

**PUBLIC PROSECUTOR -v- JEAN YVES SHEM**

**Coram:** *V. Lunabek CJ*

**Counsel:** *Mr Tristan Karae for the Public Prosecutor  
Mr Tom Joe for the Defendant*

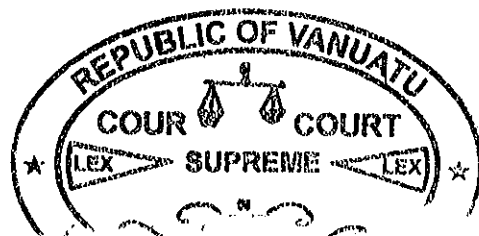
**SENTENCE**

Mr Jean Yves Shem, you appear before the Court for sentence. You are jointly charged with 2 other Accused (Etienne Mahit and Edward Bob) for unlawful entry of a non habitation premise, contrary to section 143(1) of the Penal Code Act [CAP.135] (in count 1) and theft, contrary to section 125(a) of the Penal Code Act [CAP.135] (in count 2).

On 3 May 2011, you had entered guilty pleas on the said offences charged against you in counts 1 and 2 and you were convicted on these 2 counts accordingly on the same date of 3 May 2011. Your sentencing was adjourned pending the trial of your 2 co-accused. On 10 August 2011, the prosecution applied for and the Court granted a nulli prosequi in favour of the co-accused Etinne Mahit and Edward Bob in respect to offences in Counts 1 and 2 and they were each discharged of these offences accordingly.

The brief facts of the case are not disputed by your lawyer when you had entered your guilty pleas and your lawyer accepted these facts on your behalf.

The facts are that on 3 March 2011, Mr Henry Loulou and his wife Astine Masumene lodged a formal complaint to the police at Port-Vila Police Station that a break-in occurred at Dash Store at Freshwota area, Port-Vila. Mr Henry Loulou got up in the morning of 3 March 2011 and went to open the shop when he noticed that the door to



the shop was opened. The lock of the door of the shop was cut opened to gain access in the shop. Several items in the shop were stolen. The break-in took place around 2.00am o'clock in the morning. The items that were stolen are listed as follows:

1. 1 Cash register worth 55,000vt
2. 1 box TVL refill Card of 10,000vt
3. Digicel Cards 3,000vt
4. 1 Cash Box with 80,000vt
5. 4 Packets of Gross Cigarettes of 80,000vt
6. 6 Cartons Tusker Beer of 36,000vt
7. 3 cartons Victoria Beer of 18,000vt
8. 3 cartons Rum Cola of 17,280

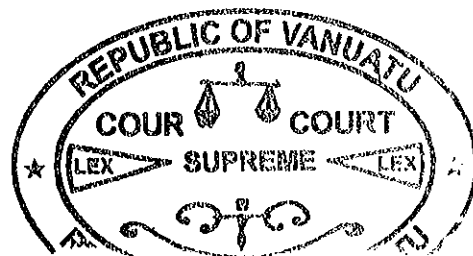
The total value of the items stolen is of VT300,000.

The police made investigation and arrested you, Mr Jean Yves Shem on 4<sup>th</sup> April 2011. You admitted you have unlawfully entered to the shop of the complainants and you have stolen the itemized properties on 3 March 2011 at the early hours of the morning of that date.

You have broken the following laws:

- Unlawfully entering a shop, contrary to section 143(1) of the Penal Code Act which provides:  
*"No person shall enter or be in any building with intent to commit an offence therein.*  
*Penalty: Imprisonment for 10 years where the place is not used for human habitation."*
- Theft, contrary to section 125(a) of the Penal Code Act which provides:  
*"No person shall cause loss to another – (a) by theft;*  
*Penalty: 12 years imprisonment."*

When I consider your sentencing, I peruse and consider submissions of the



prosecution and submissions of your lawyer. I also take into account of the pre-sentence report filed by the Probation Office.

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

- You have previous convictions for same offences of unlawful entry and theft (7 previous convictions for unlawful entry and theft).
- Damage was caused in gaining access to the shop.
- You have a cavalier attitude towards this sort of crime of dishonesty.
- There is some degree of planning and premeditation by committing offences in the night in the early part of such days of offending when people were sleeping deeply.

I sentence you to 4 years imprisonment as a starting point.

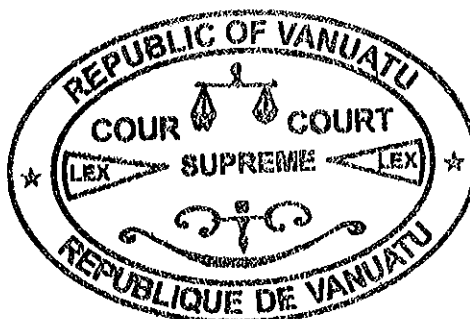
In mitigation, I reduce your imprisonment sentence of  $\frac{1}{3}$  to reflect your guilty plea.

You are sentenced to an end sentence of 2 years and 8 months imprisonment.

It is ordered that your imprisonment sentence shall be served consecutively with the other imprisonment sentences that are imposed on you by the Supreme Court on 8<sup>th</sup> July 2011 in Criminal Case No.50 of 2011 and in Criminal Case No.53 of 2011.

This means that once you serve your imprisonment sentence of 2 years and 8 months in Criminal Case No.50 of 2011, then, you must serve your imprisonment sentence of 2 years and 8 months imposed on you by the Supreme Court in Criminal Case No.53 of 2011 and you must then finally serve your current imprisonment sentence of 2 years and 8 months in the present case (Criminal Case No.55 of 2011).

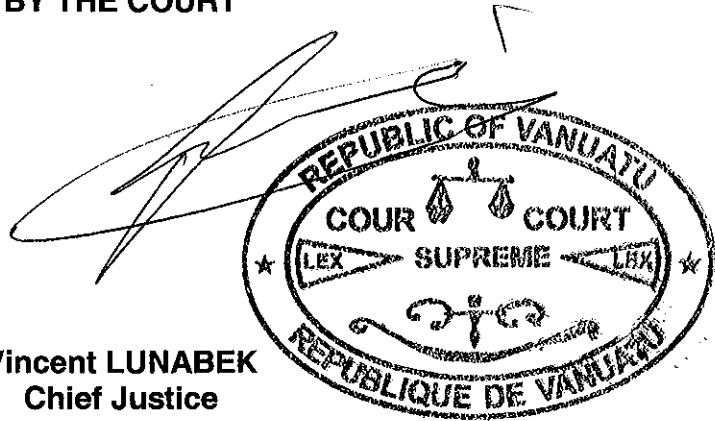
The Correctional Officers must ensure that you serve your current sentences as ordered.



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

**DATED at Port-Vila this 1<sup>st</sup> day of September 2011**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**