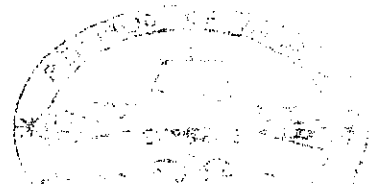


The **aggravating** factors of the offences of unlawful entry, intentional assault and robbery are that the victim was assaulted, blindfolded, tied with hands behind his back, left to die helpless in his blood on his bed, his money in excess of VT2 million in cash and other items were taken from him. The offences were done in a concert but they were done during the night. He went away so that he could not be noticed or caught to his home island with part of the money stolen and went on a shopping spree. He was seen shopping on ships for cargo to start a village retail store with VT5.000 Notes. Consistent with the evidence of the victim that almost all the money stolen were in VT5.000 Notes. He spent large sums of money on bride-price, transport and shared some of it with the defendants. He was unemployed, only just being out of jail.

Under section 143(1) of the Penal Code Act [CAP.135] (the Act) unlawful entry into a dwelling house with intent to commit an offence carries a maximum of 20 years imprisonment. Under section 107© of the Act intentional assault causing injuries of a permanent nature carries a maximum of 5 years imprisonment. Under section 137 of the Act robbery carries a maximum of 25 years imprisonment. These are serious offences. Investors to and in Vanuatu should be allowed to do business to create job opportunities for the unemployed persons of this country in peace without the fear that at the end of a hard days labour they go home and find they are suddenly attacked, robbed and left half-dead on their beds. The effect of the commission of these offences if allowed to continue will seriously affect the economic and social situations in this country. I am asked to be lenient on this defendant and Pedro Obed, the co offender in this case. But this is not a case that this court should be lenient. Rather the Court must impose prison sentences to deter the defendant and others from committing these offences, and to protect the business community as well. Under those circumstances Moses Kilton is sentenced to –

- (a) Court 1 Unlawful Entry – section 143 PCA = 5 years imprisonment.
- (b) Count 2 Intentional assault – section 107 (c) PCA = 5 years imprisonment.



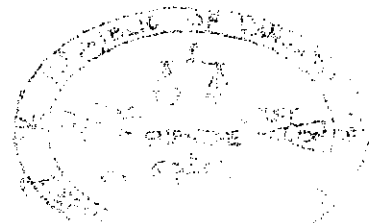
- (c) Count 3 Robbery – section 107(c) PCA = 5 years imprisonment.

These terms of imprisonment run concurrently making a total of 5 years. This man has been remanded in custody for 10 months since his apprehension by police. I order that these 10 months be deducted accordingly from his 5 years concurrent sentence.

Pedro Obed

2. Another young man of 24 years of age and is married with 2 young children. He was Moses Kilton's accomplice. Being the ex-employee of LCC store (the victim) and knowing all about the premises, he made the plans which was aborted on one occasion. On the second occasion the plan became successful with the counsel and assistance of Willie Tien. Like Moses Kilton he is charged with the same offences of unlawful entry, intentional assault and robbery.

He has a string of previous convictions in the Magistrate's Court showing that on 5th December 2001 he was imprisoned for 3 months and 3 weeks for three counts of unlawful entry and theft. Again on 21st October 2001 he was sentenced to imprisonment for 9 months concurrent for unlawful entry and theft. Then again on the same date he was sentenced for unlawful entry and theft to a term of 7 months imprisonment. Finally on 24th March, 2003 he was sentenced to 3 weeks imprisonment for having escaped from lawful custody. He is currently serving these prison terms. From his record it appears that this defendant has become a habitual offender. I am asked to be lenient on him but it is my view that the community would be safer without him enjoying such liberty whilst encroaching upon the liberty of others, especially those who sweat for their money. The sum of VT740.000 all in VT5.000 Notes were recovered by the police in his house on admission. Other items directly linking to the offences committed at Christopher Lo's residence were recovered from this defendant's house. Under these circumstances I sentence Pedro Obed to imprisonment as follows –



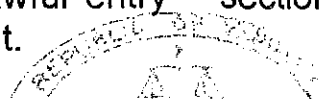
- (a) Count 1 – Unlawful entry – section 143 PCA = 5 years imprisonment.
- (b) Count 2 – Intentional Assault – section 107(c) = 5 years imprisonment.
- (c) Count 3 – Robbery – section 137 = 5 years imprisonment.

These sentences will run concurrently making a total of 5 years imprisonment. But these sentence will be served consecutively to or with his current terms of imprisonment. However like Moses Kilton the period of 10 months spent in custody awaiting trial are deducted from the 5 years.

Willie Tien

- 3: He is 73 years old and suffering from a physical condition. His medical certificate has been produced. He has put up surety for bail in the sum of VT10,000. He is maintaining a son at high school. I am asked to be lenient in sentencing him. He has no previous record of conviction. He was charged with Count 4 of inciting and soliciting unlawful entry, Count 5 with inciting and soliciting robbery and Count 6 for receiving stolen property in the sum of VT35,000. He admitted receiving moneys from Moses Kilton. He returned a box containing bracelets which was identified as one of the items stolen from the victim's cash box. The aggravating factor in regard to this defendant is that being an elderly man whom young men should turn to for wisdom, he counselled them and encouraged them to commit criminal offences which are very serious. He benefited directly from the proceeds of those criminal activities. In law he is as guilty and liable as the principal offenders and should be sentenced as such. (sections 30 and 32 PCA). The Court views his part in the omission as serious and in order to deter others in his position and age from doing what he did the defendant deserves a jail sentence. Accordingly I impose a jail term but due to his age and medical condition I will suspend his sentences. His sentences are as follows:-

- (a) Count 4 – Inciting and soliciting unlawful entry – section 30 & 143 PCA = 5 years imprisonment.



- (b) Count 5 – Inciting and soliciting robbery – section 30 & 137 PCA = 5 years imprisonment.
- (c) Count 6 – Receiving stolen property – section 131 – No imposed but a restitution order will be issued.

The terms of imprisonment for counts 4 and 5 are suspended for a period of 2 years, and they are to be served concurrently.

Restitution Order

I order the defendant to repay the amount of VT35.000 to the victim of this case, Mr Christopher Lo. He has paid surety of VT10.000. He now forfeits that sum. He has a balance of VT25.000 to pay which he must repay within 3 months (before 19th September, 2003) from the date of this sentence. All payments must be made to the Court Registry in Luganville, Santo.

Failure to pay will result in his imprisonment for 1 week for every Vt1.000 which remains unpaid. This sentence is imposed pursuant to section 54 of the PCA.

- 4. Kilton Bule
- 5. Elizabeth Bule

These are the parents of Moses Kilton. Kilton Bule was charged with receiving stolen money from his son to the amount of VT100.000. His wife Elizabeth also was charged with receiving stolen property in the sum of VT10.000. They both live at Tisman village on Malekula making a living on subsistence farming. Both defendants have no previous convictions or record. I am asking to be lenient on them as their actions were not premeditated in any ways. Kilton Bule is 55 years old. His wife is 50 years old. They have 4 children, one being Moses Kilton. Both of them have medical conditions. Whilst I take those mitigating factors into consideration, as elderly parents, like Willie Tien they are the ones charged with the moral duty to show their children the right way to live. As parents who appear in the same proceedings which involves commission of criminal offences with their own son, it should be



a crying shame for them. It should reveal a clear failure on their part to play their parental roles right. And that is enough for this Court to consider imposing prison sentences to deter elderly parents from getting involved in any criminal activities that their issues get themselves into. They both well knew their son Moses had just been released from prison and the fact that he was unemployed. Yet when Moses Kilton brought them money which they counted to a sum of VT400.000, they asked no questions. In addition they saw Moses give them cash, paid transport and bride-price all in cash and bought cargo from visiting local trading vessels, they asked no questions or made no enquiries. They both benefited from moneys which they could have known were stolen. Undoubted they both were guilty. Under those circumstances their sentences will be as follows –

- (a) Kilton Bule – Count 14 - Receiving stolen property – section 131 PCA = 6 months imprisonment suspended for 1 year from the date of sentence.
- (b) Elizabeth Bule - Count 7 – Receiving stolen property – 131 PCA = 2 months imprisonment, but suspended for 1 year from the date of sentence.

Restitution Orders

1. Elizabeth Bule in ordered to repay VT10.000 to the victim of this case. She has paid a surety of VT10.000 to the Court. She now forfeits this sum to be returned to Mr Christopher Lo.
2. Kilton Bule is ordered to repay VT100.000 to the victim of this case. He must pay VT5.000 beginning end of July, 2003 and continue to pay without failure for 16 months until all sums are paid up. All payments of restitution moneys must be made through the Court Registry in Luganville, Santo.



6. Philimon Sua

He is a man of 52 years old in gainful employment and supporting 5 children. 4 of these children are at school 2 of whom are unable to be in school due to hardship faced by the defendant. His wife left him as a result of this proceedings. He has a medical condition allegedly due to assaults by police. His wish is to continue to support his children to complete their education so they could have a good future. He asks that the Court imposes only a fine on him. It appears that he has paid a surety to the Court – but there is no confirmation as to the amount. He is a first offender. I have considered his circumstances and accordingly I impose on him a fine in the sum of VT10.000. This fine is imposed in relation to Count 11 – Receiving stolen property contrary to section 131 PCA. This fine shall be paid as follows:-

- (a) VT5.000 end of July 2003.
- (b) VT5.000 end of August 2003.

Restitution Order

Philimon Sua is hereby Ordered to repay the sum of VT40.000 to the victim, Mr Christopher Lo at VT4.000 per month beginning end of September 2003 and shall continue thereafter until the whole sum is repaid in full. All payments must be made to the Court Registry in Luganville, Santo.

Joseph Shem

7. He is charged with three counts of receiving stolen property contrary to section 131 of the PCA. In total he received Vt71.000. These offences occurred in June 2002 and on 14th and 26th August 2002, respectively. He has a previous criminal record showing that on 12th July 2001 he was sentenced to 10 months imprisonment. The dates show a repeatative pattern of behaviour. His actions therefore deserve to be punished by a jail term. A young man of 24 years of age with a wife and 2 young children with no steady income has jeopardised the welfare of his children and his family.



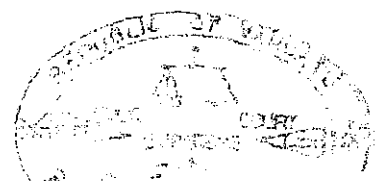
Under his circumstances the court will impose prison terms to deter other offenders. But these sentences will be suspended. Accordingly the sentences are –

- (a) Count 8 – Receiving Stolen Property – section 131 PCA = 6 months imprisonment.
- (b) Count 9 – Receiving Stolen Property – section 131 PCA = 1 month imprisonment.
- (c) Count 10 – Receiving Stolen Property – section 131 PCA = 1 month imprisonment.

These sentences run concurrently. And they are suspended for a period of 2 years from the date of sentence.

Restitution Orders

1. Joseph Shem is Ordered to repay the sum of VT71,000 to the victim of this case. He shall pay by instalments of VT5,000 per month starting end of July, 2003 and thereafter at the end of every month until the whole sum is fully paid up. All payments must be made to the Court Registry in Luganville, Santo.
2. The sum of VT740,000 recovered in the possession of Pedro Obed shall be returned to Christopher Lo personally by the Court Registry.
3. All the goods recovered by the Police at Moses Kilton's Store at Tisman village shall be returned to LCC store by the Police.
4. All items recovered by the Police which are identified as the property of Christopher Lo shall be returned personally to him by the Police.
5. All monies paid into the Court Registry in pursuance to these Orders must be returned to Christopher Lo in person.



The Defendants are advised that should they wish to appeal that they do so within 14 days.

PUBLISHED at Luganville this 27th day of June, 2003.

BY THE COURT



OLIVER A. SAKSAK
Judge

