

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

**Criminal  
Case No. 17/3323 SC/CRML**

**BETWEEN:                      Public Prosecutor**

**AND:                              Kalsau Jean Pierre  
   Catherine Kalsau  
   Accuseds**

***Date of SENTENCE:            8<sup>th</sup> February 2018 at 9 am***

***Before:                            James Paul Geoghegan***

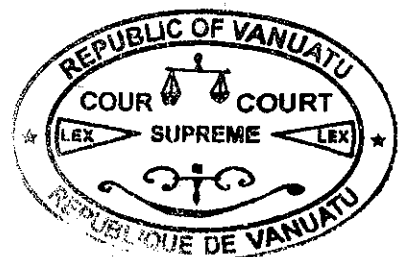
***Appearances:                 Ms Lunabek for the Public Prosecutor  
   Mr Moli (PSO) for the Accuseds***

---

**SENTENCE**

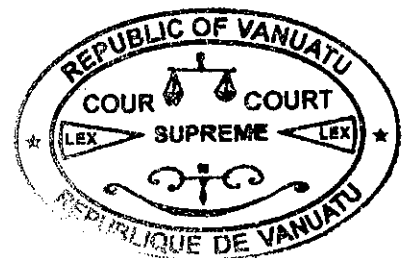
---

1. Jean Pierre Kalsau and Katherine Kalsau you appear today for sentencing in respect of one charge each of unlawful entry contrary to section 143 (1) of the Penal Code and one count each of theft contrary to section 125 (a) of the Penal Code. The offence of unlawful entry to a place used for human habitation is 20 years, the maximum penalty on a charge of theft is 12 years. These offences were the subject of guilty pleas by you on December 5<sup>th</sup> 2017 and I accept that your pleas have been entered at the earliest opportunity.
2. The summary of facts tells me that between October 2014 and July 2015 you stole a substantial amount of property from an expatriate New Zealander. Although the summary of facts does not specify how you knew each other it does say that you had



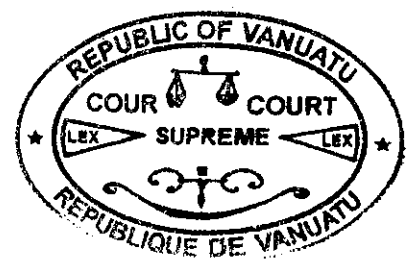
approached the victim for assistance with your daughter's marriage and, as a result of that request, the victim gave you \$ 1,000 AUD and allowed you to use a generator owned by him for the purposes of the marriage ceremony. Accordingly therefore, there must have been a positive relationship one would think existing between you and the victim. After the marriage you did not return the generator.

3. Approximately two weeks after that you approached a builder employed by the victim and told him that you had permission from the victim to remove a 3,000 watt generator, a water pump, a Yamaha boat engine and a red fuel tank from a container located on the victim's property which I understand to be at Lelepa landing. That clearly provides the basis for the charge of unlawful entry.
4. The items which you took were worth approximately Vt 550,000. In addition to this, in 2014 you stole a boat belonging to the victim. You also endeavored to disguise that boat by repainting it a different color. As well as the boat you took a 6,000 litre water tank.
5. The summary of facts would suggest that the victim in this matter has treated you with kindness and generosity and you have repaid that with deceit and dishonesty. In that context your actions are disgraceful.
6. Fortunately however, it appears that all of the property has been recovered and accordingly reparation is not an issue here.
7. I have received a copy of your pre-sentence reports that were provided to me by Mr Moli this morning. Unfortunately I had not seen these pre-sentence reports as they had not been filed in the Supreme Court, at least to my knowledge.
8. The pre-sentence reports tells me that you are aged 51, Mr Kalsau and 48 Mrs Kalsau and that you have five children all of whom you support. You have no employment and earn money from gardening. You have two children still at school.

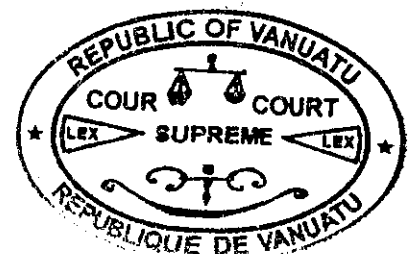


Mr Kalsau you are a deacon at the church and that makes this offending even more puzzling. You may need to consider whether it is appropriate for you to continue in that position with the church given your conviction for this offending.

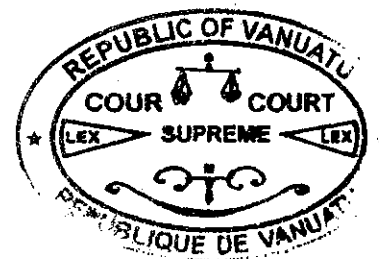
9. The pre-sentence report refers to your explanation for the offending and I have been provided with documents by Mr Moli which tend to suggest that there were some sort of a dispute between you and the victim about the victim's purchase of land from you or from other members of your family. It is not clear. It appears that the nature of the dispute is that you believe that further payments were due under the contract for purchase and they have not been made. That motivated you to take the law into your own hands and to steal the items I have referred to. I need to say now that you are not entitled to take the law into your own hands and there is insufficient information to enable me to come to the conclusion that there was a genuine dispute here rather than simply a perceived dispute on your part which was not worthy of any further action. Needless to say if there was a contractual dispute over the land you should have taken the appropriate course rather than resorting to stealing the victim's property.
10. There has been no custom reconciliation ceremony and that may well be because of the unavailability of the victim. You have however indicated that you are prepared to undergo such a ceremony and the report also refers to your insight into your offending. I hope you do have that insight. As I say, given the generosity of the victim these actions on your part were disgraceful.
11. The prosecution has emphasized the fact that the burglary of someone's home is extremely serious and can affect victims enormously sometimes for the rest of their lives. This is a slightly different case where the burglary did not involve you breaking into the victim's home and it appears the victim may not have been in Vanuatu at the time. That is unclear.



12. You will have heard me speak to Ms Lunabek about the suitability of a charge carrying a 20 year term of imprisonment. However I accept that the container was located in a place used for human habitation and accordingly I am satisfied that the charge is an appropriate one.
13. Counsel has referred to a number of authorities and has submitted that an appropriate end sentence is between 9 months for the unlawful entry and two years and three months for the theft. Mr Moli has made submissions on your behalf and he has also made reference to a number of authorities with the suggestion that the Court should first look at a community based sentence but in the event of imprisonment being imposed that the starting point of 9 to 12 months would be appropriate with an end sentence of approximately 6 months imprisonment. Mr Moli has also submitted that a suspended sentence would be appropriate and that does not appear to be a sentence opposed in any way by the Public Prosecutor.
14. The aggravating features of your offending are the following. This involved a significant breach of trust in the sense that you took advantage of what appears to have been a relationship of friendship between you and the victim. The offending occurred not just on one occasion but on more than one. The offending involves a theft of a significant amount of property of a substantial value. In the case of the boat you went to lengths to try to disguise it so that it would not be detected.
15. The mitigating feature in relation to the offending itself and perhaps not to the commission of the offence is the recovery of all of the property.
16. The aggravating features of this offending are significant ones and in my assessment they would justify a starting point of three years imprisonment. Had the offending not involved the level of deception that they did together with the fact that the offending occurred on two separate occasions, a lower starting point could have been justified.



17. From that three years I deduct 12 months for your guilty pleas and a further six months for your cooperation with the authorities and the fact that all of the items stolen were recovered. That also takes into account the fact that you are first time offenders.
18. That leaves an end point of 18 months imprisonment. The question is then whether the sentence should be suspended. I consider that in all of the circumstances, and taking into account the matters referred to in section 57 (1) (a) of the Criminal Procedure Code a suspension is warranted. You are first time offenders. You have by all accounts led trouble free lives. You have five children who depend on you for their education and general care. It would be entirely inappropriate to sentence only one of you to imprisonment to enable the other to care for the children. In all of the circumstances therefore, a suspended sentence is appropriate.
19. I intend however to impose a sentence of community work in order to emphasize the seriousness of this offending. Having spoken to Mr Moli I am satisfied that he has explained to you the meaning of a suspended sentence.
20. Accordingly in respect of both charges you are convicted and sentenced to 18 months imprisonment. That imprisonment is suspended for a period of 2 years. You are also each sentenced in respect of each charge to 250 hours community work.
21. For the sake of clarity I would record that that will involve you each in serving a maximum of 250 hours community work.



DATED at Port Vila this 8th day of February 2018

BY THE COURT

.....  
JP GEORGE  
Judge

