

**PUBLIC PROSECUTOR -v- JOHN SAM LAMBE**

**Coram:** Chief Justice Vincent Lunabek

**Counsel:** Mr Gregory Takau for the Public Prosecutor  
Mr Eric Molbaleh for the Defendant

**Trial date:** 7 June 2011

**Date of Judgment:** 7 June 2011

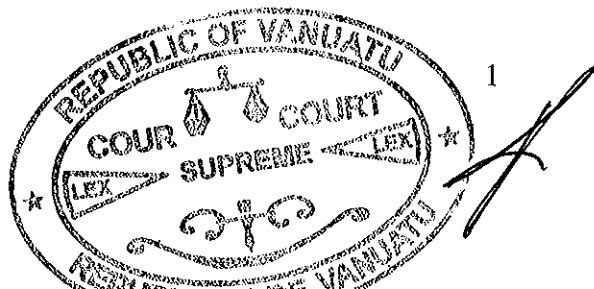
**JUDGMENT**

This is the trial of the Defendant, John Sam Lambe. The Defendant was charged initially with one count of possession of cannabis plants, contrary to section 2(62) of the Dangerous Drugs Act [CAP.12]. On the date of the trial, the prosecution applies to amend the charge of possession into a charge of cultivation of cannabis, contrary to section 4 of the Dangerous Drugs Act [CAP.12]. This morning the Defendant is re-arraigned on the amended charge. He pleaded not guilty to the offence of cultivation of cannabis.

The law is for the prosecution to prove each and all essential elements of the offence of cultivation of cannabis beyond a reasonable doubt. This means that on the basis of prosecution evidence, I must be sure of the guilt of the Defendant. If there is a reasonable doubt, I must acquit the Defendant.

The Defendants understands his statutory rights under s.81 of the Criminal Procedure Code Act [CAP.135] which are read and explained to him.

Before the Defendant could be convicted, the prosecution must prove beyond reasonable doubt, the following elements of the offence of cultivation of cannabis:



1. There are cannabis plants.
2. They are cultivated by the Defendant.
3. The Defendant nursed or looked after the plants.

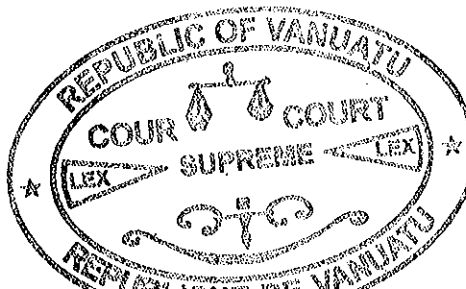
The prosecution called 2 police officers as witnesses. The first prosecution witness is police officer Uriel Leo. He is responsible for Drugs Units. He gives evidence that on 23 March 2011, he had information that there were 2 plants of cannabis in the yard of the Defendant. He and other 3 police officers went to the Defendant's residence and they found the 2 plants of cannabis at the Defendant's yard. They then went to Wilco Hardware where the Defendant works. At the Wilco, he arrested the Defendant and took him in the police truck to the police station for interview.

In the truck, he said he had conversations with the Defendant. He says the Defendant told him that the 2 cannabis plants are for a friend of his who went back to Tanna Island and he is looking after the two plants.

The next police officer Ishmael Liwusilli gave evidence to the same effect in that he had some discussions with the Defendant and the Defendant told him that the cannabis plants are for a friend of his and he is looking after them.

At the end of the prosecution case, there was a prima facie case made out against the Defendant. The Defendant was required to put forward his defence. Section 88 is read and explained to the Defendant. He understands his rights to remain silence. In this case, he chooses to give evidence and be subject to the cross-examination by the prosecution. His evidence will be assessed in the same way as the evidence of any prosecution witness.

The Defendant gives evidence that there are two (2) plants of cannabis in the yard he lives in with his father. But, he does not know about the 2 plants and he does not cultivate them. In the yard, there are 10 rental rooms fully occupied. Lots of people live in that same yard at Tebakor. The 2 cannabis plants grow in the dirties corner which is a place people living in the yard burn dirties or rubbishes. He repeated he does not smoke cannabis and he did not cultivate the 2 cannabis plants. He does not know why

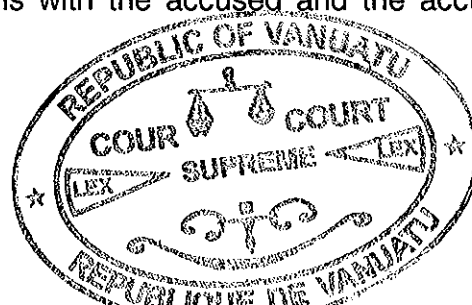


the police arrested him. He says when he was taken to the police truck, he saw 2 cannabis plants in the police truck, that is when he thought they arrested him because of the 2 plants. He denied he had conversations with police officers when he was brought into police truck. He insisted that he did not have any conversations with the police officers in the truck that is why he said when he heard the police officers gave evidence that they have conversations with him about who planted the 2 cannabis plants, he shakes his head by protesting because it was not true. He said when he was taken to the police truck, he was locked in the cage behind the police truck and he was alone there. The 4 police officers are sitting in front. He denied that he had conversation with police officers to the effect that the 2 plants are for one of his friends who return back to Tanna Island. He gave evidence that he did not plant the 2 cannabis plants.

He clarified he was behind in the cage. He did not talk to any police officers in the truck until he was taken to Port-Vila police station. At the police station, he says police officers assaulted him first before they locked him up at police cell No.6. He did not know why he got assaulted by the police officers before he gave his statement to the police. He was cross-examined and he confirmed his evidence in chief.

Sam Narua is the father of the Defendant. He gave evidence of that Defendant John Sam Lambe lives with him. He remembered when police came at his house and removed the 2 cannabis plants. He confirmed that police removed the cannabis plants at the dirty corner. He does not know who planted the 2 cannabis plants. He was not cross-examined by the prosecution.

On assessing the evidence, the Court rejects the prosecution evidence for 2 reasons. The first reason relates to the process of investigation, arrest and conduct of interview. The prosecution evidence is that witness Uriel Leo is a Senior Ranking Police Officer who is responsible for the Dangerous Drugs Unit within the Crime Investigation Section of the Police of Vanuatu. He was also the arresting officer of the accused John Sam Lambe on 23 March 2011 at the Accused's place of work (Wilco Hardware Port-Vila). He was further the interviewing officer of the accused person (Defendant). He gave evidence that he had some conversations with the accused and the accused



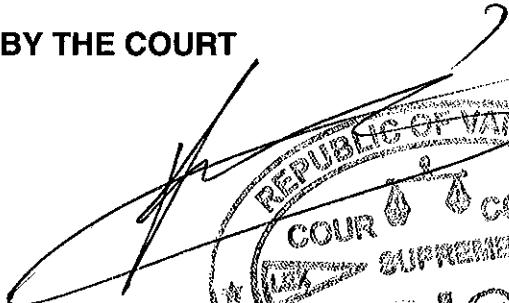
informed him that the plants of cannabis belong to a friend of his and he is just looking after them as his friend went back to Tanna Island. He made a statement that he started to conduct an interview with the Defendant/Accused but that the Accused decided that he will only make statement in the Court. In this case, for obvious reasons, officer Uriel Leo cannot be the arresting officer and at the same time the interviewing officer of the accused (Defendant). There is likelihood of a risk for the Court to rely on the evidence that are not safe in such a circumstance. In this case, officer Uriel Leo as an arresting officer also failed to contemporaneously make a note or any not of his alleged conversations with the accused in the police truck before the interview at the police station.

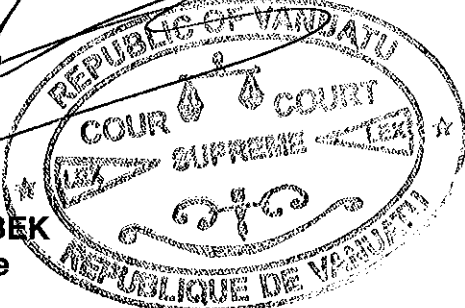
The second reason is that the prosecution fails to prove on the criminal required standard of beyond reasonable doubt that the Defendant, John Sam Lambe, cultivated the two (2) cannabis plants in his yard. There was no direct evidence to support this element of the offence. The prosecution cannot invite the Court to infer on the evidence as it is not a proper circumstantial case type.

The Defendant, John Sam Lambe is found not guilty of cultivating cannabis plants, contrary to section 4 of the Dangerous Drugs Act [CAP.12]. He is acquitted of the charge accordingly and shall be released forthwith from lawful custody as he is now a free man.

**DATED at Port-Vila this 7<sup>th</sup> day of June 2011**

**BY THE COURT**

  
**Vincent LUNABEK**  
**Chief Justice**

  
REPUBLIC OF VANUATU  
COUR SUPREME COURT  
REPUBLICQUE DE VANUATU