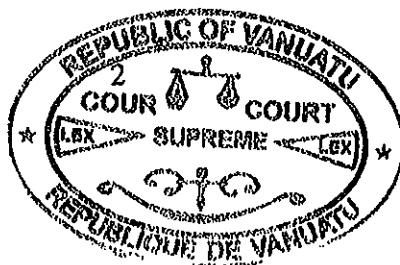
The monies were sent by Willie Dick from Tanna to Vila via Western Union. The defendant Rose Willie was the one who always receive the money in Vila. This went on for sometime. Most of the money that were received were either deposited into the defendant Rose bank account or were given to the other defendant Tom.

During the process of the false scheme, she also lied to the complainant and others who they gave money to her that she kept their monies in the bank. She promised them September 2012 for them to travel to New Zealand. In September she lied again saying that they should travel on 22nd of December 2012. On the date nothing has done and that is when the complainant and others found out that both defendant were lying to them.

As a result the complainant travel to Vila and reported the matter to the police. During a conversation held between the defendant Rose, the complainant Willie and the police, the defendant Rose promised them that the defendant Tom would return the money. But it has never been done.

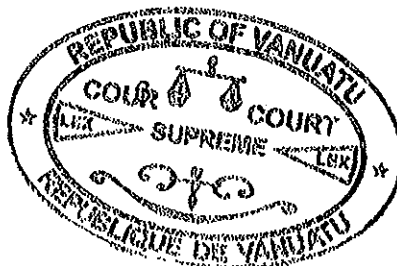
The defendants were cautioned and interviewed by the police. Defendant Rose Willie admitted she committed the offence but the defendant Tom Ezekiel denied the allegation against him."

3. Notably, during the relevant time, the defendants were in a "boyfriend/girlfriend" relationship. Ezekiel also confirms in his police interview that the defendant was assaulted by "man Tanna" as a result of the deception.
4. In the absence of a pre-sentence report, sentencing submissions were ordered and I am grateful to counsels for the helpful submissions and case authorities provided to the Court.
5. For sentencing purposes I tabulate defence counsel's brief summary of the defendant's personal circumstances as follows:
 - Defendant grew up in **Laman Island, Epl**;
 - She is the eldest child in a family of 4 children;
 - She is 38 years of age and is a widow with 3 children. Her eldest daughter is married with a family of her own and of her remaining children, a son lives with her and is attending **Wan Smolbag Theatre** and her last son lives with her late husband's family;
 - Although presently unemployed, she has travelled and worked in New Zealand under the **RSE Scheme** on 3 separate occasions;
 - She is a first offender and pleaded guilty at the earliest opportunity;
 - She was remanded in custody from 23 February 2013 to 2 May 2013;

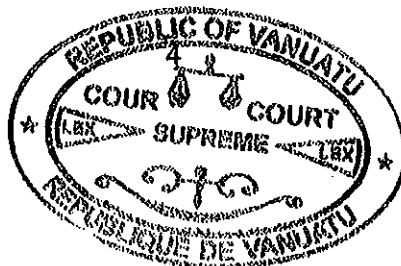


- She was assaulted by men from Tanna as a result of committing the offence; and
 - She is "sorry for what she has done and apologies for her actions ... (and) ... promised never to do that again".
6. Prosecuting counsel in his comprehensive submission correctly identifies relevant sentencing tariffs and authorities and lists the following aggravating factors in the commission of the offences:
- Abuse of trust;
 - Some degree of planning and pre-meditation was involved;
 - Offending occurred over an extended period of time;
 - There were a large number of victims who were deceived;
 - The sum collected as a result of the deception was large, being in excess of **VT1,200,000**.
7. Although prosecuting counsel makes no mention of the defendant agreeing to be a witness in the trial of her co-defendant, nevertheless, counsel suggests a non-immediate custodial sentence of 18 months imprisonment suspended for 2 years and an additional sentence of 100 hours of community work.
8. Defence counsel agrees with the recommended sentence and confirms the defendant's willingness to perform a community-based sentence.
9. This case takes advantage of the very successful **RSE Scheme** whereby ordinary villagers from Vanuatu are able to travel to and work in New Zealand on a seasonal basis earning good wages which they repatriate to Vanuatu to help in improving their personal lives and the lives of their families and communities when they return.
10. The **RSE Scheme** which has been on-going since 2007 and which has many returning employees, is considered a "success" and is best summed up in the words of one such employee under the scheme who over a single season of 4 months, saved VT600,000. He says:

"I have been to New Zealand many times now. It is like another home to me. I work very hard and save as much money as I can. With my money I have been buying solar power equipment for my house and furniture for my house. Now that I have finished my house I can start thinking about the future. My plan is to buy an outboard motor because I live on an island and having a motor will be good for getting around and also for business purposes. (the Scheme) has changed my life and my family will have a better life because of it".



11. The attractiveness of the **RSE Scheme** is well-known to the defendant who had benefited from it on 3 occasions and is evidenced by the large number of victims (**84** in number) who were willing to part with **VT15,000** of their hard-earned money on the assurance of a relative stranger of getting them a place on the Scheme. It is also a reflection of the trusting-nature of the victims who are relatively unsophisticated rural dwellers.
12. I am satisfied that this was a calculated deception perpetrated on unsuspecting innocent villagers whose sole motivating factor was a desire to travel to New Zealand and earn some money to better their lives and their communities.
13. I am equally satisfied that the defendant who does not originate from Tanna (where all her victims lived), was manipulated by her partner at the time to be the public "*front*" for his deception. Furthermore I accept that the defendant personally benefited to a lesser degree from the deception than her partner who "*master-minded*" it.
14. Having said that, this is an offence that is deserving of the community and the Court's condemnation in the strongest terms.
15. In sentencing the defendant I bear in mind that her conviction is likely to disqualify her from further participating in the **RSE Scheme** which has been somewhat tarnished by her criminal activities.
16. Given the statutory maximum penalty of 12 years imprisonment, the starting point I adopt for this offending is 3 years imprisonment which is raised to 4 years for aggravating factors and reduced by a term of 18 months for mitigating factors making a sentence of 30 months. The 30 months is further reduced by one third (i.e. 10 months) in recognition of the defendant's early admission and guilty plea making a final sentence of 20 months imprisonment.
17. Although both counsels urged a complete suspension of the defendant's sentence, I am satisfied that this is not an appropriate case for the exercise of the Court's discretion in suspending the whole of the sentence.
18. Accordingly, the defendant is sentenced, on each count, to a sentence of 20 months imprisonment to be served concurrently and, as this is a case that the Court considers "*is so serious as to warrant imprisonment*", the Court orders that the defendant serve 12 months of the sentence immediately and, thereafter, the defendant is to be released to serve the remaining 8 months of her sentence as a suspended sentence for a period of 12 months.
19. The suspended sentence means that if the defendant re-offends and is convicted during the 12 months following her release from prison she will be returned to prison to serve the unexpired 8 months sentence of



imprisonment in addition to any other penalty she may receive for her re-offending.

20. The defendant is informed of her right to appeal to the Court of Appeal within 14 days if she does not agree with this sentence.

DATED at Port Vila, this 21st day of June, 2013.

BY THE COURT

D. V. FATIAKI
Judge.

