

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

Criminal Case No.06 of 2010

CF

**PUBLIC PROSECUTOR
-V-
JOE SETH NAI0
ELI NARAURA**

Coram: *Chief Justice Vincent Lunasbek*

Counsel: *Mr Tristan Karae for the Public Prosecutor
Mr Andrew Bal for the Defendants*

SENTENCE

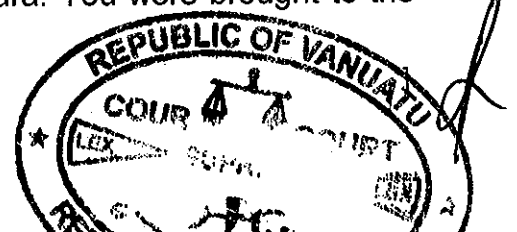
This is the sentence of the above named Defendants: Joe Seth Naio and Eli Naraura. You were both charged with one count of Unlawful Entry, Contrary to section 143 (1) of the Penal Code Act [cap.135] and one count of Theft, Contrary to section 125 (a) of the Penal Code Act [CAP.135]

On 23rd August 2010, you both entered guilty pleas on the offences of Unlawful Entry and Theft, Contrary to sections 143 (1) and 125 (a) of the Penal Code Act [135]. You were both convicted of the two offences accordingly.

The facts of your offending are this. On or about the 19th November 2009, the complainant Johna Iata who works for Star Video at Lenakel noticed that there were several items missing from the shop. The following items included a laptop, 1 digital camera, VT 100,000 cash and an army type hat.

The complainant then reported this matter to the police on the 20th November 2009. On the 13th of April 2010 the complainant went to the Police Station and recovered the laptop, the other items were not recovered.

During the investigations that were carried out by the Police, Officer Napuati John Roel went to Lawanatom and arrested you Eli Naraura. You were brought to the



Police Station and was cautioned and interviewed. During the interview you made admissions to the allegations and stated that you were with defendant Joe Seth Naio at the time and you both planned to break into Star Video shop. Defendant Eli Naraura, you stated that during that night you both went to Star Video and defendant Joe Seth Naio went through the windows of the Video shop while you were standing outside, keeping watch. After Joe Seth Naio came out he took the digital camera and the cash of VT100,000.

Defendant Joe Seth Naio, you were also cautioned and interviewed on the 31st March 2010. In your statement you made admissions to the allegations laid against you. You stated that you went inside the shop through the windows and forced the door to the office to open. There you stole the laptop (including the adaptor, mouse) and passed it through the window to the defendant Eli Naraura and then you went back inside and brought the camera, and an army hat, one orange bag, DVD's and VT100,000.

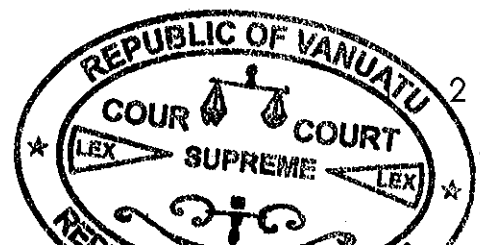
The criminal laws of Vanuatu prohibit Unlawful Entry into houses or offices with intention to commit criminal offences.

Section 143 (1) of the Penal Code is the prohibiting provision. That section sets a maximum penalty for 20 years imprisonment if the place is used for human habitation and 10 years imprisonment where the place is not used for human habitation.

Section 125 prohibits Theft is this way:

"No person shall cause loss to another - (a) by theft. That section sets a penalty for imprisonment for 12 years. The maximum penalties imposed on these offences are very high and they reflect the intention of Parliament that Unlawful Entry and theft offences are very serious offences. They must be dealt with as such.

When I consider your sentencing, I have heard, read and considered the submissions of the prosecution and these filed by your Counsel on behalf of each of you. I have also read and considered a day report provided by the probation officer to assist the court in your sentencing.



In this case, the circumstance and gravity of your offending is aggravated by the following factors:

- You have committed these offences during the night.
- There were some degree of planning and pre-meditation.
- There is a degree of joint enterprise.
- The amount of VT 100,000 stolen is a substantial amount.

In mitigation, your lawyer submitted as follows:

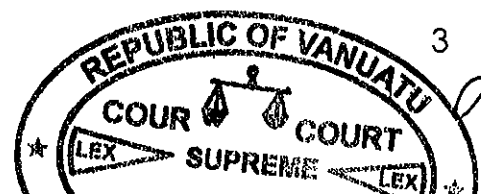
Defendant Joe Seth Naio. You are 21 years of age. You have a wife with a 2 year old daughter. Your wife is a teacher. You do gardening and look after your 2 year old daughter. You enter guilty pleas at the first opportunity giving to you by the Courts

You are a first time offender and so you do not have criminal convictions records. You admitted the offences at the police during the interview. You apologize to the court and you say you will not re-offend.

Defendant, Eli Naraura. You are 19 years of age. You are residing with your parents at Imaki Village in South Tanna. Your father is a chief and you are assisting your parents in doing gardening and growing food to sustain the family. You pleaded guilty to both offences at the first opportunity giving to you by the Courts. You are a first time offender and so you have no previous convictions on your records. You admitted your offending to the police at the time of interviewing. You apologize for what you did as you realize it was wrong. You say you will not re-offend.

Both Defendants, Joe Seth Naio and Eli Naraura. The same day report shows that you both performed a custom reconciliation ceremony with the complainant. The items exchanged for the custom ceremony are one buluk valued at 30,000 vatu, 2 pigs worth 7,000 VT each and 2 heads of kava.

You both have taken steps to compensate the complainant by repaying him VT100,000 you have stolen from him on 19th November 2009. You have already



repaid him Vatu 45,000 and 55,000 vatu is still outstanding and you inform the Court that you will continue to pay until the total amount if VT100,000 is fully paid.

Taken the above circumstances, the prosecution and the Defence counsel submitted that you should be sentenced to custody on both offences and the term of custody be suspended, with additional community based sentences. I accept such submissions on the basis that you both are warned that the next time you commit the same offences you will go to prison despite any custom ceremony you will perform.

Unlawful Entry and Theft are very serious offences. Custom ceremony cannot take away the very serious nature of such crimes. What custom can do is to mitigate your sentencing only.

I sentence each and both of you as follows:

In Count 1: 24 months imprisonment suspended for a period of 2 years for Unlawful Entry, Contrary 143 (1) of the Penal Code.

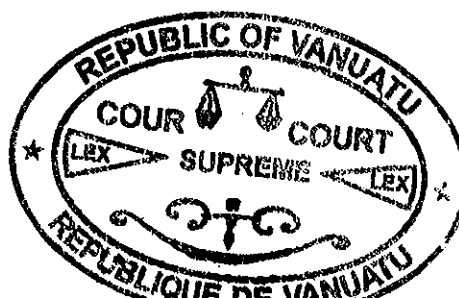
In addition, each and both of you shall perform 100 hours Community Work.

In Count 2: 24 months imprisonment suspended for a period of 2 years for Theft, Contrary to section 125 (a) of the Penal Code Act [CAP.135].

In addition, each and both of you shall perform 100 hours Community Work.

Your sentences on both Counts shall be served concurrently. This means that the sentences shall be served together and at once.

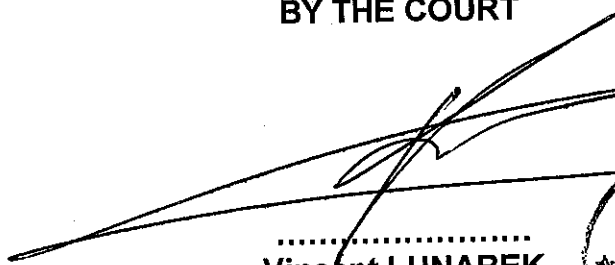
Therefore, each and both of you are sentenced to 24 months imprisonment suspended for a period of 2 years and in addition, each and both of you shall perform 100 hours Community Work.



Each and both of you have 14 days to appeal this sentence if you are dissatisfied with you.

DATED at Isangel, Tanna, this 26th day of August, 2010

BY THE COURT



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Vincent LUNABEK
Chief Justice

