



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Case Summary
The Dili District Court
August 2017¹

Affirmation: The following case summaries set out the facts and the proceedings of cases before the court based on JSMP's independent monitoring, and the testimony given by the parties before the court. This information does not reflect the opinions of JSMP as an institution.

JSMP strongly condemns all forms of violence, especially against women and vulnerable persons.

JSMP maintains that there is no justification for violence against women.

A. Summary of the trial process at the Dili District Court

1. Total number of cases monitored by JSMP: 2

Article	Type of Case	Number of cases
Articles 295, 303, and 313 of the Penal Code	Embezzlement, forgery of documents or technical report and money laundering, from the Penal Code.	1
Article 295 of the PC	Embezzlement	1
Total		2

2. Total number of cases monitored by JSMP: 1

Type of Penalty	Number of cases
Prison sentence	
Prison sentence with civil compensation	1
Suspension of execution of a prison sentence (Article 68 of the PC)	
Withdrawal of complaint	
Suspension of execution of a prison sentence – Article 68 of the PC and Rules of conduct - Article 70 (g) of the PC	
Suspension of execution of a prison sentence (Article 68 of the PC) and civil compensation	

¹ This Case Summary is short because the courts entered their annual judicial recess from 15 August 2017 until 15 September 2017 and the Dili District Court was the only court to hold trials during this period of judicial recess.

Acquitted	
Total	1

3. Total ongoing cases based on JSMP monitoring: 1

B. Descriptive summary of the decisions handed down in cases that were monitored by JSMP

1. Crime of embezzlement, forgery of documents or technical report and money laundering

Case Number : 0511/14.PDDIL
Composition of the Court : Panel
Judges : Jacinta Correia, Ana Paula Fonseca, Eusebio Vitor
Prosecutor : Angelina Saldanha
Defeza : Jose Texeira (International Private Lawyer)
Type of Penalty : 8 years in prison and compensation of US\$859,000.00²

On 28 July 2017 the Dili District Court announced its decision in a case of embezzlement, forgery of documents or technical report and money laundering involving the defendant Tiago Luis de Vilhena Texeira Guerra and the defendant Chang Fong-Fong Guerra a.k.a “Tammy Guerra”, in Dili District.

Charges of the Prosecutor

The public prosecutor alleged that in 2010, the Government of Norway, through an international bilateral cooperation mechanism, provided technical and financial assistance to the Government of the Democratic Republic of Timor-Leste (RDTL) and contracted a professional, namely the defendant Bobby Boye, to act as an international advisor to the Ministry of Finance, specifically in the area of petroleum taxation, for 1 year expiring in June 2011.

However, because the Ministry of Finance continued to need this support for the recuperation and liquidation of petroleum tax, the Directorate of Taxation decided to draft a new contract for the defendant Bobby Boye. Meanwhile, the defendants Tiago Guerra and Tammy Guerra, who are married, came to Timor-Leste in 2010 and lived near the defendant Bobby Boye. However in 2011, the defendants Bobby Boye and Tammy Guerra started an “amorous” relationship.

²The Defendants Tiago Guerra and Tammy Guerra through their lawyer will lodge an appeal with the Court of Appeal against the decision of the Dili District Court because they do not accept this decision.

In the same year (2011), the defendant Tiago Guerra established the company Olive Unipessoal Lda in Timor-Leste with the core activity of providing business advisory services, particularly in the area of tax. The defendant Bobby Boye also acted to draft agreements relating to terms of the contract, competence and authority to carry out negotiations with petroleum companies that manage the collection of taxes in the Timor Sea.

As planned, in the same year (2011) the defendant Tammy Guerra set up a company in Macau to conduct its main activity of providing business advisory services and consulting. The name of this company was the Olive Consultancy Limited Company in Macau.

The case occurred when the defendant Bobby Boye started outlining a negotiation plan to oblige the Norwegian company DOF Subsea – Norway to pay tax owing (tax that had been outstanding for a long time). For negotiations to be more effective, the defendant Bobby Boye employed a company named SIMONSEN Lawyers Firm DA, in Norway, to represent the tax authorities in Timor-Leste to negotiate with DOF Subsea - Norway regarding the payments owed to the State of Timor-Leste.

Based on the results of this negotiation, in November 2011 DOF Subsea – Norway agreed to pay a debt owing to the State of Timor-Leste totaling US \$1,009,332.00.

On 2 December 2011 DOF Subsea–Norway started to make payments through the Timor-Leste Banking Authority, into the petroleum fund held with the Federal Reserve Bank of the United States of America totaling US\$ 145,441.23.

However on the same day (2 December 2011) DOF Subsea – Norway also transferred US\$ 4,172.31 into the bank account of SIMONSEN Lawyers Firm DA, based on the request of the defendant Bobby Boye.

On the following day (3 December 2011) the defendant Bobby Boye asked SIMONSEN Lawyers Firm DA to transfer this money to the Olive Consultancy Limited Company belonging to Tammy Guerra, through the BNU Bank in Macau.

Then the defendant Bobby Boye also asked DOF Subsea – Norway to transfer US\$ 859,706.30 into the bank account of SIMONSEN Lawyers Firm DA.

On 5 December 2011 Bobby Boye via email told a representative of SIMONSEN Lawyers Firm DA, Mr. Frode A. Bernsten, to transfer US\$ 859,706.30 to the Olive Consultancy Limited Company belonging to Tammy Guerra iha Macau.

On 16 December 2011 the defendant Tammy Guerra transferred US\$ 859,706.30 to the defendant Boye through the bank account of Teschon, Roccobone & Siss Lawyers Firm in Midland Park, New-Jersey, United States of America. The defendant Bobby Boye used this money to immediately buy a house in the United States of America.

The public prosecutor alleged that the defendants Tiago Guerra and Chang Fong-Fong (Tammy Guerra) violated Article 295 (1) and (3) of the Penal Code (PC) on the crime of embezzlement, Article 303 of the PC on the crime of forgery of documents or technical report and Article 313 (a), (b) and (c) of the PC on the crime of money laundering.

Presentation of evidence

During the examination of evidence, the defendants Tiago Guerra and Tammy Guerra chose to remain silent.

The witness Monica Rangel, as the Director of Taxation, confirmed all of the facts relating to the debts and missing money, however she stated that she didn't really know about how the defendants could have stolen the money because the defendant Bobby Boye conducted a lot of negotiations via email without informing the witness. The witness also testified that she did not know the defendants but she knew about the Olive Consultancy Company, because it was responsible for paying these debts.

Another witness, Pascoela Maria Cairro, is the Head of the Division for Banking Monitoring who is an expert on the banking system, and she appeared to interpret the banking documents from the BNU in Macau and the copies of the transactions of the defendant Tammy Guerra in Macau iha 2011. According to these banking documents, the defendant Tammy Guerra in 2011 made two transactions to withdraw money from the Bank in Macau that were transferred from SIMONSEN Lawyers Firm DA to the Olive Consultancy Limited Company. In the first transaction the defendant withdrew 8,064 pataka which is equivalent to US\$ 805,000.00. Then the defendant withdrew 340.00 pataka which is equivalent to US\$ 420,000.00

The witness Pascoela Maria Cairro testified that based on the bank slip in 2011 the defendant Tammy Guerra conducted a transaction to withdraw money in Macau currency valued at 8,064.00 pataka. The defendant Tammy Guerra also withdrew 340.00 pataka. The document shows that the defendant immediately exchanged this money from pataka to American dollars. This money was sent from SIMONSEN Lawyers Firm DA to the Olive Consultancy Limited Company.

In December 2011 the defendant made two transfers to send US\$ 805,000.00 to a person who was not identified in the system. The defendant also transferred US\$ 402,000.00 to a person who was not identified in the system.

The witness Pascoela Maria Cairro further explained that the person could not be identified because of the BNU system or because of the request from the owner of the money or the person making the transfer. However, the witness maintained the conclusion that the defendant transferred the money.

Meanwhile, the defendant through her legal representative stated that one of the transfers was to Bobby Boye totaling US\$ 895,000.00 and the transfer of US\$ 402,000.00 was to the TOXEN company in Germany.

The court also examined several receipts relating to the transfer of money by the defendant Bobby Boye to the defendant Tammy Guerra totaling US\$ 10,000 including other transfer receipts from the defendant Tammy Guerra to the defendant Bobby Boye totaling US\$ 895,000.00 and to the Toxen company in Germany totaling US\$ 402,000.00.

Final recommendations

The public prosecutor maintained the facts set out in the indictment and stated that the defendant Tiago Guerra and defendant Tammy Guerra were guilty of committing the crime based on the facts set out in the indictment. Therefore the public prosecutor requested for the court to impose a prison sentence of 8 years against the defendant Tiago Guerra and the defendant Tammy Guerra and requested for the court to order the defendants to pay compensation to the State for the loss suffered by the State of Timor-Leste as a result of the defendants' actions.

The defence stated that all of the allegations made against his clients were not true. The defence stated that the defendant Tiago Guerra and the defendant Tammy Guerra had not been proven guilty of conspiring with the defendant Bobby Boye. The defence recognised that the defendant Bobby Boye used the defendants'

company as an intermediary for the transfer of money, but this was to support the interests of the defendant Bobby Boye.

The defence also argued that the public prosecutor should never have made allegations based on an amorous relationship between the defendant Bobby Boye and the defendant Tiago Guerra and Tammy Guerra as proof that they had the intent to conspire to benefit themselves or to obtain benefits from these transactions.

The defence recognised that the defendant Bobby Boye transferred US\$ 10,000 to the defendant Tiago Guerra and the defendant Tammy Guerra, but this money was to facilitate their trip to Macau, to receive money transferred from SIMONSEN Lawyers Firm DA, in Norway to the Olive Consultancy Limited Company.

The defence also stated that there was no evidence that the defendant Tammy Guerra did not transfer money to the defendant Bobby Boye and the Toxen company in Germany because the transfer receipts printed by BNU in Macau show clearly that the defendant Tammy Guerra transferred money to Bobby Boye and the Toxen company in Germany.

Meanwhile, the defence said the BNU in Macau could not print the name of the person who accepted this money because of a technical issue that depends on the banking system in each country. Another issue is that based on banking systems in general, when money is sent to a person, if the person does not receive it or the number is wrong, the money will remain pending in the system. In fact, the money is no longer there, meaning that a person on the list of recipients has withdrawn the money.

The defence said that the allegations of the public prosecutor had no basis and the facts set out in the indictment did not correspond with the testimony of the witnesses and the documents presented during the examination of evidence. Therefore the defence requested for the court to fully acquit the defendant Tiago Guerra and defendant Tammy Guerra from these crimes.

Decision

After assessing the facts produced during the trial, the Court found the defendants Tiago Luis de Vilhena Teixeira Guerra and Chang Fong-Fong Guerra “Tammy Guerra” guilty of committing the crime of embezzlement and forgery of documents or technical report and acquitted them from the crime of money laundering.

The court found that the defendants were co-perpetrators of the crime of embezzlement and the crime of forgery of documents or technical report committed by the defendant Bobby Boye, by facilitating the transfer of money belonging to the State of Timor-Leste to benefit the defendants. The court gave consideration to the crime of embezzlement even though the defendants were not public servants, but because they helped Bobby Boye as an employee of the State to cause the State to suffer a loss. Therefore, the Court gave consideration to Article 32 of the Penal Code on complicity and Article 34 of the Penal Code on unlawfulness in joint participation.

The court also found that the defendants received money transferred by Bobby Boye totaling US\$ 10,000.00 to facilitate their trip from Timor-Leste to Macau, to conduct these financial transactions. The defendant Tamy Guerra twice withdrew money or conducted transactions to withdraw US\$ 859,000.00 and US\$42,000.00 from a BNU bank account in Macau in 2011, which was sent from SIMONSEN Lawyers Firm, DA.

The court also found that the defendants had a plan with Bobby Boye to conspire to allocate or take money belonging to the State of Timor-Leste to obtain benefits from this money. The defendants had four (4) companies that they used to carry out schemes to use the money and set up many bank accounts, in Macau, Portugal, the United States of America and Timor-Leste. The court also found that the defendants took advantage of a good relationship with the defendant Bobby Boye to benefit from money belonging to the State of Timor-Leste and had a conspiracy to seek benefits by setting up the Olive Consultancy Company in Macau and Dili.

However the Court did not find that the defendant Tammy Guerra and Bobby Boye had an amorous relationship, and it also did not find that the money that the defendant Tamy Guerra withdrew twice from the BNU in Macau was immediately sent to the Toxen Company and Bobby Boye, comprising US\$402,000.00 to the Toxen Company and US\$859,000.00 to Bobby Boye.

Based on the aforementioned considerations and the facts that were proven, the Court concluded the matter and sentenced the defendants to 8 years in prison and ordered them to pay compensation of US\$ 859,000.00.

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