

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

**Criminal Case No. 79 / 2009**

**PUBLIC PROSECUTOR**

**V**

**KEVIN KALO**

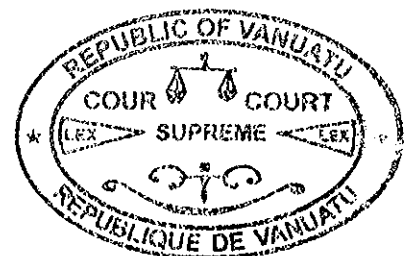
*Hearing:* 16 June 2011  
*Before:* Justice Robert Spear  
*Appearances:* Leon Malantugun for State  
Eric Molbaleh for Accused

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**DECISION**  
**16 JUNE 2011**

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1. The accused has pleaded not guilty to a charge of possession of a dangerous drug namely cannabis or marijuana.
2. This trial proceeded on a somewhat uncertain basis as Mr Molbaleh did not feel able or was not able to identify any particular point to be taken by the defence by way of an opening statement. Of course, he was perfectly entitled to put the prosecution to proof of the charge and that is essentially what he has done. Subsequently, it became apparent why Mr Molbaleh had that difficulty.
3. The evidence that I heard came from a prison officer and a police officer. In the end, however, the accused (through his counsel) admitted that he was found by the Police in possession of some 46 grams of cannabis on 11 April 2009 by the French Lycee and that he knew it was cannabis.
4. What then transpired was the statement from the accused (again through his counsel) that he does not accept that it should be a crime to possess cannabis. He says that cannabis is a gift from God and that no one can interfere with that gift. This is, of course, not an assertion that he did not believe that possessing cannabis was not against the laws of the Republic of Vanuatu. It is more a protest that possessing and using cannabis is against the law.
5. Accordingly, it is not a case where ignorance of the law is raised or that the accused had an honest belief in a state of affairs which might establish an absence of *mens rea*. It is simply a protest against the law prohibiting possession of dangerous drugs including cannabis.



6. The Republic of Vanuatu is a sovereign democratic state and it is entitled by its constitution and by international law to make laws which regulate the conduct of those people who come within its territory. This has occurred in respect of the enactment of the Dangerous Drugs Act and, in particular, the provision that prohibits the possession of dangerous drugs including cannabis or marijuana.
7. The Defendant, by his admissions, provides full proof of the charge and there can be no outcome but a finding that the charge is proven. I accordingly find the charge proven.
8. The accused is convicted accordingly.
9. The defendant has earlier been convicted of a charge of possession of cannabis, Criminal Case No. 17 of 2010. He pleaded guilty to that charge on 20 August 2010. Sentencing has been delayed principally because the defendant absconded from bail.
10. The Defendant is to be sentenced on both matters on 1 August 2010 at 9 am. I call for a pre-sentence report.
11. In respect of the first charge, I notice that the Defendant was caught selling cannabis by an undercover police officer. When searched, he was found in possession of five large rolls of cannabis to a total weight of some 286.71 grams. That offence occurred on 7 December 2009 - that is, some 8 months after he was apprehended on the charge that went to trial today and while he was on bail.
12. So the Defendant is to be sentenced on the earlier charge of possession of cannabis for which he was convicted today and which involves possession of 46 grams of cannabis. He is also to be sentenced on the other charge which involves the act of selling of cannabis and being in possession of some 286 grams of cannabis for that purpose. In that latter respect, he was already on bail for the first offence.
13. A pre-sentence report is called for and he will be sentenced on 1 August 2011 at 9 am.

**BY THE COURT**

