

PUBLIC PROSECUTOR

V

OLAGOOKUN JOHN SEGUN

Coram: A. Laloyer – Acting Chief Magistrate

Counsel: Ms. Ngwele. B for Public Prosecutor

Mrs. Gesa. C for Defence

SENTENCE

1. Olagookun John Segun, you entered a guilty plea on one count of attempt to illegally export kava branches contrary to ss. 28(1) of the Penal Code Act [Cap.135] and 9 (a) of the Kava Act of 2002.
2. You are now sentenced on the information charge dated 14 July 2021.
3. The offence of attempt is reflected in s. 28 (1) of the Penal Code Act [Cap. 135] provides:

“(1) An attempt to commit a criminal offence is committed if any act is done or omitted with intent to commit that crime and such act or omission is a step towards the commission of that crime which is immediately connect with it, or would have been had the facts been as the offender supposed them to be.

(2)...

(3)...

(4)...

(5)... .”

4. Section 9(a) of the Kava Act No. 7 of 2002 states that:

“(1) A person must not export from Vanuatu or exchange with a person outside Vanuatu any of the following:

(a) stumps, shoots, growing buds, lateral branchers and other planting material of kava ;

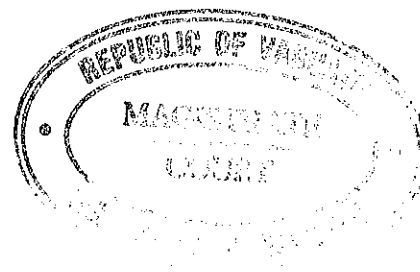
(b) ...;

(c)... .”

5. The high level of fine set by law is 3 months imprisonment or 500,000 Vatu fine or both. This indicate the intention of the legislature that those offences are serious in nature. The courts must reflect the intention when sentencing those committing such offences.



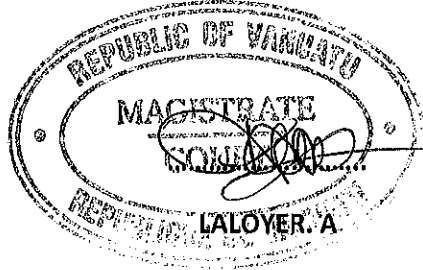
6. A person who commits such offences is liable for such maximum penalties of 3 months imprisonment or 500,000 Vatu fine.
7. The facts of this case as provided by prosecution and you accepted these facts before you entered a guilty plea on 14 July 2021. You did not dispute them. You are now sentenced on the basis of these facts.
8. Facts of this case which you do not dispute are those-
9. On 02 July 2021, you were at Bauerfield airport to board the international flight NF850 flight to Auckland. Unfortunately, you did not board the flight at the last minute. Your bag went out on outbound flight to Auckland and later came back on the return flight NF851. As standard procedure for COVID-19 the passenger luggage is disinfected overnight before physical inspection on the next day 3 July 2021. It was during the inspection of your luggage that customs officer found inside a grey colored bag kava cuttings wrapped inside in a white tissue and kept inside a blue shopping bag. On 7th July 2021 questioned by a Bio-security officer you admitted that you intend to take the kava cutting to your country for propagating and use the kava plant for scientific research.
10. During your interview with the Bio-security officer, you admitted to the allegations made against you.
11. In this case, the following aggravating factors are present:-
 - You made attempt to export Kava illegally from Vanuatu;
12. The mitigating factors present are as follows:
 - Your guilty plea;
 - You had cooperated well with the Bio-security and made admissions when questioned.
13. You must be responsible and accountable for your own acts. The offences committed here are serious offences.
14. I noted also that prosecution provided no information about any previous conviction on your behalf.
15. I take the mitigating and aggravating factors into consideration and take into account that both prosecution and your lawyer agree for the Court to sentence you to a fine of VT50, 000 for this offence.
16. In this case, the Court order a starting point sentence at VT60, 000. You pleaded guilty to the earliest opportunity. Your sentence will be reduced for your guilty plea by 1/3.
17. The end sentence for this count shall be VT50, 000.
18. The Court also orders you to pay the fine before you leave the country tomorrow at midday.
19. The Court orders you to hand over all travelling documents to the prosecution until you pay out your fine of VT50, 000 and prosecution fee of VT 1,000.



20. You have a right to appeal this sentence if you are unsatisfied with it. You have 14 days to do that and it starts today.

DATED at Port Vila, this 14th day of July 2021

BY THE COURT



Acting Chief Magistrate