

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(CRIMINAL JURISDICTION)**

CRIMINAL CASE NO 15 OF 2013

PUBLIC PROSECUTOR

v

SAM KALO

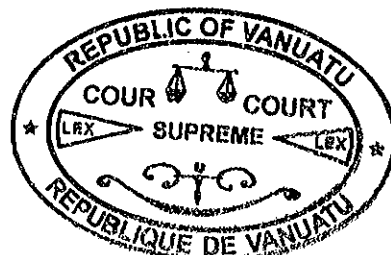
Coram: Justice Mary Sey

Counsel: Mrs Losana Matariki for the Public Prosecutor
Mr. Brian Livo for the Defendant

Date of Sentence: 29 April 2013

SENTENCE

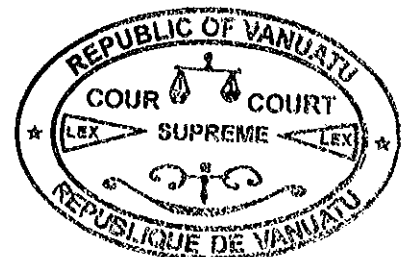
1. Sam Kalo, you appear today for sentence having pleaded guilty to the offence of "Possession of Dried Cannabis Leaves" contrary to section 2 (62) of the Dangerous Drugs Act [CAP.12] of the Republic of Vanuatu. You were convicted accordingly for the said offence.
2. The brief facts of the offending are provided by the prosecution and no dispute is taken with the summary of the facts presented by the prosecutor as follows:



On the morning of 09 February, 2012, The defendant took a bus to town and got off outside the Handicraft center at Center Point downtown Port Vila holding a handbag with him. He was spotted by two police officers to be acting suspiciously and they approached the defendant and asked to search his handbag. The defendant handed the handbag to the police officers and at the same time he admitted to the police officers that he had some marijuana in the handbag.

The police then took the defendant to the police station with the bag for a thorough search. During which search the Police Officers found ten packages of marijuana inside the bag with weights of 74.31, 50.80, 51.96, 43.94, 57.98, 54.85, 55.24, 56.57, 54.75 and 121.96 grams respectively. The defendant in his interview with the police admitted that he had in his possession dried cannabis leaves. Further, that the packages of dried cannabis leaves were to be passed on to a person named William and that he had come to town that morning to meet the said William and to pass on the cannabis to him. The defendant was detained at the police station for further investigation and later charged with the offence.

3. The Court had ordered a pre-sentence report to be prepared on the defendant and this order was complied with. The pre-sentence report states that the defendant understands the seriousness of the offence and that imprisonment would be likely. It is also submitted in the report that the defendant is a first time offender.
4. However, it is the Public Prosecutor's submission that the quantity of the cannabis is to be taken into consideration and that the nature and circumstances of the offending by the defendant, make this case a very serious offending which does not warrant any other form of sentencing but a custodial sentence. The Public Prosecutor in making its submissions as to the penalty to be imposed on the defendant in this case and applying the law to the facts of the case submitted the following:
 - That a penalty be imposed to denounce the conduct of the defendant and as deterrence to future offences of the same kind.



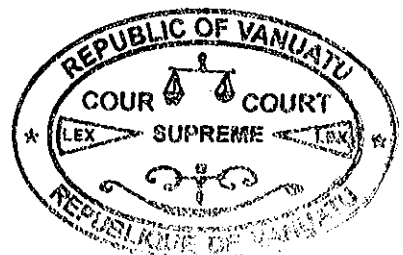
- The offence of being in possession and the use of cannabis is increasing and a sentence is to be imposed to serve as a warning to others out there in the community that the use of cannabis will not be tolerated in the community;
- That the public and the community need to be protected from drug taking;
- The sentence should show the seriousness of the offence which is reflected in the penalty imposed by legislation which is a fine not exceeding VT 100,000,000 vatu or a term of imprisonment not exceeding 20 years. See the case of **Naio v Public Prosecutor** [1998] VUCA 1.

5. The Public Prosecutor also relied on the case of **Public Prosecutor v Saki Mael & Ors** [2009] VUSC 18; Criminal Case 60 of 2006 (27 March 2009) *where the defendant and a co-defendant were charged with being in possession of cannabis leaves. In sentencing the defendants Justice Dawson stated:*

"In sentencing you today, Mr. Mael, it is important that I impose a sentence that will promote within you a sensible responsibility so this type of offending does not happen....."

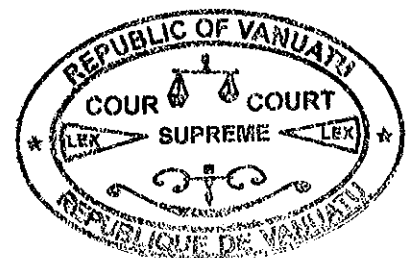
.....it is also necessary for me to denounce your behavior and make it clear that the use of cannabis is not acceptable in this community."

6. Defence counsel in this present case submitted that the defendant was remorseful of the offence he had committed and he had acknowledged the seriousness of offence and that he now understands that this kind of offence carries a heavy penalty. Counsel referred the Court to the cases of **Public Prosecutor v Ali** [2007] VUSC 59; **Public Prosecutor v Obed** [2011] VUSC 221 and **Public Prosecutor v Melteras** [2012] VUSC 21. In the latter case, 3 offenders were found packaging cannabis at a nakamal. The total weight was 156 grams. The Court ordered 250 hours community work plus supervision for 12 months.



7. In mitigation I have considered the following circumstances put forward by defence counsel as well as in the pre-sentence report:
1. The defendant is a first time offender and he is 28 years old and has two children - a son and a daughter.
 2. He pleaded guilty at the first opportunity.
 3. He is remorseful of the offence he committed.
 4. He has good relationship with family members and members of his community which shows a person of good character.
 5. The defendant is the sole bread winner of his family (two children and his wife).
 6. The defendant has plans for the future to build his own house.
 7. The defendant does not consume cannabis and the defendant said the cannabis was not his; he was to transport it to another person.
 8. The defendant was remanded in custody for 22 days at the correctional remand center from 10/02/2013 to 04/03/2013.
8. Having taken into consideration relevant case authorities and having considered the aggravating and mitigating factors in your case and recognising your early guilty plea, I will impose a sentence on you of 9 months imprisonment suspended for 12 months on condition that you commit no further offences. In addition, I impose on you a sentence of 12 months supervision with the following special conditions:
- (a) To undertake Niufala Road Program and/or any other rehabilitation programs available as directed by the Probation Officer.
 - (b) To undertake spiritual counseling with a Church Pastor as directed by the Probation Officer.
 - (c) To report to a Probation Officer as and when directed to do so.
 - (d) Not to re-offend

I should warn you that breach of your supervision conditions is an offence punishable with 3 months imprisonment and/or a fine of up to VT10, 000.



9. The Court also orders that the cannabis found in possession of the defendant be condemned in accordance with section 18 (1) (b) of the Dangerous Drugs Act [Cap 12].
10. You have 14 days within which to file a notice of appeal against this sentence if you do not agree with it.

Dated at Port Vila this 29th day of April, 2013.

BY THE COURT



M. M. SEY

JUDGE

