

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

Criminal
Case No. 23/398 SC/CRML

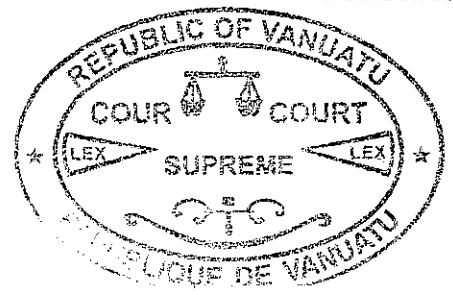
BETWEEN: Public Prosecutor

AND: Bill lakuma
Simen Kapten
Romie Nassack
Jackson Kamelu
Defendants

Date: 12th July 2023
By: Justice W.K. Hastings
Counsel: Ms M Meltebury for the Public Prosecutor
Ms L Bakokoto for the Defendants

SENTENCE

1. Mr lakuma, Mr Kabten, Mr Nassack and Mr Kamelu, each of you has pleaded guilty to one charge of unlawfully entering a dwelling and one charge of theft. The unlawful entry charge carries a maximum penalty of 20 years imprisonment, the theft charge 12 years imprisonment.
2. Each of you is a first time offender. You range in age from 19 (Ronnie Nassack and Jackson Kamelu), to 25 (Bill lakuma), and to 30 (Simen Kabten).
3. The facts are that all of you decided to go fishing and diving but due to the weather, you decided to return home. You succumbed to peer pressure from a fifth person who was with you but does not appear to have been charged. Footage from the security camera at the house you entered shows five of you entering the yard and then standing around while the fifth person tries to open a sliding window with an object. Two pairs of shoes and nine bottles of wine were taken from the house. Mr lakuma and Mr Kamelu admitted taking the shoes. It is a mitigating feature for each of them that they returned the shoes. Mr Kabten and Mr Nassack admitted taking bottles of wine. The wine was consumed. I have no evidence of the value of the shoes or the wine.

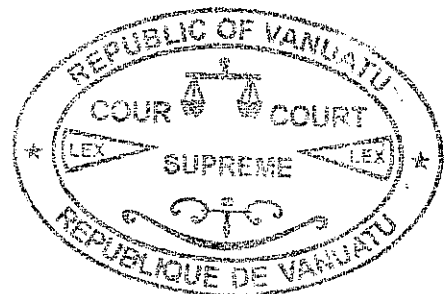


4. The sentence I impose must denounce your conduct, deter you and others from the same or similar offending and hold you accountable for the harm you have caused. I must also have regard to the possibility of keeping offenders in the community so far as that is practicable and consistent with the safety of the community, and to the facilitation of settlement according to custom.
5. I have considered the submissions of the prosecution and your lawyer. I have also considered the pre-sentence reports prepared for each of you, and in particular the comments of Chief Solomon Noka conveyed through those reports. I will first establish a starting point for your sentences taking into account aggravating and mitigating factors related to the offending, I will then adjust the starting point taking into account aggravating and mitigating factors that are personal to each of you in order to reach your sentence end point.
6. The prosecutor has referred me to two comparable cases to assist in establishing a starting point for this offending. A starting point of 30 months imprisonment was adopted in *Public Prosecutor v Tarosa*¹ following conviction on one count of unlawful entry into a dwelling house and one count of theft. The offending occurred at night and involved theft of a mobile phone and VT 20,000. The phone and some of the money were returned. A starting point of 30 months was adopted in *Public Prosecutor v Filai*². The defendant in that case was charged with unlawfully entering two dwelling houses at night and the theft of a mobile phone, a guitar and two speakers.
7. Your lawyer has referred me to *Public Prosecutor v Martin*³ in which three defendants were jointly charged with unlawful entry, theft and malicious damage to property. Two defendants were first time offenders upon whom the court imposed a sentence of 18 months imprisonment suspended for 2 years in one case and 3 years in the other, both with a special condition to undertake counselling. The Court did not suspend the sentence of the third defendant because he had a previous conviction.
8. I identify the following aggravating features of your offending:
 - a. The offending occurred in someone's home. This violates the sanctity of the home and can leave the resident feeling insecure and unsafe in the very place they are most entitled to feel safe and secure.
 - b. The victim suffered the loss of nine bottles of wine of unknown value and two pairs of shoes, also of unknown value. With respect to the shoes, the significance of this as an aggravating factor is reduced because the shoes were returned.
9. I do not consider much planning was involved. The pre-sentence reports speak of peer pressure and of being misled by the fifth offender after you decided not to go fishing.

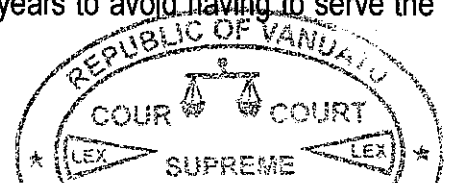
¹ Public Prosecutor v Tarosa [2021] VUSC 134

² Public Prosecutor v Filai [2020] VUSC 164

³ Public Prosecutor v Martin [2010] VUSC 131



10. I have mentioned the return of the shoes as a mitigating feature.
11. I consider the offending in this case comparable to the offending in Tarosa and less serious than the offending in Filai because your case does not involve multiple properties. A global starting point of 28 months for Mr Kaptan and Mr Nassak is appropriate for this offending. A global starting point of 22 months for Mr lakuma and Mr Kamelu is appropriate for their offending.
12. I turn now to aggravating and mitigating factors personal to each of you:
- a. Each of you is a first time offender. You are entitled to a discount of 10% for your previous good character.
 - b. Each of you has expressed remorse by cooperating with the police and admitting your wrongdoing. You are entitled to a discount of 5% for your remorse.
 - c. Most significantly, you performed a custom reconciliation ceremony with the victim and this was accepted. The items given to the victim were a mat, 5 manioc roots, 3 kava roots and a pig. These items have a monetary value of VT 30,000. Chief Solomon Noka confirmed this happened and also confirmed his willingness to assist Probation with your reintegration into the community in the event some or all of your sentences are suspended.
 - d. You pleaded guilty at an early opportunity. This warrants a further discount of 33%.
 - e. Finally, you were remanded in custody for about a month until you were granted bail. You are entitled to credit for that.
13. Taking into account the time spent in custody before you were granted bail, this brings me to a sentence end point of 13 months imprisonment for Mr Kaptan and Mr Nassak, and 10 months imprisonment for Mr lakuma and Mr Kamelu.
14. The pre-sentence reports concede an end sentence of imprisonment is likely, but they also speak highly of your ability to rehabilitate and reintegrate into the community. Your lawyers recommend that I suspend your sentences in their entirety. The prosecution submits that in the circumstances, a suspended sentence of imprisonment combined with a sentence of community work could be imposed.
15. I must weigh on the one hand the seriousness of this offending and its impact on the victim and the community, and on the other hand your youth, remorse, previous good character, and the successful customary reconciliation ceremony by which you have been held accountable for the loss you caused. Given the purpose of deterrence this sentence must achieve, it would be wrong to suspend the sentences in whole. However, I am prepared to suspend part of the sentences in light of your youth and to increase your prospects of rehabilitation by reducing your exposure to long term imprisoned offenders.
16. In the cases of Mr Kaptan and Mr Nassak, 10 months of their 13 month sentence is to be suspended for two years. You will both need to stay offence-free for the next two years to avoid having to serve the



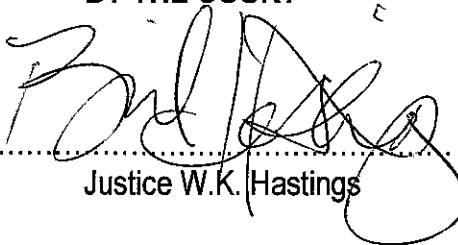
balance of your sentence. In the cases of Mr lakuma and Mr Kamelu, 8 months of their 10 month sentence is to be suspended for two years. You will both need to stay offence-free for the next two years to avoid having to serve the balance of your sentence.

17. In addition, all four of you are ordered to complete 150 hours community work each so that you can give back to the community.

18. Each of you has 14 days to appeal your sentence.

Dated at Port Vila this 12th day of July 2023

BY THE COURT


Justice W.K. Hastings

