

**BETWEEN:** Public Prosecutor

**AND:** John Kasau Nalau Jimmy  
*Defendant*

**Before:** Justice Oliver A. Saksak

**Counsel:** Mr Christopher Shem for Public Prosecutor  
Mr Harrison Rantes for the Defendant

**Date of Plea:** 25<sup>th</sup> November 2024

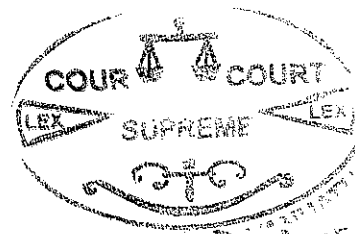
**Date of Sentence:** 6<sup>th</sup> December 2024

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**SENTENCE**

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1. The defendant was charged with one Count of Cultivation of Cannabis under sections 4 and 17 of the Dangerous Drugs Act [ Cap 12].
2. He pleaded guilty through his Counsel Mr Rantes on 25 November 2025 and is here for sentence today.
3. The Police at Isangel received a report that the defendant was cultivating cannabis plants in his garden at Loupali Village. Following the report PC Roy Daniel paid a visit to the defendant's garden on 13<sup>th</sup> December 2023 and found 86 cannabis plants. Later that day PC Jeffrey Nakou accompanied PC Roy Daniel to the defendant's garden and uprooted the plants and took them to the Police station for tests. 25 plants were measured at heights of 1.10 meters and 61 plants were of heights of 3 metres tall.
4. The total net weight of the 86 cannabis plants removed by the Police was initially stated as 216kg in the Information and charge dated 11 November 2024 to which the defendant pleaded guilty. However on 29 November 2024 Mr Shem filed a memorandum informing that the figure



216kg was a mistake and sought leave of the Court to amend the figure and substituting in its place the figure "26kg".

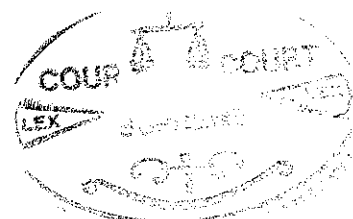
5. I have examined the Police Records and found inconsistent figures. The Drug Weight Sheets shows the total net weight in grams as 216kg. However the Drug Measurement Sheet shows the actual weight of the substance on the balancing scale as 26kg. I therefore accept 26kg to be the correct weight of the 86 cannabis plants uprooted from the defendant's garden by the Police on 13 December 2023 and tested on 24 December positive as cannabis plants.
6. Accordingly leave is granted. The figures "216" appearing in the particulars of the charge and the summary of facts in paragraph 4 are therefore deleted and substituted by the figures "26kg".
7. Cultivation of cannabis is prohibited by law. It is a serious offence which carries the maximum penalty of a fine of VT 100 million or imprisonment of not exceeding 20 years or to both.
8. The defendant deliberately grew these cannabis plants knowing they are prohibited by law. He was warned by his father but ignored the warnings to remove them and destroy them. However the facts do not show for how many years the defendant had cultivated the prohibited drugs. And the facts do not show that he supplied others with the substance for use for medical purposes, or for sale on a commercial basis or for his personal use or possession. However the Same Day Pre-Sentence Report filed on 27 November 2024 records the main contributing factor to the defendant's offending was peer pressure from his associates and the viable profit and good earnings from the activity.
9. The Court of Appeal of Wetul v PP [2013] VUCA 26 lays down three categories which are to be applied in sentencing of drug offenders. From the facts, it is my view that the defendant's offending falls within category 2. The Court of Appeal said this: "*Category 2 encompasses small-scale cultivation of cannabis plants for a commercial purpose. It is with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent, a lower starting point may be justified.*"
10. The defendant had a clear intention to derive profit, although facts do not show he actually supplied or sold the substance, but from the facts and the pre-sentence report it can be safely



inferred the defendant was deriving profit from the substance. The only rational conclusion to be drawn from the cultivation of 86 cannabis plants growing to heights of 1.10 metres ( 25 plants) and 3 metres (61 plants) is that the defendant was making profits from the plants he grew in his garden. The total number of plants (86) and their heights and weights are of relevant consideration in assessing the sentence of the defendant.

11. By comparison this case is more serious than the case of Meltherongrong v PP [ 2024] VUCA CRAC 24/3154. In that case the appellant pleaded guilty to planting 66 cannabis plants with a net weight of 6.14kg. He started planting seeds in mid 2023 but admitted cultivating cannabis since cyclone Pam in March 2015. He knew planting cannabis is illegal but he just continued to do so.
12. The sentencing Judge concluded the offending fell within category 2 and imposed a start sentence of 3 years imprisonment, and after making deductions the judge imposed an end sentence of 22 months without suspension.
13. The defendant appealed against the starting point of 3 years imprisonment and against the non-suspension of the sentence.
14. The Court of Appeal allowed the appeal and resentenced the appellant. The Court found that the start sentence of 3 years imprisonment was too high. The Court held that the appellant's offending fell on the borderline of categories one and two of the Wetui case. The Court resentenced the appellant to a start sentence of 2 years and after making appropriate reductions, including the time spent in custody, an end sentence of 11 months and 28 days without suspension was imposed.
15. Of importance the Court of Appeal at [14] clarified Wetui:

*“ It is necessary to keep in mind that the Wetui categories are not to be regarded as fixed or inflexible or as though contained in a statute. Wetui itself recognised that this is so as the Court described the categories as “ broad” and noted that the borderline between them may in specific cases be “indistinct and sometimes incapable of exact demarcation”. The Court went on to say that the number and size of the plants are relevant matters.”*

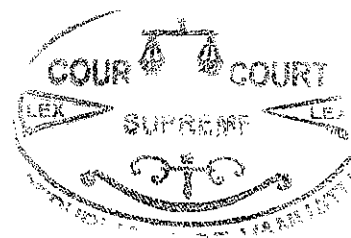


16. And in relation to the decision not to suspect the sentence of the Court of Appeal at [20] said:

" We do not consider that any suspension is appropriate. The appellant's offending was serious involving as it did, significant cultivation of cannabis is a deliberate flouting of the law. Moreover, while the appellant is not to be sentenced for his earlier unlawful conduct, the fact that he has been cultivating cannabis since Cyclone Pam means that he does not come to Court with an otherwise unblemished character. This is a case in which the offender knew that what he was doing was unlawful and chose to take the chance of detection. These circumstances in combination make suspension whether in whole or in part inappropriate"

( my underlining for emphasis)

17. There are no mitigating circumstances. Therefore applying the principles in Wetul and Meltherongrong cases I sentence the defendant to a starting sentence of 2 years imprisonment.
18. In mitigation I take into account first his guilty plea and reduce his start sentence by 4 months down to 20 months. For his clean past record, his young family, his good report and contribution to the community, his custom fine and ceremonies performed in the presence of chiefs, the police and the members of the community and for his other personal factors, I allow a further reduction of 6 months, leaving the end sentence for the defendant tot be 14 months or 1 year and 2 months.
19. The defendant is convicted and sentenced to an end sentence of 14 months imprisonment. This sentence shall not be suspended for reasons given earlier and based on the Court of Appeal's decision in Meltherongrong's case.
20. Pursuant to section 201 of the Criminal Procedure Code Act [ Cap 136] the defendant has 14 days to appeal against the sentence if he disagrees with it.
21. This means that his sentence of 1 year 2 months imprisonment will not be enforced until the 14 days appeal period has expired on Thursday 19<sup>th</sup> December 2024 at 2:00pm.



22. Mr Rantes is to take instructions immediately on this right of appeal and to advise the Court whether the defendant wishes to appeal his sentence, or go to prison immediately today, or wait until 19<sup>th</sup> December 2024.
23. Finally I condemn all the cannabis substance or plants held by the Police to destruction with immediate effect.

**DATED at Isangel, Tanna, this 6<sup>th</sup> day of December 2024**

**BY THE COURT**

  
**Hon. OLIVER A SAKSAK**

**Judge**

