

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

Criminal
Case No. 21/1107 SC/CRML

PUBLIC PROSECUTOR

v

JANDY GAMMA

Date: 28 July 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr S. Blessing
Defendant – Mrs K. Karu

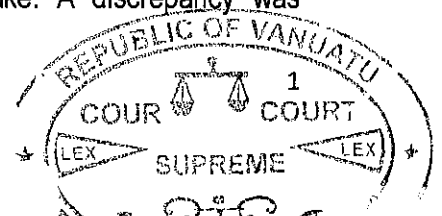
SENTENCE

A. Introduction

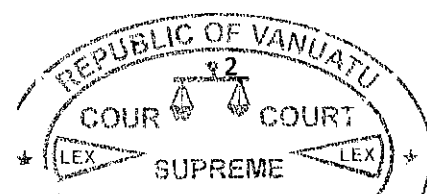
1. Mr Gamma pleaded guilty to 5 charges of misappropriation (Counts 1-5) and 2 counts of forgery (Counts 6 and 7). He accepted the summary of facts and was accordingly convicted on his own pleas and the admitted facts.

B. Facts

2. Mr Gamma was employed by Vanuatu Brewing Limited ("VBL") as a sales representative. VBL produces and sells alcoholic and non-alcoholic beverages including Tusker beer and Cascade Water.
3. The majority of VBL customers are small retailers who purchase beverages upon delivery. Larger businesses have accounts with VBL. They place orders through VBL sales representatives and have 30 days to pay after delivery.
4. Before going out on his daily runs, Mr Gamma would obtain beverages from the officer in charge of VBL's warehouse and be given a tax invoice which, among other things, showed the type of beverages obtained, the quantity, the price and the total amount.
5. On 13 January 2020, VBL conducted its monthly stocktake. A discrepancy was discovered and it was found to be caused by Mr Gamma.



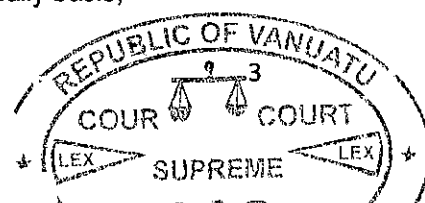
6. The records showed that Mr Gamma delivered a quantity of beverages to the following small retailers who paid for their orders on delivery:
 - a. Emates Limited, who effected immediate payment of VT190,280; and
 - b. Johnny's Nakamal, who effected immediate payment of VT121,700.
7. Mr Gamma wasted both sums of money which had been entrusted to him for a particular manner of dealing (Counts 1 and 2).
8. The records further showed that Mr Gamma delivered a quantity of beverages to Wahoo Bar and it had failed to make payment within 30 days. Wahoo Bar has an account with VBL, and so it pays for its beverages at the end of the month. There were two tax invoices to Wahoo Bar in the amounts of VT775,425 (invoice number P023001) and VT22,925 (invoice number P023000).
9. When VBL followed up with Wahoo Bar, they said they never made the orders. The orders were in fact made by Mr Gamma and he sold the beverages to his own customers. Mr Gamma knew that Wahoo Bar has an account with VBL, he knew at that point in time that the company's stocktaking was done infrequently and so he knew that he would be able to obtain the monies and use them for his own purposes without detection. He took advantage of the situation (Counts 3 and 4).
10. Sometime between October 2019 and 30 January 2020, Mr Gamma caused the making of false documents knowing them to be false, namely tax invoices P023000 and P023001, with intent that they would be used or acted upon as genuine or that some person would be induced by the belief that they were genuine (Counts 6 and 7).
11. Mr Gamma also did random sales. While out driving, people would stop his van and buy from his stock, which VBL called "VBL route". Mr Gamma, from time to time, obtained a quantity of beverages from the warehouse for this purpose. The officer in charge of the warehouse prepared a tax invoice and handed a copy to Mr Gamma before the stock was loaded into this van.
12. During the time of the offending, Mr Gamma had a quantity in his van worth VT377,805. He sold the lot of it, wasting the money made which had been entrusted to him for a particular manner of dealing (Count 5).
13. The records confirmed that Mr Gamma received a total of VT1,488,135 from his sales. The money had been missing for a period of almost two months and it went missing at the time when VBL's stocktaking was conducted infrequently and Mr Gamma knew that to be the case.
14. Mr Gamma's manager asked him to explain the discrepancy uncovered by the stocktake.
15. Mr Gamma told him that he had supplied stock to Emates Limited and Johnny's Nakamal but forgotten to collect the money.



16. Mr Gamma did not turn up to work for a week after that. Mr Gamma's colleagues checked with Emates Limited and Johnny's Nakamal who confirmed that they had paid upon delivery. Wahoo Bar confirmed that they had never ordered the stock reflected on tax invoices P023000 and P023001 and that they had settled all their orders before the stocktake.
17. Mr Gamma returned to work on 20 January 2020. His manager confronted him again. Mr Gamma told him that he forgot the money at his house.
18. He later messaged his manager that he only had half of the money at his house. No explanation was offered in relation to the rest of the missing money.
19. On 21 January 2020, Mr Gamma messaged his manager that he would arrive at work a little late and would bring the money with him. He did not turn up.
20. On 23 January 2020, Mr Gamma turned up to work. He was confronted again.
21. Mr Gamma told his manager and colleagues that he lied to them about having the money. He said that he spent the money and goods on his girlfriend, on alcohol and had rented a number of vehicles, among other things. According to VBL officers, he was not at all contrite. He was arrogant as opposed to remorseful in any way.
22. Mr Gamma finally messaged his manager asking to meet him and the General Manager. They agreed. Mr Gamma did not turn up to the appointment.
23. Mr Gamma did not apologise for what he did but said that his sister would refund the money on his behalf. When VBL approached his sister, she denied saying that and that she wanted nothing to do with it.
24. When interviewed by the Police, Mr Gamma admitted misusing the money.

C. Sentence Start Point and Personal Factors

25. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
26. The maximum sentences for the offending are:
 - Misappropriation – 12 years imprisonment; and
 - Forgery – 10 years imprisonment.
27. The offending is aggravated by the following:
 - Serious breach of trust against his employer as VBL sales representatives are entrusted with handling substantial amounts of cash on a daily basis;



- The financial loss and damage to the relationships with the customers involved caused to his employer;
 - The offending was premeditated and planned using his knowledge of internal company processes;
 - Repeated dishonest offending over a 2-month period;
 - Mr Gamma benefitted substantially from the offending;
 - Mr Gamma used subterfuge to conceal the reality of his offending and afterwards when confronted by his employer; and
 - There is no prospect of reparation.
28. There are no mitigating aspects of the offending.
29. The factors set out above require a global sentence start point of 54 months imprisonment.
30. Mr Gamma pleaded guilty at the first opportunity. Given the strength of the Prosecution case, I deduct 25% for the plea (13 months).
31. Mr Gamma is 28 years old. He has no previous convictions. He has 3 children but does not live with any of them or their mothers. Mr Gamma has not found new employment since ceasing employment with VBL. I deduct 2 months for Mr Gamma's personal factors.

D. End Sentence

32. Taking all of those matters into account, the end sentences imposed concurrently are:
- a. Misappropriation (Counts 1-5) 3 years 3 months imprisonment; and
 - b. Forgery (Counts 6 and 7) 18 months imprisonment.
33. The end sentences imposed are to denounce dishonesty offending, particularly from an employer. The sentences are also imposed to mark the gravity of the offending, to deter Mr Gamma and others, and to hold Mr Gamma accountable for his offending.
34. The offending is too serious. Suspension of the sentences would be inappropriate.
35. Mr Gamma has 14 days to appeal the sentence.

**DATED at Port Vila this 28th day of July 2021
BY THE COURT**

..... *UM Trief*
Justice Viran Molisa Trief

