

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Criminal Jurisdiction)

Criminal Case No.30 of 2013

**PUBLIC PROSECUTOR**

**-v-**

**GROUP (1) – Teenagers**

1	ANTONIN VEBONG
2	YASANG KEKEP
3	PETO MASINGNALE
4	DONATIEN NALY
5	JEYSEN MEGISURMAN
6	HILLARION MARCOTH
7	JEAN BAPTIST LERU
8	BERNADIN DRALIKON
9	TASO SOKSOK
10	RAYMOND DRALIKON
11	SAKARI LOKVARU

**GROUP (2) – Young men**

1	BERNARD LOKVARO
2	FRANK LERU
3	ALBERT NALY
4	PIERRE TOKTOK
5	RECKLY KELEP
6	JOHN VANUASOKSOK
7	JEAN BATICK
8	BENEDICTO LOKVARO
9	OLIVIER SOKSOK
10	SANTOR MELEUN
11	MULLER BATICK EAL
12	JEAN YVES VEBONG
13	GUILLAUME LOKVARU
14	PHILIMON HEROMANLY
15	NASER HEROMANLY
16	PLACID LOKVARU
17	SIKO MARCOTH
18	BERTI LOKVARO
19	JEAN CLAUDE BATICK
20	BAMBU BAYEO
21	ZEVERAIN BAKOLILI
22	YVES NALI
23	FREDERICK VEBONG
24	PAUL NALO
25	ROMEO DRALIKON
26	MARADONA SOKSOK
27	PITA LEYMANG
28	FRANCIS LOKVARO
29	AXEL LOKVARO
30	SYLVANO BATICK
31	FERNAND BONG

**GROUP (3) – Mature men**

1	PATRICE THAVO
2	ALBANO TOKTOK
3	PATRICK MARCOTH
4	NARCISSE MARCOTH
5	JACQUE KOUBACK
6	JEAN VEBONG
7	CHANEL SOKSOK

**GROUP (4) – Women**

1	KANDIS DRA
2	SERAPHINE MAINGUISURMAN
3	JOANIE MAINGUISURMAN

**Coram:**

**Justice D. V. Fatiaki**

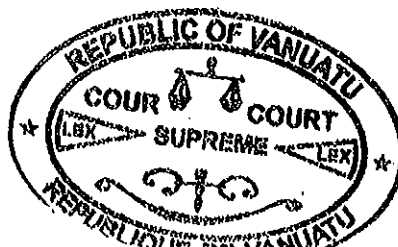
**Counsels:**

Mr. T. Karae for the State  
Mr. E. Molbaleh for 16 defendants  
Mr. A. Bai for 16 defendants  
Mr. B. Livo for 20 defendants

**Date of Sentence:**

28 June 2013

**SENTENCE**



1. This case arises out of a joint police task force operation entitled "*Step Up Goodwill Operation*" which involved a contingent of police officers going to **Lamap village** in **South Malekula** and conducting wide spread investigations into suspected large-scale cultivation of cannabis.
2. As a result of the operation 13 teenagers, 3 women, 34 young men and 6 mature men, in total, numbering 56 individuals were arrested and transported under police escort from South Malekula to Port Vila in April 2013 where they taken before the Magistrate's Court and each was charged with a single offence of: Cultivation of Cannabis Plant, contrary to Section 4 of the **Dangerous Drugs Act** [CAP. 12].
3. On **4 June 2013** when the defendants appeared in Court all but 4 of them, admitted the charge and were convicted on their guilty pleas.
4. I mean no criticism of the police operations when I say that greater thought and coordination is required to handle such a large number of arrestees. In this instance 56 able-bodied individuals who tended and maintained subsistence gardens for their families at Lamap village, South Malekula, were taken from their village and transported across the sea to a completely different island (**Efate**) many kilometers away. Such a large dislocation of menfolk from a single village would have a seriously disruptive impact on their respective families as well as their subsistence gardens. It also places considerable pressure on Court resources as well as on the resources and personnel of the Correctional Services Department who are ill-equipped to accommodate such a large influx of remandees.
5. In the result, because of this lack of resources and facilities available to house the 56 defendants, all were granted bail and ordered to live with an appointed guardian living in and around Port Vila. There were 26 guardians appointed to house the 56 defendants with some 12 appointed guardians billeting two or more defendants and, in one instance, a guardian had 8 defendants to house, feed, and care for. That has been the situation since 10 May 2013 and is a heavy additional burden imposed on the defendants' appointed guardians which could have been avoided with a bit more coordination and communication between police and other criminal justice agencies.
6. This was not a case involving fighting or rioting between different factions within the same village or between two neighbouring villages where the continued presence of the defendants in their village might re-ignite tensions and where the safety of other villagers could be endangered. No, this was a case where the defendants could safely have remained in their



home village without danger to other villagers, and the offending cannabis plants removed.

7. Having said that, the actual police investigations in the operation were professionally conducted, thorough, and systematic and included photographing many of the defendants in their own gardens surrounded by cannabis plants that each had cultivated. However, the weighing of the newly harvested green cannabis plants (as opposed to measuring their heights or lengths) is not entirely clear, as such plants would undoubtedly have a significant water content which renders the utility and results of such an exercise doubtful or inaccurate as pointed out by defence counsel Mr. Livo in his submissions.
8. Likewise, the Public Prosecutor should be commended for charging each defendant separately and including in the particulars, the number of plants that each defendant is alleged to have cultivated.
9. Under caution, each defendant admitted planting cannabis in his or her garden as well as knowing that it was against the law to do so. Each has admitted cultivating the number of plants where enumerated in the particulars, and, many claim to have planted the cannabis out of a sense of curiosity and after seeing other defendants cultivating it in their gardens. Some admitted to being users of cannabis and planted it not for any commercial purpose or reward, but, for his own personal consumption.
10. There is not the slightest doubt in my mind that whatever the reason or excuse for planting cannabis, cultivation of the prohibited plant was widespread in Lamap village gardens. Although there is no suggestion of cultivation being conducted covertly or in an organized or commercial manner, the large number of growing plants recovered during the police operation (400+ plants) and the large number of people cultivating it (50+ individuals) indicates the magnitude of the offending and the scale of planting.
11. On that scale, if all the defendant were regular users of cannabis (as some claimed) this would present a serious problem within Lamap village and could lead to social problems and disorder on a large scale. Whatsmore such an open defiance of the law also has the potential of bringing the law itself into disrepute and that cannot be ignored or condoned and the police must be commended for conducting the operation.



12. This Court too, has a solemn duty, first and foremost, to uphold and vindicate the law which binds all citizens and extends to all islands, villages and corners of Vanuatu.

13. For convenience in sentencing, I have separated the defendants into four (4) age groupings as follows:

- GROUP (1): Teenagers (under 20 years of age);  
GROUP (2): Young men (between 20 to 30 years of age);  
GROUP (3): Mature men (over 30 years of age);  
GROUP (4): Women.

14. By way of general mitigation, I record the following:

- All defendants are first offenders;
- All cooperated fully with police investigations and admitted the offences when questioned;
- All pleaded guilty at the first opportunity;
- All have expressed their regret and promise not to re-offend;
- All have come from supportive and most have dependant family members in Lamap village; and
- All were remanded in custody for a period of 3 weeks before being bailed by the Magistrate's Court.

15. In the absence of pre-sentencing reports, I acknowledge the comprehensive sentencing submissions provided by defence counsels as well as from prosecuting counsel which I found of considerable assistance.

GROUP (1): - Teenagers (under 20 years of age)

16. In this group there are 13 defendants aged between 14 and 18 years of age and each had planted an average of 6 plants in his garden.

17. The youngest is **Raymond Dralikon** who gave his birth date as 10 September 1999 which would make him 2 months short of his 14<sup>th</sup> birthday and is correctly described by defence counsel as "*only a child*". In his case the law states:

*"A person under 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate".*

In your case **Raymond Dralikon**, you still have all your life ahead of you. Don't waste it on drugs. I am willing to be very lenient with you on this

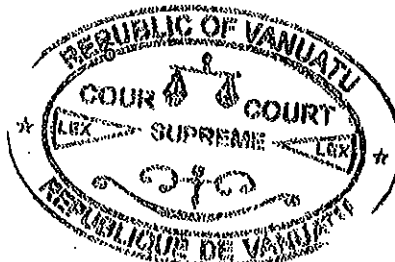


occasion. You are accordingly discharged without conviction under **section 55 of the Penal Code.**

18. None of the other teenage defendants reached secondary education and each offered a variety of reasons for planting cannabis. Most did so out of a sense of curiosity and following others, and some, because they smoked it. Most were aware that it is illegal to cultivate cannabis yet went ahead and did it.
19. For this category of offenders, I impose a sentence of 6 months imprisonment suspended for 2 years.
20. What this sentence means is that each of the defendants will be allowed to return to Lamap village today, but, each is warned that if he commits another offence and is convicted in the next 2 years then he will be required to serve 6 months imprisonment in addition to any other sentence he may receive for re-offending. My advice to this group is: stay out of trouble for the next 2 years and you won't have to serve this sentence.

**GROUP (2): - Young men** (over 20 years but under 30 years of age)

21. This group represents the majority of the defendants and although most left school at primary school level they are more mature and, on average, cultivated a larger number of cannabis plants.
22. In my view, there is a greater danger of recidivism and usage amongst members of this group if a deterrent sentence is not imposed and if they are not closely supervised and monitored. These defendants are "*role models*" for younger teenagers and have an opportunity to be an influence for good.
23. Accordingly, for this group I impose a sentence of 18 months imprisonment suspended for 3 years. In addition, I impose on each defendant a sentence of 300 hours of Community Work to be undertaken over a period of 24 months at Lamap village under the supervision of a probation officer or other authorized sponsor.
24. Each of these offenders is warned that if he re-offends and is convicted of another offence within the next 3 years he will be sent to prison to serve this sentence of 18 months imprisonment in addition to any other sentence he may receive for re-offending. Whether that happens or not is entirely in their hands and if any defendant does re-offend then he cannot expect the Court to be lenient towards him.



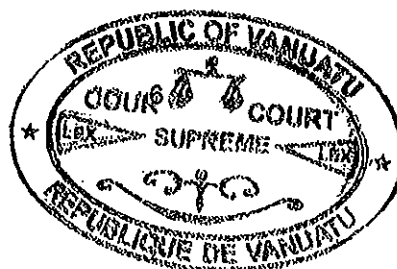
25. Additionally, each defendant is warned that breach of his Community Work order is an offence that carries a maximum penalty of 3 months imprisonment and would, itself, constitute a sufficient reason to activate his suspended prison sentence.

**GROUP (3): - Mature men** (over 30 years of age)

26. There are 6 defendants in this category with the eldest being **Patrice Thavo** aged 58 years of age. Most are married or in a steady defacto relationship with child dependants.
27. These defendants are older and more mature and as "*heads*" of their respective households they have a duty to lead by their example. Some also hold responsible leadership positions within the community.
28. In respect of these 6 defendants, I impose a sentence of 12 months imprisonment suspended for 2 years and 100 hours of Community Work to be performed over the next 12 months under the supervision of a Probation Officer or other authorized sponsor.
29. You are each warned that if you commit another offence and are convicted in the next 2 years, you will be sent directly to prison to serve this 12 months imprisonment sentence. You are also warned that breaching your community work sentence is an offence that could result in the activation of your suspended sentence.

**GROUP (4): - Females**


30. Amongst the defendants, there are three (3) females aged, 22 years (**Kandis Dra**); 29 years (**Joanie Mainguisurman**) and **Seraphine Mainguisurnam** aged 31 years of age.
31. All three females are single although Seraphine has an 8 year old son and all claim they planted cannabis because they saw others planting it and decided to try it out. None of them are admitted users of cannabis. In short, their curiosity got them into trouble.
32. The sentence I impose on each female defendant is 9 months imprisonment suspended for 18 months and 80 hours of Community Work.



33. Each defendant is also warned that although she is free to return to her home and family in Lamap, if she commits another offence in the next 18 months and is convicted then she will be sent directly to prison to serve 9 months imprisonment. Whether that happens or not in the next 18 months depends entirely on each defendant's actions and choices. However, if she chooses to lead a law-abiding useful and productive life for the next 18 months as she professes, then she will not have to serve her suspended prison sentence.
34. The foregoing sentences indicates a further reason why the defendants would have been better dealt with in Malekula rather than being transported to Efate. By that I mean, that the defendants having been released on suspended prison sentences and Community Work orders must now find their own individual fares and passages back to their home village at Lamap, South Malekula unless provision is made to transport them back as a group, in the same way that they were brought here from Malekula in the first place.
35. For completeness I order the forfeiture and destruction of all cannabis plants seized from the defendants' gardens within 14 days.
36. The defendants are advised that they can appeal against their sentences if they do not agree with it by filing a Notice of Appeal in the Court of Appeal within 14 days.

DATED at Port Vila, this 28<sup>th</sup> day of June, 2013.

BY THE COURT

  
D. V. FATIA  
Judge.

