

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

**VANUA DUVU
MELEUNE BAE
STANLEY JACK
JEAN MARK NIMBAL**

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr P. Wirrick for the Public Prosecutor
Miss J. Tari for the Defendants

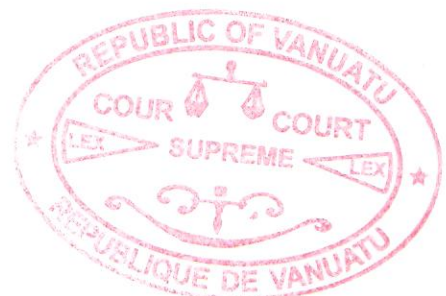
Date of Submissions Hearing: 3rd August 2012
Date of Sentence: 16th August 2012

SENTENCE

1. These Defendants namely Vanua Duvu, Meleune Bae, Jean Mark Nimbal and Stanley Jack were charged separately from Bill David who was charged alone and separately in Criminal Case No. 36 of 2012. As such, they are sentenced separately.

2. On 3rd July 2012, the four named defendants pleaded guilty as follow:-
 - (a) Vanua Duvu
 - (i) To three Counts of Unlawful Entry (Counts 2, 5 and 7) contrary to section 143 of the Penal Code Act Cap 135 (the Act).
 - (ii) To two Counts of Theft (Counts 6 and 8) contrary to section 125(a) of the Act.

 - (b) Meleune Bae



To two Counts of Aiding Theft (Counts 1 and 4) contrary to section 30 in conjunction with section 125(a) of the Act.

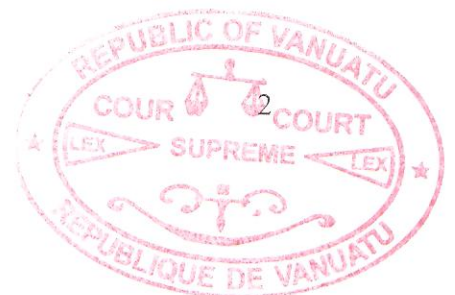
(c) Stanley Jack

To one Count of Aiding Theft (Count 9) contrary to section 30 in conjunction with section 125(a) of the Act.

(d) Jean Mark Nimbal

To two Counts of Aiding Theft (Counts 1 and 4) contrary to section 30 in conjunction with section 125(a) of the Act.

3. The maximum penalty for unlawful entry in a place used for human habitation is 20 years imprisonment and where the place is not used for human habitation, the maximum penalty is 10 years imprisonment. For an offence of theft the maximum penalty is 12 years imprisonment. And for complicity a person charged as an accomplice may be charged and convicted as a principal offender in accordance with section 30 of the Act.
4. The facts to which all of you have accepted show that –
 - (i) On the night of 13th April 2012, Meleune Bae and Jean Mark Nimbal accompanied Bill David to the premises of Santo Roofing Ltd at Side River. There the two defendants kept watch while Bill David gained entry into the premises and offices and stole cash, tools, extension cords, meat and a mobile phone. Each of these two defendants received cash of VT2.000 from Bill David.
 - (ii) On the second occasion, during the night of 22nd April 2012 some 9 days later, defendants Vanua Duvu, Jean Mark Nimbal and Meleune Bae accompanied Bill David to College de Santo. There



you assisted each other to cut open a hole in the fence and Vanua Duvu gained entry and forced his way into the school office, and using a pinch bar he forced open the cash box and metal cupboard causing considerable loss and damage to school properties.

(iii) On the third occasion during the night of 28th April 2012 some 6 days later, Vanua Duvu and Stanley Jack entered Kamewa School and kept watch while Bill David cut the fence and gained entry to commit theft.

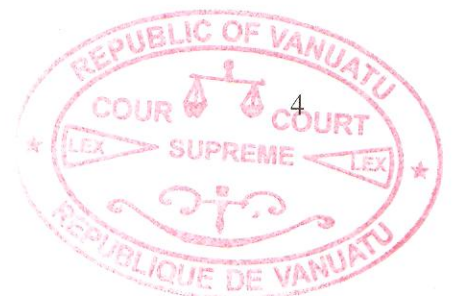
(iv) The fourth occasion during the night of 29th April 2012 only 1 day later Vanua Duvu and Jack Stanley accompanied Bill David to College de Santo again and kept watch while Bill David cut the fence. Then Bill David and Vanua Duvu gained entry to steal milk, milo, tins of tuna and meat. Vanua Duvu shared these items with Stanley Jack.

5. In considering and assessing your appropriate punishments, the Court has been assisted by the case authorities submitted by both the Prosecutions and defence counsel. These are the Cases of Herromanley v. Public Prosecutor [2010] VUCA, Kalfau v. Public Prosecutor [1990] VUCA 9; Bule v. Public Prosecutor [2005] VUSC 167; Public Prosecutor v. David Killion and Others [2004] VUSC 17 and Public Prosecutor v. Gere [2011] VUSC 298.
6. Based on the above cases, the Prosecutions submitted that immediate custodial sentences should be imposed on Jean Mark Nimbal and Vanua Duvu for repetitive offendings, and suspended sentences coupled with supervision be imposed on Stanley Jack and Meleune Bae. Both Counsel submitted the starting point of 6 years imprisonment before any uplifts and then followed by reductions due to



mitigating factors. Further, both Counsel submitted that concurrent sentences should be consistent to comply with the totality principle established by the Court of Appeal in Kalfau's Case.

7. The facts show the following collective aggravating features of your offendings as follows:-
- (a) Your offendings involved careful planning and premeditation.
 - (b) There were substantial damage and loss to properties of all the victims which have not been recovered and which cannot be made good by any of you.
 - (c) Your offendings were repeated on four occasions against three separate victims, two of whom are schools. Jean Mark Nimbal offended on two separate occasions (13th and 22nd April). Vanua Duvu offended on three separate occasions (22nd, 28th and 29th April). Meleune Bae offended on two separate occasions (13th and 22nd April). And Stanley Jack offended on two separate occasions (28th and 29th April) quite contrary to what the Prosecutor stated.
 - (d) All offendings were committed by more than one defendant acting together.
 - (e) Jean Mark Nimbal is charged separately in other cases such as Criminal Cases No. 32 of 2012 and Criminal Cases No. 19, 20, 23, 24 and 27 of 2012 for unlawful entry and theft.
 - (f) Vanua Duvu has a previous conviction in the Magistrates Court where he was convicted and sentenced to 1 month and 24 days imprisonment for harbouring an escaped prisoner, Andre Ringiau.
8. These aggravating features add seriousness to what are already in themselves very serious offences and therefore they warrant uplifts from the starting point of your respective sentences.



9. I have perused all the Pre-Sentence Reports submitted on behalf of Vanua Duvu, Meleune Bae, Jean Mark Nimbal and Stanley Jack. It is clear that all four of you are unfortunate victims of broken marriages and relationships. I note these are stated as mitigating factors by defence counsel on your behalves. But in our society and communities, where extended families and relationships exist with chiefs and religious leaders at all levels, these can never be a valid excuse not to do and do something worthwhile to contribute to the development and the building of our nation as anticipated in the fundamental duties enshrined in the National Constitution. If life in the towns becomes too challenging because of unemployment, high costs of living and the challenges of modern living, then your villages back in your respective islands are the only safe and better places for you to be where you can eat, drink and sleep freely.
10. Your unlawful actions of breaking into other innocent and hard working people's properties and damaging and causing permanent losses to those properties were results of your own choices. You all knew those actions were bad and against the law, yet you all chose to do them and for all four of you, you did them more than once. This indicates you have become habitual offenders with a no-care attitude that no matter how much the Courts impose punishments there will be one or two of you who have made up your minds that committing offences is the only life for you. If this is the way some of you are thinking right now, then you would do well to know that the Correctional Centre is the only place you will spend the rest of your life, unless you choose to accept responsibilities for your actions, accept your terms of imprisonments not only as forms of punishments, but more so as forms of correction and rehabilitation.



11. Due to the serious offendings you all have committed and the aggravating features that add to that seriousness, I consider that for Jean Mark Nimbal, Meleune Bae and Stanley Jack who aided theft as accomplices should be convicted and sentenced as principal offenders. And I so Order.
12. I have seen the various mitigating factors submitted by defence counsel on your behalves. Not every factor are relevant. I accept that for each of you the only relevant mitigating factors are:-

(a) Vanua Duvu –

- Guilty pleas; and
- Good cooperation with the Police.

(b) Meleune Bae –

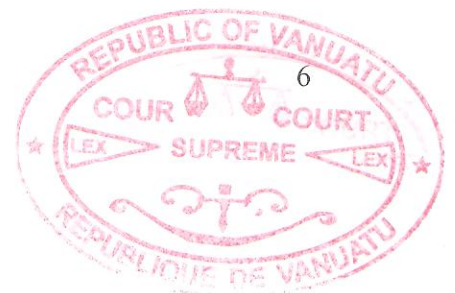
- First time offender;
- Guilty plea;
- Cooperation with Police; and
- Being in late teens (19 years old).

(c) Stanley Jack –

- First time offender;
- Cooperation with Police;
- Guilty plea; and
- Being in late teens (18 years old).

(d) Jean Mark Nimbal –

- Guilty pleas; and
- Cooperation with Police.



For these factors, the Court will allow some reductions from your total terms of imprisonment.

13. Having stated all that, the Court now convicts and sentences each of you as follows:-

(a) Vanua Duvu

(i) For three Counts of Unlawful Entry (Counts 2, 5 and 7) to 6 years imprisonment as the starting point on each count concurrent.

(ii) For two Counts of Theft (Counts 6 and 8), to 6 years imprisonment as the starting point on each count concurrent.

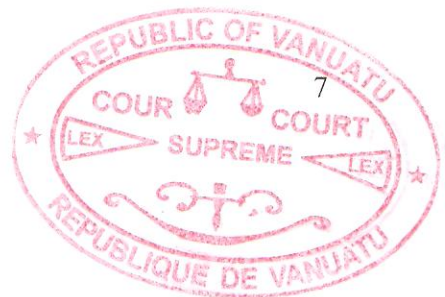
In applying the totality principle I order that these sentences will be served concurrently. In effect you will serve a concurrent term of 6 years imprisonment. However, due to the various aggravating features your sentence of 6 years are uplifted by 3 years to 9 years imprisonment. For your mitigating factors, I consider a reduction of 3 years from the 9 years so as to avoid a crushing effect on you as a young man, and to promote a sense of rehabilitation in and for you. In effect you will serve a total concurrent sentence of 6 years imprisonment commencing on 3rd July 2012.

(b) Meleune Bae

You are sentenced as a principal offender –

(i) For the two Counts of aiding theft (Counts 1 and 4), to 6 years as the starting point on each count to be served concurrently,

In effect you will serve a concurrent sentence of 6 years imprisonment. Like Vanua Duvu, there is an uplift of 3 years for the aggravating features bringing the total to 9 years imprisonment. For your four mitigating factors, I consider a reduction of 4 years is necessary so as to avoid a crushing effect on you as a young man in your late teens, and to promote a sense of rehabilitation in and for you. In effect you



will serve a total concurrent sentence of 5 years imprisonment commencing on 3rd July 2012.

(c) Stanley Jack

You also are sentenced as a principal offender –

(i) For one Count of aiding theft (Count 9) but as a representative charge due to repetitive offendings on two separate occasions, to 6 years imprisonment. Like Duvu and Meleune your sentence is uplifted by 2 years for the aggravating features bringing the total to 8 years imprisonment. For your four mitigating factors, I consider a reduction of 3 years and 8 months are necessary so as to avoid a crushing effect on you as a young man in your late teens, and to promote a sense of rehabilitation in and for you. In effect you will serve a total term of 4 years and 4 months imprisonment commencing on 3rd July 2012.

(d) Jean Mark Nimbal

You also are sentenced as a principal offender.

(i) For the two Counts of Aiding Theft (Counts 1 and 4), to 6 years imprisonment on each Count to be served concurrently. Like Duvu and Meleune your sentence is uplifted by 3 years for the aggravating features bringing the total to 9 years imprisonment. For your two mitigating factors, I consider a reduction by 4 years is necessary so as to avoid a crushing effect on you as a young man, and to promote a sense of rehabilitation in and for you. In effect you will serve a total concurrent sentence of 5 years imprisonment commencing on 3rd July 2012.

14. The Court has imposed high sentences on each of you to achieve the following purposes –

- (a) To mark the gravity of your offendings.
- (b) To be a deterrent both for you and for others.



- (c) To mark public disapproval of your unlawful and undesirable actions.
 - (d) To protect the innocent and hard working members of the public and the business sector.
 - (e) To punish each of you appropriately and adequately.
15. Those are the sentences of the Court. Each of you has a right of appeal within 14 days if you so choose.

DATED at Luganville this 16th day of August 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

