

BETWEEN: Public Prosecutor

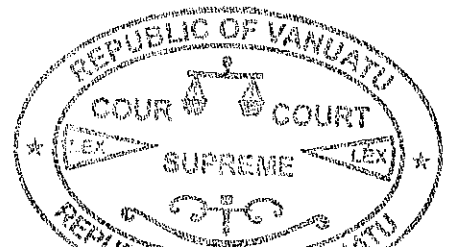
**AND: Bruno Tau Leingkon
Defendant**

Date: 27 July 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr T. Karae for Public Prosecutor
Mr C. Leo for the Defendant

Sentence

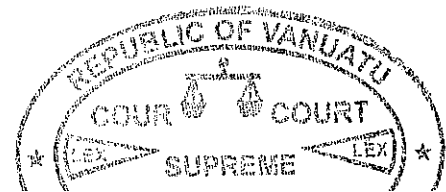
A. Introduction

1. Mr Leingkon pleaded guilty to 3 charges:
 - Doing an Act that endangered the safety of an aircraft passenger;
 - Intentionally boarding an aircraft while intoxicated; and
 - Breaching the Leadership Code by failing to comply with and observe the law.
2. All 3 charges relate to one incident which took place in and around Pekoa Airport, Espiritu Santo, during the morning of 1 May 2020.
3. There is a degree of overlap between the offences. The laws accepted to not be observed or complied with in Charge 3 are the basis of Charges 1 and 2, namely the two breaches of the Aviation Security Act. What brings the Leadership Code into play is the fact that Mr Leingkon was and is the Minister for Climate Change and he therefore had the additional obligations imposed on him by the Leadership Code and the Constitution.



B. Facts

4. On 1 May 2020, Mr Leingkon was scheduled to fly back to Port Vila together with the Prime Minister of Vanuatu and others on a charter flight with Unity Airlines at 7am. However, that did not eventuate.
5. After taking the prime Minister and others to Port Vila, the pilot Ms Olivia Magoffin, was advised that Mr Leingkon was now at Pekoa Airport, and she was instructed to return to Pekoa Airport to collect Mr Leingkon as he had another appointment to attend to in Port Vila at 11am. She took an 11-year old acquaintance with her on the flight, who sat beside her in the cockpit. The plane returned to Pekoa Airport, landing at about 10am, but Mr Leingkon was absent.
6. Mr Leingkon arrived at Pekoa Airport at about 10.30am following a number of telephone enquiries as to his whereabouts. On arrival, the pilot witnessed Mr Leingkon stumble out of his vehicle holding an opened can of Victoria Bitter beer. He went over to the pilot, hugged her and attempted to kiss her. In doing so, he spilt beer down the back of the pilot's uniform. Mr Leingkon then proceeded to speak with persons at the airport, run around on the grass chasing some of those present and tackling some of the men. It took his subordinates 30 minutes coaxing to get Mr Leingkon to finally board the plane. The pilot had reported Mr Leingkon's conduct to her Manager, explaining her delay in returning to Port Vila.
7. Once on board, the pilot gave Mr Leingkon a safety lecture and warned that if he "played up" she would turn the plane around and he would be off-loaded. Mr Leingkon laughed at that suggestion and took out a packet of cigarettes. He asked if could smoke on board, well knowing that that was not permitted. The pilot considered he was trying to provoke a reaction from her. At this time, the pilot's acquaintance was in the cockpit and a second passenger, the Director-General for Climate Change, Ms Garaebiti was in the body of the airplane with Mr Leingkon.
8. Shortly after the plane had taken off, the pilot was instructed by her superior to return to Pekoa Airport and off-load Mr Leingkon as it was unsafe and illegal to fly with an intoxicated person on board. The pilot duly did as instructed.
9. Once the plane had landed and come to a standstill, the pilot explained her instructions to Mr Leingkon. She faced resistance as Mr Leingkon did not want to disembark and wanted her to fly him to Port Vila. The pilot felt under pressure. She advised her Manager that things had settled down and that Mr Leingkon appeared to have sobered up. On that basis, with the agreement of her Manager, the pilot again prepared the plane for take-off to Port Vila.
10. However, the pilot was then ordered by Port Vila Tower to off-load Mr Leingkon. The pilot shut down the engine and turned to explain her latest instructions to Mr Leingkon. At this point she noticed that he had taken out another can of Victoria Bitter beer from his bag and was proceeding to drink from it. On hearing the position, Mr Leingkon became angry and refused to disembark. The pilot simply walked away from the plane at that stage. Security officers eventually succeeded in persuading Mr Leingkon to get off the plane after some 20 minutes.
11. Other evidence presented demonstrated that Mr Leingkon had consumed copious alcohol the night before the scheduled flight on 1 May 2020. He had had to be assisted into his bed. Also, there is evidence that on the way to the airport on the morning of 1 May 2020, Mr Leingkon



stopped his vehicle en route to purchase a 6-pack of Victoria Bitter beer. He consumed some of that on the way to the airport.

12. When asked about this matter following the complaint to the police by the Director of Civil Aviation, Mr Leingkon exercised his right to silence, indicating he wished to speak to the charges in Court. However, when speaking with the PSR writer, he accepted that he was intoxicated; that on a scale of 1 – 10, he was at “more than 10”.

C. Sentence Start Point

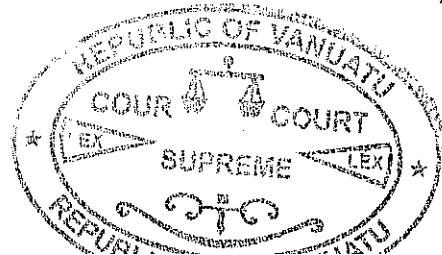
13. The sentence start point is to be assessed having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
14. The maximum sentence for doing an act that endangers the safety of an aircraft passenger is 2 years imprisonment and/or a fine not exceeding VT 800,000.
15. The maximum sentence for intentionally boarding an aircraft while intoxicated is a fine not exceeding VT 400,000.
16. The maximum sentence for breaching the Leadership Code by failing to comply with and observe the law is 10 years imprisonment and/or a fine not exceeding VT 5 million.
17. The prosecution submissions point to 10 aggravating factors. However, I consider only the following are present:
- The Unity Airways plane was unduly delayed and used additional navigation fuel needlessly;
 - The pilot was subjected to personal harassment and improper pressure to fly by Mr Leingkon; and
 - Other persons on board were frightened and had to endure Mr Leingkon's behaviour.

18. There are no mitigating aspects to this offending.

19. I adopt a sentence start point of 8 months imprisonment, on a totality basis.

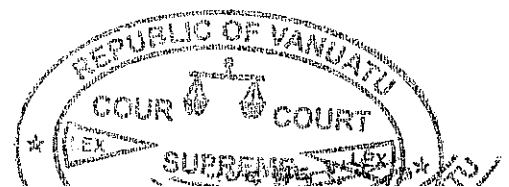
D. Personal Factors

20. Mr Leingkon pleaded guilty to the charges at an early stage. However, the evidence against him was strong, and accordingly guilty pleas were the sensible option. The pleas indicate that he has accepted his wrong-doing, and it has also saved Court time and expense. For Mr Leingkon's prompt pleas I reduce the sentence start point by 2 months.
21. Mr Leingkon is now 53 years old. He is married with 4 children, 3 of whom are still at school and require his support as the family's sole bread-winner. He was, in a previous career, a reporter with VBTC for some 20 years. Since 2012 he has been a Member of Parliament, and



for most of this time also a Minister of the Government. He is in good standing with his family, his Church and the wider community.

22. He has no previous convictions, and states he is extremely remorseful.
23. Mr Leingkon has performed custom reconciliation ceremonies to his constituency on Ambrym Island and the National Council of Chiefs, making apologies and presenting gifts of pigs, kava and mats. He has also apologised to Unity Airlines, to the Prime Minister and to his National United Political Party, of which he is the President.
24. Mr Leingkon has produced a number of supporting statements made by eminent persons in our community who all speak highly of him and point to the significant contribution Mr Leingkon has made to Vanuatu in the course of his public service. That evidence is accepted.
25. Mr Leingkon's claim of remorse to the PSR writer must be tempered by the fact that he still seeks to mitigate the seriousness of the offending by apportioning some of the responsibility to the airport security staff who allowed him to board the aircraft. However, he was the one who truly knew the level of his alcohol consumption and subsequent intoxication, and he should have elected not to board the plane. The security officers had no way of knowing that Mr Leingkon carried alcohol onto the plane or that he would then choose to consume alcohol while on board.
26. Further, the Court notes that despite numerous apologies, the person whose role was most affected by Mr Leingkon's conduct on 1 May 2020, namely the pilot, has not received an apology.
27. Lastly, Mr Leingkon's stated remorse is further undermined by his purported reliance on section 44 of the Disaster Risk Management Act. The act makes certain persons, including the Minister, immune from legal proceedings for damage, loss, death or injury sustained during a state of emergency because of anything done or omitted to be done in good faith under the Act. This provision has no application to Mr Leingkon's conduct. For him to attempt to utilise such immunity is inconsistent with his stated remorse.
28. This Court also needs to correct a perception expressed by Mr Leingkon and supported by one or two of his character referees, and that is that this conduct did not endanger anyone. Firstly, if so, one wonders why a guilty plea was entered to the charge? Secondly, there were 4 persons on board the plane at the time. Not only was the pilot concerned, but another passenger stated she was extremely frightened by what she witnessed. Thirdly, and more significantly however, is the lack of control of one's actions when so inebriated, which is a cause for serious concern.
29. This was a small 6-passenger aircraft, with very confined space for passengers and luggage. Mr Leingkon, by his own admission, was extremely intoxicated yet sitting very close to the pilot. An inebriated person is capable of quite unexpected acts. To have a person in that condition on board creates a dangerous and volatile situation, which was correctly not permitted by the Port Vila control tower.
30. Ultimately, the pilot of the plane has the role of making critical decisions regarding the passengers and cargo. At all times, the pilot must be able to give full attention to the flying of



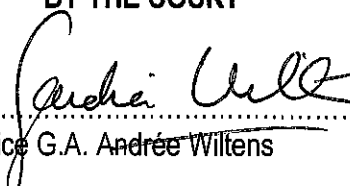
the plane, to the aspects of navigation, to the prevailing conditions of the weather and most importantly, the aircraft controls. The pilot should not be distracted, as to do so is to place all the lives of those on board at risk. By his actions Mr Leingkon did much more than simply distract the pilot.

31. Mr Leingkon has advised regarding his state of health. The assumption is that the Court should take it into account. However, why should that be so when Mr Leingkon's choice was to ignore his doctor's warnings? He has been told to cease all consumption of alcohol for the sake of his health. It was his choice to ignore that, a choice only he was able to make. I do not consider this to be an aspect of mitigation.
32. For Mr Leingkon's personal factors, as earlier outlined, I reduce the sentence start point by a further 3 months.

E. End Sentence

33. Mr Leingkon must be held accountable for his disorderly and reprehensible conduct which has demeaned his office, called into question his integrity, and diminished respect and confidence in the Government which he represents. However, I do not consider that imprisonment is the appropriate end sentence to mark Mr Leingkon's conduct. I consider a combination of community work and a heavy fine to be the appropriate level at which to sentence.
34. I regard Charge 3, breaching the Leadership Code by failing to comply with and observe the law, to be the lead offence. The sentence to be imposed in respect of that must act as a deterrent to Mr Leingkon and other Leaders. Accordingly, in respect of that Charge, Mr Leingkon is sentenced to complete 120 hours of Community Work.
35. The fines imposed need to have an effect. If the fine is too steep, that would be unfair. Similarly, if the fines are pitched at too low a level, they will be no deterrent.
36. For doing an act that endangered the safety of an aircraft passenger, Mr Leingkon is fined VT 250,000.
37. For intentionally boarding an aircraft while intoxicated, Mr Leingkon is additionally fined VT 50,000.
38. Mr Leingkon receives a significant salary as a Member of Parliament, topped up by additional salary as a Minister of the Government. He is therefore well able to pay the total fines imposed. The fines are accordingly to be paid within 21 days.
39. Mr Leingkon has 14 days to appeal his sentence.

Dated at Port Vila this 27th day of July 2021
BY THE COURT


Justice G.A. Andrée Wiltens

