

**PUBLIC PROSECUTOR -v- MILES KISALE**

**Coram:** Chief Justice Vincent Lunabek

**Counsel:** Mr Tristan Karae for the Public Prosecutor  
Mr Eric Molbaleh for the Defendant

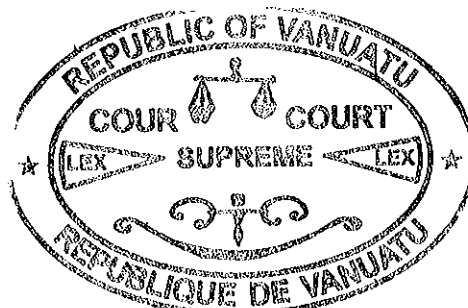
**SENTENCE**

Mr Miles Kisale, this is your sentence. You are charged with one count of possession of cannabis, contrary to section 2(62) of the Dangerous Drugs Act [CAP.12]. On 20 July 2011, you entered a guilty plea on that offence of possession of cannabis and you were convicted accordingly.

The brief facts which are not disputed are that: on or about the 8<sup>th</sup> of April 2011, you were arrested outside the Police Station in Port-Vila. You were suspected of supplying cannabis substance. At the Police Station, Police Officer Bakon Sylvano who is the complainant officer in this case, applied for a search warrant which was executed on the same day.

Upon arrival at your home at Erakor area, the complainant and other police officers searched your premises and inside your house they found a large quantity of suspected cannabis substances.

The complainant and other police officers brought the cannabis substances back to the police station after the search. The complainant officer then forwarded the suspected cannabis substances to the laboratory for verification and examination. The result of the examination showed that the cannabis substances weighed 143.53 grams and consisted of cannabis seeds, dried flowers and leaves.



You were cautioned and interviewed in regards to cannabis materials found at your home. You admitted to have been selling cannabis for VT100 per roll. You admitted that you were only selling to your friends and boys living around the Erakor area.

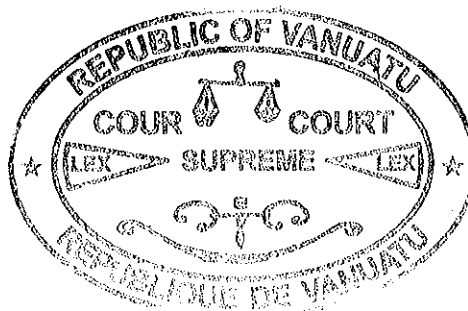
In considering your sentencing, I have had the opportunity to read and consider the submissions filed on behalf of the Public Prosecutor and submissions filed by your lawyer on your behalf. I have also had an opportunity to peruse the pre-sentence report filed by the Probation Office to assist the Court in your sentencing.

You were born on 1<sup>st</sup> January 1977. You are now 34 years of age. You originate from Imaki village, South Tanna. You have been living in Port-Vila for approximately 12 years. You reside now at Erakor Half Road area, Port-Vila. You are married and have a three year old daughter with your wife. You have good relationship with your siblings. You own a kava nakamal that provides money for your families and for the payment of your rent, water and electricity. You have skills in farming with limited knowledge amount in carving, in custom medicine, custom songs and dances.

The prosecution submits that the Court will impose a suspended imprisonment sentence on you for your offending with an order to perform community work.

The pre-sentence report recommends a suspended imprisonment sentence with community work and supervision. Your lawyer submitted on your behalf that the Court shall make a suspended imprisonment sentence with supervision. Your lawyer submits that no community sentence shall be imposed on you in addition to your suspended imprisonment sentence. Your lawyer advances that the reason for such a submission being that there is no need to impose a community sentence because you have already spent time in custody waiting for your trial/sentence. I refuse the last aspect of the submission of your lawyer because he has misapprehended the sentencing power and meaning of section 58G of the Penal Code (Amendment) Act No.14 of 2007 which is applied in such a situation like your own in the present case.

Mr Miles Kisale, let me remind you that the law that prohibits the cultivation, possession or sale of cannabis substance is called the "Dangerous Drugs Act



[CAP.12]" and it provides a maximum penalty of a fine up to VT100 million and/or imprisonment for up to 20 years.

As you can understand from the severity of the penalties imposed by law that drug offences are very serious offences (see **PP v. Andrew and Noel** [1998] VUCA 1 and **PP v. Tukoro** [1999] VUCA 9).

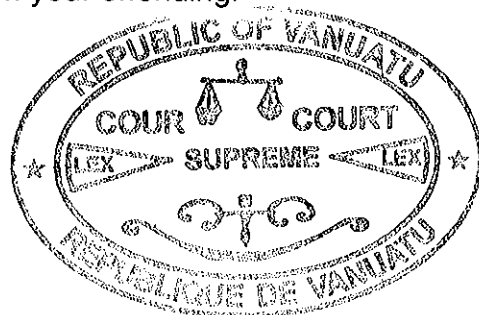
In the present case, your offending and the circumstances of your offending are aggravated by the following factors:

- You have in your possession cannabis weighing at 143.53 grams;
- You admitted selling cannabis to your friends and boys at Erakor area (sticks/rolls of cannabis of Vatu 100).
- You failed to appear on the 3<sup>rd</sup> day of May 2011 as stipulated under your bail conditions dated 21 April 2011. A Bench Warrant was issued for your arrest on 11 May 2011. You were arrested on 1<sup>st</sup> July 2011 until 20 July 2011 until 20 July 2011 when you were brought before the Supreme Court for plea and you pleaded guilty to the offence of possession of cannabis.

I sentence you to 16 months imprisonment as a starting point.

In mitigation, I take into account that you are a first time offender and you do not have a previous conviction. You entered a guilty plea after you have been arrested, detained and brought to Court for plea. I give you some allowance for the pre-custody period you served in custody since 2 July 2011. I reduce your imprisonment sentence of 16 months by 2 months. Since your guilty plea was entered after warrant of arrest has been issued, I refuse to reduce your sentence by  $\frac{1}{3}$  but I further reduce it only by 2 months making an end imprisonment sentence of 12 months.

Through the pre-sentence report, Chief Reuben said he looked after you in the community in Vila and any suspended imprisonment sentence with community sentence will assist you to change your mentality and put some sense back into yourself and be a big lesson for you to learn from your offending.



I will take that opportunity to give you a chance to rehabilitate and become a good abiding citizen in your future life.

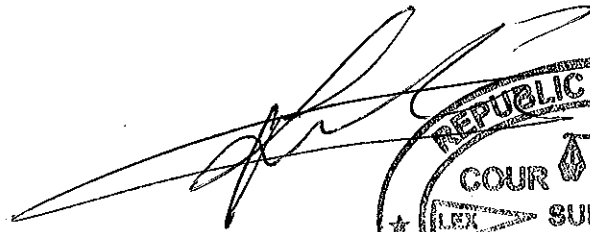
Your end sentence of 12 months imprisonment is suspended for a period of 2 years. During the 2 years period of suspension, you must not re-offend again. If you re-offend and upon conviction on the new offence, your suspended imprisonment sentence of 12 months shall be reactivated.

In addition to your 12 months suspended imprisonment sentence, you are ordered to perform 80 hours community work.

You have 14 days to appeal this sentence if you are not satisfied with it.

**DATED at Port-Vila this 12<sup>th</sup> day of August 2011**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**

