

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

**Criminal Appeal**  
**Case No. 18/544 SC/CRMA**

**BETWEEN: Kition Abel**

**Appellant**

**AND: Public Prosecutor**

**Respondent**

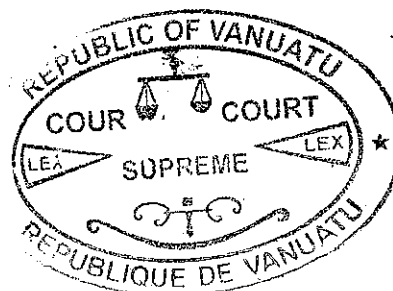
***Date of HEARING: 5th day of April, 2018 at 10:30 AM***  
***Before: Justice Oliver Saksak***  
***In Attendance: Henzler Vira for the appellant***  
***Simcha Blessing for the respondent***

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**ORAL JUDGMENT**

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1. The appellant sought leave to appeal the whole sentence of the Magistrates Court dated 13<sup>th</sup> December 2017 which sentenced him to 4 years 5 months imprisonment for-
  - a) Unlawful entry- Section 143 (1) PCA – 2 years imprisonment
  - b) Theft- Section 125 (a) – 2 years imprisonment
  - c) Malicious Damage- Section 133- 5 months imprisonmentThese sentences were ordered to run consecutively. Leave was granted on 29<sup>th</sup> March 2018.
  
2. The grounds were basically the same grounds raised by the principal offender Jimson Noses Verlili in Criminal Appeal No. 3624 of 2017 which are-
  - a) The Magistrates Court erred in imposing consecutive sentences,
  - b) The sentences were manifestly excessive, and
  - c) The Magistrate's Court failed to follow the three step process of Kal Andy's case.



3. At the outset of the hearing Mr Blessing concedes to the appeal and asks that this Court refers the case back for a rehearing before the Magistrates Court.
4. Mr Vira accepts the concession made and for the case to be sent back to the Magistrates Court for a rehearing.
5. Accordingly the Court orders that-
  - a) The appeal be allowed on the concession made by the Prosecution and on the basis of the Judgment in Criminal Appeal Case No. 3624 of 2017 dated 4<sup>th</sup> April 2018 which has quashed and set aside the sentences imposed on both Jimson Noses Verlili and Abel Kition ( this appellant).
  - b) The Judgment as referred is applicable also to this appellant, save as to the resentencing of Jimson Noses.
  - c) The appellant be released forthwith from custody. A separate order will issue in respect of his bail application.
  - d) The appellant's case be returned to the Magistrates Court for a rehearing.

**DATED at Port Vila this 5th day of April, 2018**

**BY THE COURT**

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**Oliver.A. Saksak**

**Judge**

