

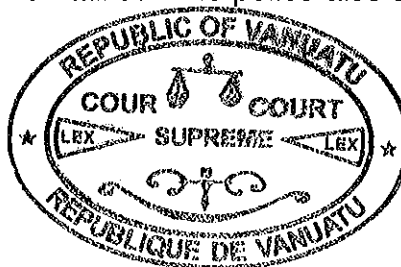
PUBLIC PROSECUTOR
V.
MOISE BICE
KAVIN AILUL AKAR BEN

Coram: Justice D. V. Fatiaki
Counsels: Mrs. T. Harrison for the State
Defendants – in person
Date of Decision: 19 January 2012

SENTENCING

1. On **23 September 2011** both defendants were convicted of drug offences after a trial. The defendants had been jointly charged with Possession of Dried Cannabis Leaves and Sale of Cannabis and a third count of Possession of Property Suspected of Being the Proceeds of Crime contrary to Section 12 of the Proceeds of Crime Act [CAP. 284]. Pre-sentence reports and sentencing submissions were ordered and these were eventually provided to the Court on 17 October 2011. The defendants had been remanded in custody and appear today for sentence. Destruction and confiscation orders have already been made in respect of the cannabis and money produced at the defendants' trial.
2. At the outset when the defendants were arraigned they entered "guilty" pleas but denied that cannabis was a dangerous or prohibited drug. Their pleas were then changed to "not guilty" and the matter proceeded to trial.
3. The prosecution case against the defendant which the Court found was proved beyond reasonable doubt may be summarised as follows:

On **11 May 2011** a team of police officers executed a search warrant at the defendants' house at ex-FSP compound in Anamburu. A large quantity of dried leaves was recovered from inside the house together a large amount of local currency in notes and coins. The dried leaves later tested positive for cannabis sativa and weighed a total of **2145.90 grams**. The confiscated currency totalled **VT108,554** when tallied. The police also seized a quantity of



used filters or the unsmoked butt ends of marijuana joints together with other smoking paraphenalia.

4. Significantly, during the trial, both defendants elected to give sworn evidence and their evidence is summarised as follows:

*"The first defendant, **Moise Bice**, testified that "the product" he sold from his house at the ex-FSP compound is called "**VORTAMAT**" which is a word from his language and traditions. "Cannabis" and "marijuana" are introduced names and foreign to Vanuatu. Vortamat was the name he gave the plant on 14 July 2006. The plant is related to the 10 commandments which says it is "holy" the vortamat tree. He criticised the forensic test carried out on the dried leaves as failing to show that cannabis is dangerous. All it did was show a colour pink which cannot be dangerous. He further said: "All people who use cannabis that I know are not dead, so where is the danger in the dried leaves? The test is for chemical inside the plant material but not for bacteria. No one can tell me the poison inside." Finally he said "Vortamat is cultivated by a cooperative called the South West Malekula Cooperative".*

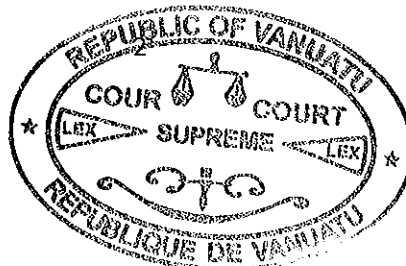
In cross-examination he confirmed the second defendant (Kavin) was living with him in his house at ex-FSP compound and he steadfastly refused to admit that Vortamat is also known by the names "cannabis" and "marijuana". He admitted however that the money recovered from his house were the proceeds of selling Vortamat which came from Melip Village in Malekula.

*For his part, the second defendant **KEYVEN AILUL AKAR** also claimed that the dried plant material is called "**VORTAMAT**" in his language which was launched on 14 July 2006. He said there are 3 "solutions" to the use of Vortamat:*

- a. *land to be returned to custom owners;*
- b. *respect the 10 commandments; and*
- c. *respect boundary blong plant lo Jesus – Jesus grass;*

He claimed that following and using VORTAMAT gave him wisdom and understanding.

*In cross-examination he confirmed being in the first defendant's house at the ex-FSP compound when the police entered to search the house. He agreed that there was **VORTAMAT** stuff in the house as well as money collected from the sale of Vortamat. He denied being shown by the police or seeing any search warrant. The second defendant was particularly evasive in his answers ("mi no save") to counsel's questions which sought to identify Vortamat as being one and the same as "cannabis" and "marijuana". He*



admitted however selling Vortamat and he denied any real knowledge of the Dangerous Drugs Act which he disagreed with anyway.

In answer to the Court's questions the second defendant said Vortamat means "World Peace". He agreed that the word **VORTAMAT** also refers to a plant which can be smoked like tobacco and when used, gave "wisdom to understand right from wrong". He confirmed that he sold VORTAMAT as "a product because it's God's creation" to get vatu. He agreed that "VORTAMAT is easy money" whereas growing tomatoes was "too hard work". He reluctantly accepted that he came to know about the Dangerous Drugs Act when he was arrested by the police, but, because he didn't agree with it, he refused to follow or obey it."

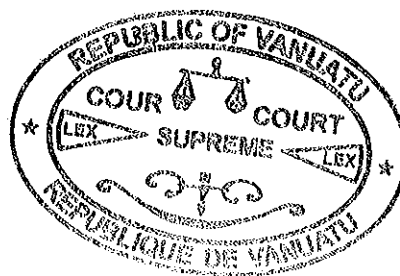
5. From the foregoing it is clear that the defendants maintain their innocence because of their firmly held, if somewhat misguided and uninformed beliefs, that the law is wrong in criminalising the possession, cultivation and sale of cannabis which is "Jesus grass" and is "not dangerous".
6. Nothing could be further from the scientific truth as the following extracts from a **WHO** report clearly reveals:

"Cannabis is a generic term used to denote the several psychoactive preparations of the plant Cannabis sativa. The major psychoactive constituent in cannabis is Δ -9 tetrahydrocannabinol (THC). Compounds which are structurally similar to THC are referred to as cannabinoids. The Mexican term "marijuana" is frequently used in referring to cannabis leaves or other crude plant material in many countries. The unpollinated female plants are called hashish. Cannabis oil (hashish oil) is a concentrate of cannabinoids obtained by solvent extraction of the crude plant material or of the resin.

Acute health effects of cannabis use

The acute effects of cannabis use has been recognised for many years, and recent studies have confirmed and extended earlier findings. These may be summarised as follows:

- Cannabis impairs cognitive development (capabilities of learning); including associative processes; free recall of previously learned items is often impaired when cannabis is used both during learning and recall periods;
- Cannabis impairs psychomotor performance in a wide variety of tasks, such as motor coordination, divided attention, and operative tasks of many types; human

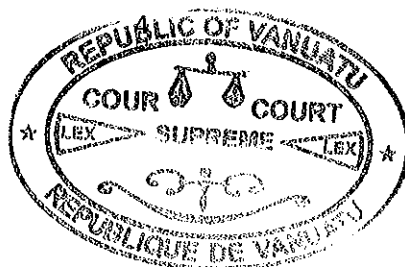


performance on complex machinery can be impaired for as long as 24 hours after smoking as little as 20 mg of THC in cannabis; there is an increased risk of motor vehicle accidents among persons who drive when intoxicated by cannabis.

Chronic health effects of cannabis use

- Selective impairment of cognitive functioning which include the organization and integration of complex information involving various mechanism of attention and memory processes;
- Prolonged use may lead to greater impairment, which may not recover with cessation of use, and which could affect daily life functions;
- Development of a cannabis dependence syndrome characterized by a loss of control over cannabis use is likely in chronic users;
- Cannabis use can exacerbate schizophrenia in affected individuals;
- Epithelial injury of the trachea and major bronchi is caused by long-term cannabis smoking;
- Airway injury, lung inflammation, and impaired pulmonary defence against infection from persistent cannabis consumption over prolonged periods;
- Heavy cannabis consumption is associated with a higher prevalence of symptoms of chronic bronchitis and a higher incidence of acute bronchitis than in the non-smoking cohort;
- Cannabis used during pregnancy is associated with impairment in fetal development leading to a reduction in birth weight;
- Cannabis use during pregnancy may lead to postnatal risk of rare forms of cancer although more research is needed in this area.

The health consequences of cannabis use in developing countries are largely unknown because of limited and non-systematic research, but there is no reason a priori to expect that biological effects on individuals in these populations would be substantially different to what has been observed in developed countries.



7. In summary:

*"The mental or psychological effects of certain illicit drugs such as marijuana can also place pressure on the public health system, particularly mental health services. The main active chemical in marijuana is **delta-9-tetrahydrocannabinol, THC** for short. It is this chemical that acts upon certain receptors in the brain that influence feelings of pleasure, memory, thoughts, concentration, time perceptions and coordination of movement. This is why people who are intoxicated from marijuana use may have distorted perceptions (laughing when something is not funny), impaired coordination and have difficulty thinking and solving problems. Research on the long-term effects of marijuana misuse indicates permanent changes in the brain and a number of studies have shown a link between long term marijuana misuse with increased rates of anxiety, depression, suicide and schizophrenia (a mental disorder that manifests in hallucinations, paranoid or bizarre delusions and/or disorganised speech and thinking). High doses of marijuana have also been shown to induce psychotic reactions in vulnerable individuals."*

8. The same discussion paper in speaking of drug-use trends in Vanuatu states:

"When discussing illicit or illegal drugs in Vanuatu, cannabis is the most common illicit drug, due to its ready availability and low cost. Its use and cultivation is widely spread throughout the islands and is steadily on the increase. It is used mainly by younger people and is often consumed with alcohol or kava. It is most commonly smoked but is also chewed or baked with flour.

Unfortunately statistical information in Vanuatu regarding drug use and misuse is limited and methods of data collection and collation differ between agencies. The following information therefore should only be used as illustrative of the current situation. It should also be noted that the term "drug" generally refers to cannabis.

..... statistics provided by the Vanuatu Police Force, the number of people being apprehended for drug related charges has increased dramatically in recent years. This can be attributed to a number of things such as increased reporting and improved capabilities within the police force to detect and investigate offences however it is generally accepted that use of cannabis is on the rise in Vanuatu.

Information provided by the Department of Correctional Services indicates that currently drug offences make up 4% of the sentenced



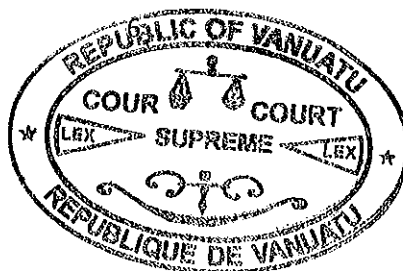
offences in Correctional Centres in Vanuatu. 3% is for cannabis related offences and 1% for other prohibited substances. This figure is higher for those on remand (those who have not yet been to court) for drug related offences at 8% and 12% of all community sentences currently being served are for drug related offences. Generally drug offenders make up 4-8% of the detainee population in Vanuatu at anyone time."

9. The Courts are also aware of similar trends of drug-related offences coming before the courts over the past couple of years with most involving young men in their late teens and early twenties being found in possession of cannabis both for personal use and for sale and, to a lesser degree, cultivation of cannabis.
10. I turn from the general to the particular circumstances of the defendants and deal firstly, with you, **Moise Bice**. Your pre-sentence report prepared with your help contains the following relevant personal details:

- You are a mature man of **57 years** of age and single;
- You are originally from **Lembenwen village**, near Melip in South-West Malekula and you grew up in Nouméa where you spent most of your childhood;
- Although you possess skills as a mechanic and have knowledge of running a business you have **not** utilised them in pursuing any legitimate business;
- In 2007 you were convicted for an offence of **Possession of Cannabis** and you were sentenced to 100 hours of community work which you successfully completed;
- You have been in continuous remand since your arrest for this offence in July 2011;
- You told the probation officer who prepared your pre-sentence report that:

"... cannabis is like a programme and you will continue to fight to make cannabis a business product. To you cannabis is normal and you can't understand why people are unhappy about you smoking it. ... you will not stop fighting the law and you have no regrets."

11. **Moise Bice** the laws of Vanuatu are passed by the Parliament and must be obeyed however much you may disagree with it. The only institution that can change the law is Parliament and it is there that you must take up your fight. The

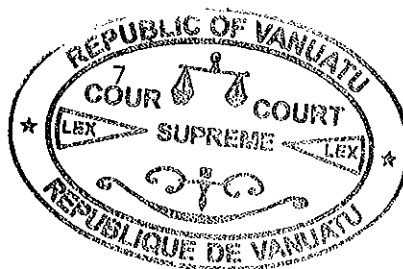


courts can't change the law. If everyone was allowed to disobey a law that he did not agree with there would be lawlessness and anarchy in this country.

12. The paramount duty of this Court and indeed of all citizens of Vanuatu, is to obey, uphold, and enforce the law so long as it exists until it is changed by Parliament. It is **not** the Court's function to criticise or change the law however much it may sympathise with your particular cause or "*program*".
13. **Moise Bice** there are lawful avenues available to change the law if you do not agree with it but breaking the law is not one of those ways.
14. As the Chief Justice recently said in Criminal Case No. 09 of 2011 for Possession of Cannabis, in sentencing **Gregory Tari** who expressed a similar opinion to you on cannabis:

"I need to inform you that if you do not like a law, as a Vanuatu citizen, you have the right to approach the relevant authorities to have them removed. You have also the right to take part in the democratic process yourself to have the said law removed. But while the law stands as they are, you must obey and comply with them whatever your own opinions of that law."

15. **Moise Bice**, your previous conviction and sentence for Possession of Cannabis in 2007 has clearly not deterred you from re-offending in an even more serious manner and you are clearly a danger not only to yourself but also to the growing number of young male users of cannabis in Port Vila. It is indeed unfortunate that you are using your so-called commercial skills to conduct a business selling cannabis which you well know is illegal in this country.
16. Your offending has the potential of wreaking havoc and misery on the lives and family members of your customers and, although you may have convinced yourself that there are no ill-effects from your smoking cannabis, you cannot guarantee that your customers will fare as well and will not suffer the well-documented seriously damaging effects of prolonged use of cannabis.
17. **Moise Bice** in the absence of any mitigating factors in your favour I sentence you to **2 years imprisonment** with effect from **5 July 2011**.
18. I turn next to you **Kavin Ailul Akar Ben** and I extract the following personal circumstances from your pre-sentence report:
 - You are **25 years** of age in a steady defacto relationship with a young son;
 - You are originally from **Melip Village** in **South-West Malekula** but now reside at Freshwota 4 area in Port Vila.



- You attained a year 10 level of education and have skills in construction. You have an interest in music and sell kava to make a living;
- In June 2007 you were convicted of Cultivating Cannabis and received a sentence of six months supervision which you successfully completed;
- You too have been in continuous remand since your arrest in July 2011; and
- Like your mentor Moise Bice, you told the probation officer who prepared your pre-sentence report:

“... that you will not stop smoking cannabis and it is part of your life and belief and use it to meditate and not to cause trouble. Cannabis has helped you live a peaceful life and relieves you when you are under stress or anxiety. You do not have any feelings of regret and to you smoking cannabis is normal. It will be hard for you to change or stop using cannabis as it has now become part of your life.”

19. **Kevin Ailul Akar** everything that I have said to **Moise Bice** is also applicable to you. I do not propose to repeat it except to remind you of what the Chief Justice said about you when you were convicted in **[2007] VUSC 35**:

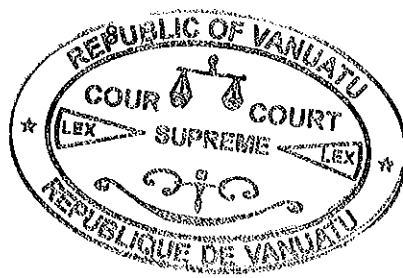
“The defendant (i.e. you) was cross-examined for sometime. He said he is a member of the Presbyterian Church. He believes in the commandments. The church does not allow cultivation of cannabis. But cannabis is money. Today he and others planted cannabis plants because they bring money to satisfy their physical needs.

He knows the laws of Vanuatu prohibit the planting of cannabis plants but he planted cannabis because he respected the 10 commandments. Later on he conceded that the 10 commandments did not allow the cultivation of cannabis plants but cannabis is the creation of God. He said cannabis came on Melip Village through Moise Tohtes Pais. He confirmed that the sale of cannabis generated big cash money ...”

and later

“He was asked whether he knows the bad effects of cannabis. He hesitated. The question was repeated to him. He evasively said when I sold cannabis to a person, I told the person to smoke cannabis with purpose. The person must not abuse cannabis.

He knows that he is a citizen of Vanuatu. Malekula island is part of Vanuatu. Every one follows the laws of Vanuatu. He said he is 20 years of age. He could vote and he had already voted. He finally



confirmed that the Government of Vanuatu legislates by enactment against the possession and cultivation of cannabis."

On that occasion **Kevin Ailul** you were convicted of cultivating **5** cannabis plants in your garden and of being in possession of **123** dried cannabis plants hanging in your house at **Melip Village**. You also had **8** plastic packets containing dried cannabis leaves and seeds at your house at **Freshwota** in Port Vila.

20. **Kevin Ailul Akar**, it is unfortunate that you did not heed what the Chief Justice said to you in 2007. By re-offending as you have done on this occasion, clearly shows that you have learnt nothing from having had a non-custodial sentence imposed on you in the past. It also demonstrates an unwillingness to reform and change your attitude towards the possession, and sale of cannabis.
21. In all the circumstances, having regard to the quantity of cannabis involved and the amount of money recovered which, together, makes it clear that what was being conducted out of the first defendant's house at the ex-FSP compound in Anamburu, was a large commercial operation for the collection, storage, packaging and selling of dried cannabis. In the face of that and in the absence of any mitigating features in your case, I also sentence you **Kevin Ailul Akar** to **2 years imprisonment** with effect from **5 July 2011**.
22. You both have 14 days in which to lodge an appeal against your sentence if you do not agree with it.

DATED at Port Vila, this 19th day of January, 2012.

BY THE COURT



D. V. FATIAKI
Judge.

