

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

Criminal Case No. 25/1186 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Port Vila

State

AND: Ambong Thompson
Port Vila

Defendant

Date of plea: 20 May 2025
Before: Justice B. Kanas Joshua
Counsels: Mr Gregory Takau, for the State
Ms Kylie Karu, for the defendant

SENTENCE

Introduction

1. Mr Ambong Thompson, you appear today because you pleaded guilty to the charge of failure to file annual returns, on 20 May 2025. This is contrary to Section 33(a) of the Leadership Code Act [CAP 240].
2. The maximum sentence for this offence is a fine not exceeding VT2,000,000.

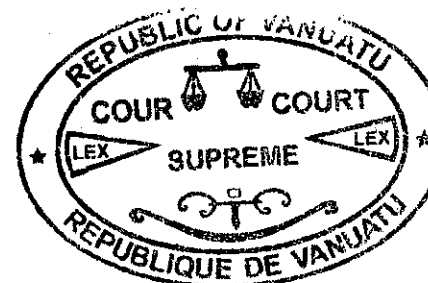
Facts

3. You admitted that you are a member of the Vanuatu National Cultural Council. You were appointed to that position on 7 June 2022, and as a member you are required to file an annual return every year, by 1 March. On 1 March 2024, you failed to file your 2023 annual return. A warning notice was given for you and a further 14 days was given to you to file your annual return. You did not file your annual return by 15 March 2024.

Sentencing purposes/principles

4. You must be held responsible for your actions so others, who also behave this way, will see that this is against the law and can be punished, and stop their actions. This sentence should help you to rehabilitate, and must be generally consistent.

Sentence approach



5. The sentence approach taken is in two steps, as in *Jimmy Philip v. PP*¹, which applied *Moses v. R*².

Step 1 – Starting point

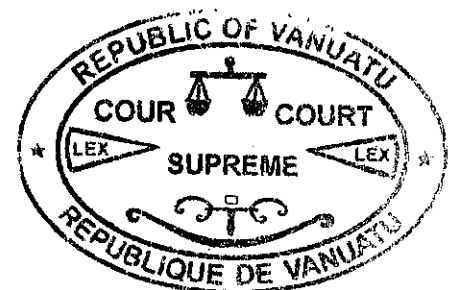
6. The first step is to set a starting point. Reference is made to the aggravating and mitigating factors of the offending and the maximum penalty of the offence. The aggravating factors here are:
 - a. The defendant had knowledge that his annual return is due; and
 - b. Breach of trust.
7. A mitigating factor of the offending is that the defendant willingly cooperated with the police during his arrest.
8. Prosecutions cited the following cases as guides to a starting point.
 - a. The first case is *PP v. Jimmy Iawia & ors*³, where each defendant who had knowledge of filing their annual returns were sentenced to pay a fine of VT400,000 and VT1,000 per day for each day the leader remains in breach. Eight defendants were sentenced to pay a fine of VT300,000 as they filed their annual returns late.
 - b. The second case is *Stephen v. PP*⁴, which is the appeal of the first case, by three defendants. On appeal, it was accepted that Mr Stephen did not have any knowledge of filing an annual return as he had only been in office for a year, as the second political advisor at the Ministry of Health. However, upon speaking with his legal counsel he immediately filed his return and pleaded guilty after being charged. He was discharged without conviction. Mr Ialoulou, the then third political advisor at Ministry of Foreign Affairs & Trade, was a late filer. It was his first time for this defendant to be classified as a leader and the first time to have such an obligation. He was also discharged without conviction. Mr Kombey, who was a third political advisor, knew about the obligation to file a return. A starting point of VT250,000 was adopted as the court considered that this was the first prosecution for failure to file annual returns.
9. Defence conceded with the cases referred to by prosecution, as guides to a starting point. They submitted that in the current case the defendant was sick with a severe case of flu during the grace period given of 14 days, after the due date. He does not deny his obligations, but he just could not file in time due to his medical situation at the time.
10. Prosecution submitted a starting point of VT50-100,000 fine. The aggravating factors should increase the starting point to VT150,000. No starting points was given by defence.
11. I adopt a starting point of VT50,000 fine, as the defendant made an effort to file his return within the grace period. In *Iawia*, the eight defendants who filed their returns late were sentenced to fines that were lower than those defendants who did not file at all. Soon

¹ [2020] VUCA 40.

² [2020] NZCA 296.

³ [2022] VUSC 200; Criminal Appeal Case No. 3659 of 2021 (23/11/22).

⁴ [2023] VUCA 25; Criminal Appeal Case No. 1357 of 2022 (19/5/23).



after the defendant recovered, he filed his return on 18 March 2024, 3 days after the grace period lapsed.

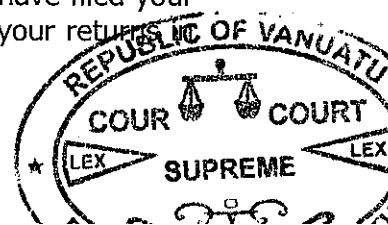
12. I consider the increase suggested by prosecution for the defendant's knowledge of filing a return but this is canceled out by the medical certificate attached in the Pre-Sentence Report where it was confirmed that the defendant had a severe flu from 11 – 15 March 2024. The grace period lapsed on 15 March 2024, which was a Friday. The defendant filed his return on 18 March 2024, the Monday after.

Step 2 – Personal factors

13. The second step is to make the appropriate deductions for personal factors. There are no aggravating factors to the offender.
14. In mitigation, defence submitted that,
- The defendant entered a guilty plea at the first available opportunity. A deduction is warranted. Prosecution did not submit a percentage, however, defence submitted that a 1/3 reduction should be given;
 - The medical condition of the defendant, at the time of the incident, was not good;
 - The advanced age of the defendant. He is 72 years old;
 - The defendant is employed and lives with his wife and one of his daughters;
 - The defendant is a first-time offender;
 - The defendant was a dedicated and committed civil servant, and human resource towards the development of the country.
15. I also consider the Pre-Sentence Report where the defendant stated in a letter to the Ombudsman that he has been faithful in filing his returns in the past and this is the first time he has not done so, due to being sick. The medical certificate confirms this.
16. Firstly, I will deal with guilty plea deduction. Mr Thompson has been quite honest about his situation, where in his caution statement he mentioned that he had been filing his returns so he has knowledge of this requirement as a leader. He admitted not checking his email but learned that the due date of 1 March had lapsed when he was served with the notice of the Ombudsman. For this, I give 1/3 reduction on the sentence, bringing the fine to VT33,500.
17. Secondly, I consider the other factors. You are advanced in your years, married and employed. Although your children are all grown, you are living with one of them, and no doubt supporting them one way or another. You are a first-time offender only because you were very ill during the grace period of the annual returns. I further reduce your fine by VT10,000.

End sentence

18. Mr Ambong Thompson, you are sentenced to a fine of VT23,500. I consider the defendants in the case of *Iawia* where they had no knowledge but filed their returns when they learned of this obligation. You, on the other hand, knew that you should have filed your returns. You fell sick and could not file it in time. You have always filed your returns



the past because you know that as a leader you have to do that. You are committed to your family, church and community, and you showed this when you filed your returns, as soon as you possibly could. You made an effort to file your returns.

19. I do not think it fair that you should be convicted for being sick during the grace period. Therefore, I am applying Section 55 of the Penal Code Act [CAP 135] and discharge you without conviction.

20. You are acquitted.

Dated at Port Vila on this 16th day of July, 2025

BY THE COURT

