

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

Criminal Case No. 01 of 2014

PROSECUTOR - VS - MARK TINING & HENRY TINING
PUBLIC PROSECUTOR - VS - MARK TINING & HENRY TINING

Coram: Mr. Justice Oliver A. Saksak

Counsel: Mr. Ken Massing for the State
Mr. Junior Garae for the Defendant

Date: 26th February 2014

SENTENCE

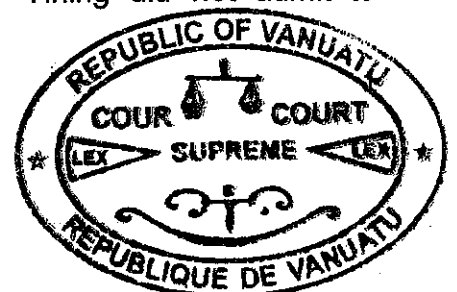
1. Mark Tining and Henry Tining, you both appear for Sentence today for cultivation and unlawful possession of cannabis.

2. Mark Tining on 7th February 2014 you pleaded guilty to one charge of unlawful possession of cannabis contrary to Section 2 (62) and to one charge of cultivation of cannabis contrary to Section 4 of the Dangerous Drugs Act Cap. 12 (the Act).

3. Henry Tining you pleaded guilty to one charge of unlawful possession of cannabis contrary to Section 2 (62) of the Act.

4. Based on your guilty pleas the Court hereby convicts both of you as charged.

5. The facts are simple. On 25th November 2013, Police Officers carried out checks on the defendants at the landing jetty at St Michel. They found leaves and branches in Mark Tining's bag and trousers with a weight of 42.113 grams. On Henry Tining the Police found cannabis weighing 0.383 grams. You both concede and accept those facts. Mark Tining admitted to cultivating a plant of cannabis. He also admitted to consumption. Henry Tining did not admit to



1
cultivation but he admitted consumption and possession. Both gave the reason being peer pressure.

6. In Sentencing both you I have considered your pre-sentence reports and the written submissions and cases made by both Mr. Massing and Mr. Garae.

7. I have considered and applied the Sentencing principles laid down by the Court of Appeal in the case of Wetul v. Public Prosecutor [2013] VUCA 26 and Boe v. Public Prosecutor Criminal Appeal Case No. 5 of 2013. I accept the defence submission that your offendings fall within category 1.

8. I consider that you have both spent 25 days in custody under remand prior to your pleas and bail application. It appears from your reports that you both have learned from that period of incarceration and as a result you both have made indications that you will not re-offend. I hope you both will maintain your positions in that regard.

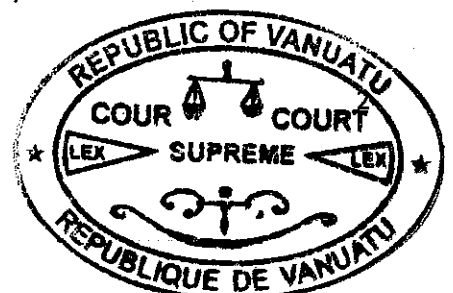
9. In light of the current trend of drug offendings in Vanuatu, I will follow the approach taken by the Court of Appeal in Public Prosecutor v. Tuk Sope [2004] VUCA. I consider that a deterrence sentence should be appropriate by imposing short term custodial sentences. However, considering your circumstances, those sentences should be suspended. I consider that to assist both of you walk on the positive side of life, you both should be placed under supervision.

10. Under those circumstances I now sentence both of you as follows:-

(a) Mark Tining – For Count 1 – Unlawful Possession of Cannabis – 6 months imprisonment concurrent with the sentence in Count 2.

- For Count 2 – Cultivation of Cannabis – 6 months imprisonment, concurrent with the sentence in Count 1.

Your current sentence of 6 months imprisonment is suspended for a period of 12 months (1 year).



Under supervision of the Probation Service for
suspended sentence with special conditions.
to the Probation Service within 72 hours.

(b) Henry Tining – For Unlawful Possession of Cannabis I sentence you to 6
months imprisonment. However this sentence is also
suspended for a period of 12 months (1 year) with
supervision under special conditions stated in the
appropriate order. You are to report to the Probation
Service within 72 hours.

You have a right of appeal against sentence if
either of you are not happy with it.

DATED at Luganville this 26th day of February 2014.

THE COURT

BY THE COURT

OLIVER A. SAKSAK
Judge


OLIVER A. SAKSAK
Judge

