

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

**OPAS GERE
FABIE WUS
LULU LIATLATMAL
SYLVANO JACOB
REX LIATLATMAL
ALEX NATERA**

**Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk**

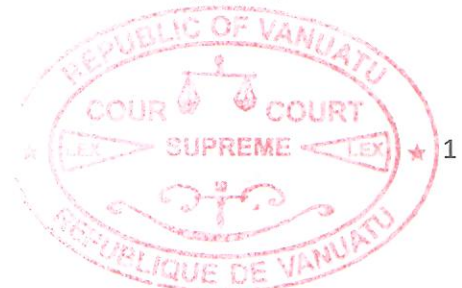
**Mr P. Wirrick for Public Prosecutor
Ms J. Tari for 5 Defendants
Mrs M. Vire for 1 Defendant**

**Date of Submissions: 20th October 2011
Date of Sentence: 28th October 2011**

SENTENCE

1. Ms Tari acts for Defendants Opas Gere, Lulu Liatlatmal, Rex Liatlatmal, Sylvano Jacob and Alex Natara. Mrs Vire acts for Defendant Fabie Wus.
2. On 22nd September 2011 all the defendants pleaded guilty as follows:-
 - (a) Opas Gere – Unlawful Entry, section 143 Penal Code Act Cap 135 (PCA).
 - Theft – section 125 (a) PCA.
 - No Firearms Licence – section 3(b) Fire Arms Act (Cap 198).
 - No Firearms Dealers Licence – Section 6 (c) Cap 198.

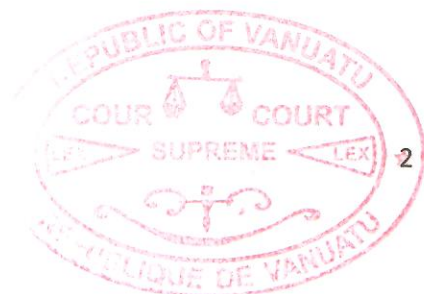
(Counts 1, 2, 3 & 4)



- (b) Fabie Wus – Aiding Theft x 2 Counts – Section 30 & 125 (a) PCA.
- No Firearms Licence – Section 3 (b) Cap 198.
- No Firearms Dealer's Licence – Section 6 (c) Cap 198.
(Counts 5, 6, 7 & 10).
- (c) Lulu Liatlatmal – Unlawful Entry – Section 143 PCA.
- Theft – Section 125 (a) PCA.
(Counts 8 & 9).
- (d) Sylvano Jacob – Receiving Stolen Property – Section 131 PCA.
- No Firearms Licence – Section 3 (b) Cap 198.
- No Firearms Dealers Licence – Section 6 (c) Cap 198.
(Counts 11, 12 & 13).
- (e) Rex Liatlatmal – Receiving Stolen Property – Section 131 PCA.
- No Firearms Licence – Section 3 (b) Cap 198.
- No Firearms Dealers Licence – Section 6 (c) Cap 198.
(Counts 14, 15 & 16).
- (f) Alex Natera – Receiving Stolen Property – Section 131 PCA.
- No Firearms Licence – Section 3 (b) Cap 198.
- No Firearms Dealers Licence – Section 6 (c) Cap 198.
(Counts 17, 18 & 19).

The admissions made by Defendants Opas Gere, Fabie Wus and Lulu Liatlatmal are in respect of 3 cartons of ammunition and 2 gross boxes of ammunitions only.

3. The maximum penalties for these offences are –
- (a) Unlawful Entry – 20 years imprisonment.
- (b) Theft – 12 years imprisonment.



- (c) Complicity – Conviction as a principal offender.
 - (d) Receiving Stolen Property – fine not exceeding VT5.000 or imprisonment not exceeding 1 year or to both.
 - (e) No Firearms Licence – Fine not exceeding VT20.000 or not exceeding 6 months imprisonment or to both.
 - (f) No Firearms Dealers Licence – Fine not exceeding VT50.000 or imprisonment not exceeding 12 months or to both.
- 4.1. The facts show that during the month of June 2011 on three separate occasions Opas Gere and Fabie Wus conspired together to steal ammunition from the Au Bon Marche Shop, Side River, Luganville, Santo. On each of those occasions Fabie Wus instructed Opas Gere to enter the premises and steal a carton of ammunition. In all, three cartons of ammunition were stolen. On each of those occasions Fabie Wus acted as a “Lookout”.
- 4.2. On the forth occasion Fabie Wus conspired with Lulu Liatlatmal who entered the premises and stole 20 boxes or 2 gross of ammunitions. Fabie Wus again acted as a “Lookout” on that occasion.
- 4.3. The facts also show that after the first three occasions of unlawful entry and theft, Opas Gere and Fabie Wus supplied Sylvano Jacob with 60 boxes of ammunition to sell. This defendant sold the ammunition to members of the public, he having knowledge that they had been stolen.
- 4.4. Fabie Wus also supplied Alex Natera with the stolen property during June and July 2011 who also sold the ammunition to the members of the public with knowledge that they were stolen property.
- 4.5. Opas Gere, Fabie Wus and Sylvano Jacob also supplied ammunition for sale to Rex Liatlatmal during June and July 2011, he having knowledge that the property



was stolen. Rex Liatlatmal received the ammunition and sold them to members of the public without authorization or appropriate licences.

- 4.6. Opas Gere and Fabie Wus were also engaged in selling the ammunition to members of the public. None of the Defendants was authorized by law to possess, distribute or sell ammunition.
5. From the facts, it is clear to the Court this was a well and thought-out plan by the Defendants, in particular Defendant Opas Gere, Fabie Wus, Lulu Liatlatmal and Sylvano Jacob. They are all familiar with the surroundings and the premises when on friendly terms with the owner of the shop who occasionally engaged the defendants to do odd jobs around the shop on voluntary basis. That relationship created a degree of trust between the shop owner and the defendants. That trust was breached when the defendants committed these offences. It caused substantial loss to the shop owner. The stolen ammunition being sold to the public constituted a danger to society.
6. In considering and assessing sentence, the Court has perused the pre-sentence reports submitted by Probation Officers in respect to each of the defendants.
7. The Prosecutor and defence counsel submitted the cases of Heromanley v. PP [2010] VUCA 25 and PP v. David Killion and others [2004] VUSC 17. Mrs Vire submitted the cases of PP v. Jimmy Norman [2010] VUSC 60 and PP v. Jack and Yahipe [2004] VUSC 83. These cases differ in their facts and circumstances.
8. It is clear that the offences of unlawful entry and theft are very serious offences. Similarly aiding theft and unlawful entry are equally serious and is punishable as the principal offender. It is clear from the cases cited by Counsel that unlawful entry and theft attract custodial sentences despite different facts and circumstances. The offendings were repeated for at least up to four (4) times. The supply and sale of ammunition without appropriate licences especially on



repetitive occasions pose a serious threat to peace, order and security of the public or the society in the Northern town.

9. It is under and against those circumstances that the Court must assess the appropriate punishments to be imposed on each of the defendants. Appropriate punishments must be such that –

- (a) Mark the gravity of the offendings;
- (b) Mark public disapproval or condemnation of the defendants' behavior;
- (c) Act as a deterrence to the offender and to others;
- (d) Punish the offenders adequately.

10. For the defendants in this case and for the charges each of them are charged with, the only appropriate punishments to achieve the purposes in paragraph 9 above are sentences of imprisonment.

11. Therefore, the Court sentences the defendants as follows:-

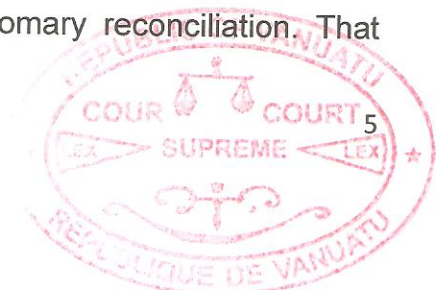
(a) Opas Gere

(i) For Unlawful Entry – 6 years imprisonment as the starting point in light of the aggravating features.

(ii) For Theft – 6 years imprisonment concurrent with 6 years for Unlawful Entry.

(iii) For Having No Firearms Licence – 3 months imprisonment.

(iv) For Having No Firearms Dealers Licence – 3 months imprisonment concurrent with the 3 months for having no firearms licence. However, being separate offences under a different Act, these 3 months will be cumulative to the 6 years imprisonment for Unlawful Entry and Theft. The total period of imprisonment is 6 years and 3 months. However, for your mitigating factors such as early guilty plea 1/3 is removed from 6 years 3 months leaving the balance of 4 years and 3 months. A further reduction of 1/3 is allowed for being a first-time offender and good cooperation with police during investigations, and a willingness to perform customary reconciliation. That



brings the balance of 4 years down to 2 years 3 months. You will serve 2 years and 3 months at the Correctional Centre in Luganville, Santo commencing from the date of this sentence.

(b) Fabie Wus

You and Opas Gere masterminded this whole criminal activities. For your part you will receive the same punishments imposed on Opas Gere as follows:-

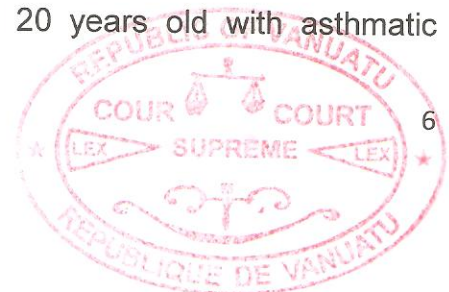
- (i) For Aiding Theft – 6 years imprisonment.
- (ii) For Aiding Theft – 6 years imprisonment.
- (iii) For having no firearms licence – 3 months imprisonment.
- (iv) For having no firearms dealer's licence – 3 months imprisonment concurrent . These 3 months are cumulative to 6 years imprisonment making a total of 6 years and 3 months.

However, like Opas Gere and for your mitigating factors such as early guilty plea, 1/3 reduction is allowed bring your sentence down to 4 years and 3 months. A further 1/3 reduction is allowed for no previous convictions, good cooperation with police during interviews, your remorse and willingness to perform reconciliation ceremony. This brings your sentence down to 2 years and 3 months. You will serve a total of 2 years and 3 months imprisonment at the Correction Centre, in Luganville, Santo commencing from the date of this sentence.

(c) Lulu Liatlatmal

For Unlawful Entry – 6 years imprisonment.

For Theft – 6 years imprisonment concurrent. Your total sentence is 6 years imprisonment. For your mitigating factors of early guilty plea, 1/3 reduction is allowed leaving the balance of 4 years imprisonment. A further 1/3 reduction is made for being a first time offender, for being remorseful and your willingness to perform customary ceremony and good cooperation with police during interviews. This brings the balance of 4 years down to 2 years imprisonment. I consider that you are about 20 years old with asthmatic



conditions but there is no medical certificate to confirm it. I therefore order that you serve only up to 6 months of your sentence of 2 years. I suspend the balance of 1 year 6 months under section 58 of the Penal Code Act. During the remaining 1 year and 6 months you will be under supervision pursuant to section 58 G of the Act. You will begin serving your 6 months sentence from the date of this sentence. The 6 months is without parole.

(d) Sylvano Jacob

For Receiving Stolen Property – A sentence of community service of 50 hours pursuant to section 58 N of the Act.

For having no firearms licence – 3 months imprisonment.

For having no firearms dealers licence – 3 months concurrent making a total sentence of 3 months imprisonment. These are suspended pursuant to section 57 of the Act on condition that within a period of 16 months from today's date, you must not commit these offences or other criminal offences for which you would be charged. If you do commit other offences, your sentence of 3 months imprisonment will be activated automatically.

(e) Rex Liatlatmal

(i) For Receiving Stolen Property – A sentence of community service of 50 hours.

(ii) For having no firearms licence – 3 months imprisonment.

(iii) For having no firearms dealer's licence – 3 months imprisonment concurrent.

I order that your concurrent sentences of 3 months imprisonment be suspended for a period of 16 months from today's date pursuant to section 57 of the Act. You must not commit these offences or any other criminal offences within those 16 months. If you do, your sentence of 3 months will come alive automatically and you will go into custody without any further notice.

(f) Alex Natera

(i) For receiving stolen property – A sentence of community service of 50 hours.



- (ii) For having no firearms licence – 3 months imprisonment.
- (iii) For having no firearms dealer's licence – 3 months imprisonment concurrent.

I order that your concurrent sentences of 3 months imprisonment be suspended for a period of 16 months from today's date, pursuant to section 57 of the Act. You must not commit these offences or any other criminal offences within the next 16 months. If you do, these 3 months will immediately come alive and you will be remanded in custody to serve those 3 months without any further notice.

12. Those are the sentences of the Court for each of the six defendants.

13. There has been a request for a restitution order. It appears the only amount agreed is VT30.000 out of larger amounts claimed. There is uncertainty as to the amounts. For that reason, the Court rejects the request for a restitution order.

14. Each of the defendant has a right of appeal within 14 days if they so choose.

DATED at Luganville this 28th day of October 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge

