

(Criminal Appeal Jurisdiction)

BETWEEN: **ARU CLIFFSON BULE**
 PIERRE BRISBAN NALAU
 REDDINGTON SALILI
 KEITHSON BULE

Applicants/Appellants

AND: **PUBLIC PROSECUTOR**

Respondent

Coram: **Mr Justice Oliver A. Saksak**
 Mrs M. John – Clerk

Counsel: **Mr Hillary Toa for the Applicants/Appellants**
 Mrs Linnes Moli for the Public Prosecutor.

Date: **20th April 2005.**

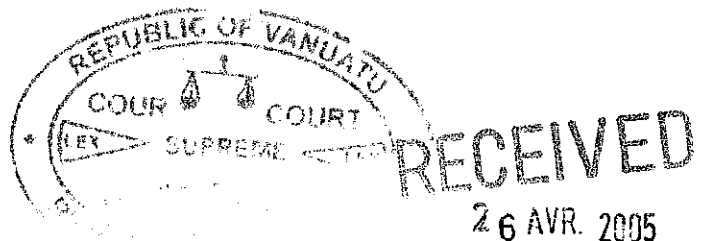
JUDGMENT

On 22nd March 2005 the Magistrate's Court sentenced the applicants as follows:-

1. Aru Cliffson Bule – 18 months imprisonment for charges of –
 - (a) Theft in December 2002 contrary to section 125(a) PCA
 - (b) Unlawful Entry in November 2004 contrary to section 143 PCA
 - (c) Unlawful Entry beginning of 2004 contrary to section 143; and
 - (d) Unlawful Entry in March 2004 contrary to section 143.

He pleaded guilty to all four charges.

2. Pierre Brisban Sam – 15 months imprisonment for charges of –



- (a) Theft in November 2004 contrary to section 125(a)
- (b) Aiding and Abetting Theft contrary to section 30 and 125(a)
- (c) Unlawful Entry in March 2004 contrary to section 143
- (d) Theft in March 2004 contrary to section 125(a).

He pleaded guilty to all charges.

3. Reddington Salili – 15 months imprisonment for charges of :-
- (a) Unlawful Entry in November 2004 contrary to section 143
 - (b) Theft in November 2004 contrary to section 125(a)
 - (c) Aiding and Abetting Theft in early 2004 contrary to section 30 and 125(a)
 - (d) Unlawful Entry in March 2004 contrary to section 143
 - (e) Theft in March 2004 contrary to section 125(a)

He pleaded guilty to all charges.

4. Keithson Bule – 12 months imprisonment for charges of :-
- (a) Theft in December 2002 contrary to section 125(a)
 - (b) Receiving Property Dishonestly Obtained contrary to section 131 PCA
 - (c) Theft in early 2004 contrary to section 125(a)
 - (d) Unlawful Entry in early 2004 contrary to section 143
 - (e) Unlawful Entry in March 2004 contrary to section 143
 - (f) Theft in March 2004 contrary to section 125(a)

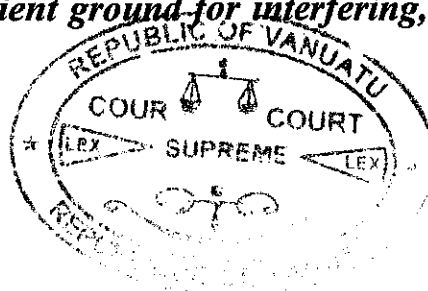
He pleaded guilty to all charges.

On sentencing the defendants, the Court below expressly advised them of their rights of appeal within 14 days. They did not do so. Therefore orders of imprisonment in respect of each of them were issued on 5th April 2005. While in jail the applicants lodged their appeal on 11th April 2005.

Following their Notice of Appeal, the applicants filed an application for bail under section 60 of the Criminal Procedure Code Act CAP. 136. Mr Toa seeks an urgent hearing of the application.

After hearing Mr Toa the Court dismisses the appeal summarily under its powers specified in section 204 (1) and (2) of the CPC Act which states:

“When a memorandum of appeal has been lodged, the appeal court shall peruse the same together with the record of the case and if it considers that there is not sufficient ground for interfering, it may



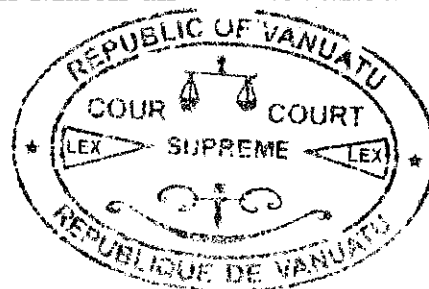
notwithstanding the provisions of section 201 reject the appeal summarily:

Provided that no appeal shall be rejected summarily except in the case mentioned in subsection (2) unless the appellant or his advocate has had the opportunity of being heard in support of same.

(2) Where an appeal is brought on the ground that the conviction is against the weight of the evidence, or the sentence is excessive, and it appears to the appeal court that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead the appeal court to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the appeal court certifying that it has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.”

The following are the reasons for the court rejecting the applicants appeal summarily:-

1. All 4 applicants pleaded guilty to multiple charges of unlawful entry and theft, and single charge of aiding and abetting and receiving property dishonestly obtained. These are serious charges. Unlawful entry to a dwelling house carries a maximum penalty under section 143 PCA of 20 years imprisonment and 10 years imprisonment where the house is not used for human habitation. Theft carries a maximum of 12 years imprisonment under section 125 PCA. Section 30 PCA provides that any person who aids, counsel or procures the commission of a criminal offence shall be guilty as an accomplice and may be charged and convicted as a principal offender. Section 32 PCA states that such a person shall be punished in like manner as a principal offender.
2. Applicant defendant Aru Cliffson Bule and Keithson Bule started committing offences of unlawful entry and thefts in a dwelling house in December 2002. These did not come to light until they were caught in subsequent criminal acts in 2004. In 2004 they committed offences of unlawful entries in early 2004, in March and in November 2004.



These indicate the applicants were and are habitual and repetitive criminal offenders.

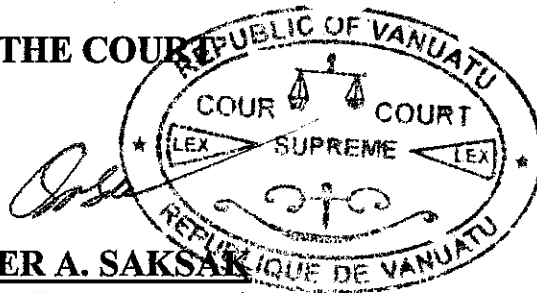
3. Under the circumstances it is the opinion of the court that the sentences imposed by the court below ought not be reduced. In the event that the appeal was allowed, it is more likely than not that the appeal court might increase the sentences of the applicants and that would be prejudicial or detrimental to their best interests.
4. It is therefore the opinion of the court after having perused the record, that the appeal has been lodged without any sufficient ground of complaint.
5. This finding therefore renders the applicant's application for bail pending the appeal nugatory. In any event section 60 of the CPC Act could not have formed the basis for making such an application.

This judgment amounts to a certificate required under section 204(2) CPC Act.

Accordingly the applicants application for bail is dismissed together with their appeal.

DATED at Luganville this 20th day of April, 2005.

BY THE COURT



OLIVER A. SAKSAK

Judge