

PUBLIC PROSECUTOR

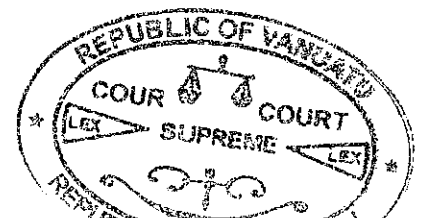
V

**WELBY KAMISAK
WAWIE KAMISAK**

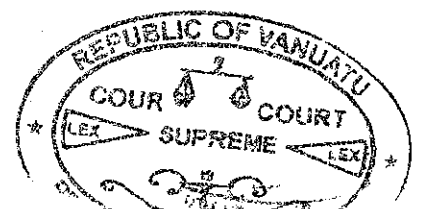
Sentence: *Wednesday 19 August 2015 at 9:45 am, Isangel, Tanna*
Before: *Justice SM Harrop*
Appearances: *Betina Ngwele for the Public Prosecutor*
Willie Kapalu for the Defendants

SENTENCE

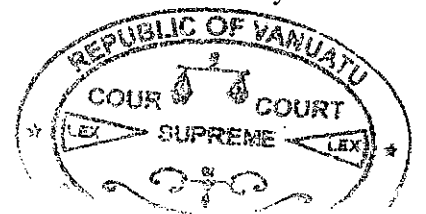
1. Mr and Mrs Kamisak, you are husband and wife, aged 46 and 43 respectively. You pleaded guilty to some cannabis charges earlier this week and you are here for sentence today following the preparation of helpful pre-sentence reports and written submissions by counsel. There are three counts to which guilty pleas have been entered. The first one, which you both face, was possession of cannabis, some leaves and small branches. The second one, which you also both face, is sale of cannabis again some leaves and small branches are referred to and third, faced by you alone Mr Kamisak, is cultivation of cannabis.
2. By the maximum penalties which the Parliament of Vanuatu has attached to this offending it is made very clear that drug offending is regarded as extremely serious in the Vanuatu community. The maximum penalty is 20 years imprisonment or a fine of up to Vt 100,000,000. The only sentence on the statute books of which I am aware that is more serious is that of life imprisonment for homicide and for sexual intercourse without consent.



3. The facts of the case are not disputed and I record them as follows: although you are both from Tanna and now living back here, you were at the time of this offending living in the Etas area on Efate. Towards the end of last year in October and November the chiefs in that area and some members of the community suspected that you were cultivating and selling marijuana to young people at Etas. The Police were informed and a search warrant was executed on the 3rd of November by the Drugs Unit and some parcels of dried cannabis leave and seeds were found and also some uprooted cannabis plants were found outside the house. There was also some money that was earned from selling dried cannabis leaves.
4. The chief who lodged the complaint said that despite efforts to stop you doing this you did not care (and I think that is a reference to you Mr Kamisak) about what the chiefs were saying so you continued selling cannabis to young people in the community. The amount of cannabis found during the search totalled 103.47 grams which is certainly not a large amount by comparison to some cases but on the other hand neither is it a small amount indicative of personal use.
5. When you were spoken to by the Police Mr Kamisak you said you preferred to speak in Court; that was absolutely your right and nobody can be penalized for choosing to do that. However, Mrs Kamisak you admitted that the allegations were true and explained that you had been cultivating and selling marijuana at Etas and you knew you had broken the law and for that you were very sorry.
6. It is difficult to assess the full gravity of the offending because there is no information about how much cannabis had been sold, how many sales there were, over what period they occurred and how much cannabis had been cultivated. The amount that was found which is really what lies behind the possession charge is relatively small as I have said but the general picture which you admit is that you were selling at least small amounts of cannabis grown by Mr Kamisak to young people in the Etas area.

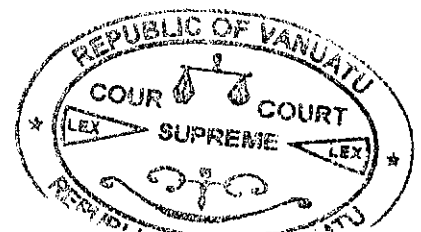


7. The Court is always much more concerned about sale and supply of cannabis than it is about possession for personal use. Depending on the amounts involved usually the former will result in a prison sentence although it may be suspended whereas the latter would normally involve a final sentence of community work perhaps with supervision.
8. Where, as here, there is evidence of selling cannabis to young people, the Court is particularly concerned because there is a good deal of scientific research about the serious and irreversible adverse effects which cannabis has on the brain development of young people. At a stage when they are too young to make good decisions about their long-term health they are at their most vulnerable from the effects of cannabis.
9. So I proceed on the basis that the sales to young people here amount to a significant aggravating factor. Also aggravating this case is the fact that you were told by the chiefs at least on one occasion it seems to stop doing what you were doing and it was only when you kept going despite that that the Police were brought in. That suggests an attitude which is of real concern to the Court. Not only were you doing something of detriment to the young people but you carried on even after older people in the community had told you it was wrong. All of that that suggests that the Court needs to send a very clear message both to you and to anyone else minded to offend in this way that this conduct must not occur in the communities of Vanuatu.
10. The pre-sentence report says, and I am looking first here at the one relating to you Mr Kamisak, you are married and you have four children of your own but also six adopted children, so you have a family of ten people. You should understand that by offending in this way you have put yourself at a risk of a sentence of imprisonment which would leave them without either of their parents. You were involved effectively in a criminal business which could well have resulted in both of you being sent to prison for a period of time and your children would have been left without the essential support you provide.
11. You are both otherwise however it seems of good character and making appropriate contributions both to your family and to the wider community.

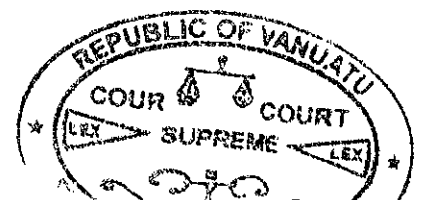


You are both first time offenders and at your age, you are entitled to credit for the significant number of years during which you have been valuable members of the community and have not offended in any way.

12. Mr Kamisak you candidly say that you did not see the conduct as wrong or serious at the outset but you now understand that it is seriously illegal and because of your awareness of that the Probation Officer says you are at a low risk of re-offending. Of course you have pleaded guilty at the first opportunity and each of you is entitled to a full discount of one-third from your sentence to reflect that. The Probation Officer suggests, if imprisonment is not to be imposed, that community work and supervision would be appropriate.
13. Some people think that drug offending is a victimless crime. It is not. In fact there are more victims than with most crimes because every person who consumes cannabis grown or sold by people like you becomes a victim who may suffer life-long consequences. Apart from brain damage, there may be an additional health problems and sometimes addiction can lead to them becoming offenders because they steal money to buy more cannabis. Their families may in turn suffer because the effects of cannabis make those people, if they are the breadwinner in the family, unable to think properly, unable to work properly and so maintaining employment can be a problem. So far from being victimless offending, drug selling can be seen as rather like dropping a pebble in a puddle: the ripples go out and you may not see where they all go but there are wide-ranging consequences.
14. I have also received helpful submissions from both counsel and essentially they agree that, with reference to the guideline sentencing case of *Colombus Wetul* [2013] VUCA 26, a prison sentence is required but that it is properly suspended for two years and that community work should be imposed. Both counsel accept too that supervision would be appropriate as suggested by the Probation Officer.

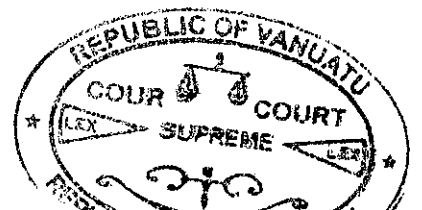


15. In assessing the appropriate sentence I turn to the leading case of *PP v. Wetul* which sets out three categories of cultivation offending, so in referring to that case I am primarily referring to your sentence Mr Kamisak because you are the one who has been convicted of cultivation. It is clear that of the three categories identified by the Court of Appeal in *Wetul*, your case is in category two, that is it encompasses small scale cultivation of cannabis plants for a commercial purpose i.e. with the object of deriving profit. The starting point of sentencing is generally between two and four years imprisonment but where sales are infrequent and of a very limited extent a lower starting point may be justified.
16. On the information before me I adopt a starting point of around 2 ½ years is appropriate for you Mr Kamisak and, while not strictly a cultivation case, as far as you are concerned Mrs Kamisak I adopt a starting point of around 18 months imprisonment because you were fully involved in the operation and despite not having directly been involved in the cultivation you knew what your husband was doing and the selling certainly involved you.
17. I note that you are both apparently now remorseful, I have recorded already your guilty pleas at the first opportunity. You are also living in a different place now back here on Tanna so the Etas community is free of the influence you had there. The concern of course is that you might be inclined to offend in this way in whatever community you live and the purpose of this sentencing is to discourage you as firmly as possible from doing so.
18. I take into account that it is some nine to ten months since this offending occurred and there has been no suggestion of further offending. And also there have been bail conditions restricting your liberty which in itself is a modest form of punishment. You have complied with those bail conditions which suggests that if I impose a sentence which leaves you in the community you are likely to comply with its conditions.
19. I have considered two other cases as well both Tanna cases. In *PP v. Iakei* [2014] VUSC 102, Justice Sey decided the appropriate outcome was a two



year prison sentence suspended for two years with 80 hours community work and supervision for six months. That was a much more serious case involving in excess of 500 plants although as I understand it there was no charge of cultivation involved. I have also considered the decision of the Chief Justice in *PP v. Waha* [2015] VUSC 50 where the sentence was 8 months imprisonment suspended for two years and 80 hours community work. That case was clearly not as serious as yours, involving 59 grams and no sale; the only charge before the Court was one of possession.

20. In all the circumstances, I have come to the view that the following prison sentences, albeit to be suspended, are appropriate. Mr Kamisak, from the starting point of two and half years or 30 months one-third or ten months must be deducted for your guilty plea. That brings it down to 20 months. I would reduce it by a further three months to recognise your absence of any previous convictions and previous good character. So that leaves me with an end sentence of **17 months imprisonment** and that will be suspended for two years.
21. Mrs Kamisak I start with 18 months in your case, it is reduced by 6 months or one-third for your guilty plea, bringing it down to 12 months and I would reduce that by three months to reflect your remorse, your previous good character and your immediate acknowledgement of responsibility so the end sentence for you is **nine months imprisonment** but I suspend that for two years as well.
22. What a suspended sentence means is that if you offend in any way, and that does not mean just in relation to cannabis, over the next two years you will be called on to serve the prison sentences that I have imposed. If however you keep out of trouble there will be no prison time served.
23. What is relevant though is that you do have drug convictions now and that means in effect a form of de facto suspended sentence for the rest of your lives, because if you were to come back before the Court at any time for cultivation or selling of cannabis almost certainly you would receive an



unsuspended prison sentence. If you did come back to the Court then the Judge on that occasion would have access to this judgment and would understand that you have been warned about that risk and have decided to take it.

24. Because I hope that there will be no actual prison time served, and I have some confidence that will be the case, it is appropriate also to impose community work and that will be in combination with supervision. When you offend in this way you have offended against the community, more particularly the Etas community in this case, but also against the wider Vanuatu community. Mr Kamisak I sentence you to 150 hours community work and to 12 months supervision on such conditions as the Probation Officer considers appropriate. By that I mean that if there are any aspects of education through which you can learn about the effects of cannabis then that would be highly desirable but I appreciate that the Probation Officer may be limited in his ability to deliver such education here on Tanna.
25. Mrs Kamisak I sentence you to 75 hours community work and to 12 months supervision on the same conditions.
26. Finally, each of you has 14 days to appeal against these sentences if you wish to do so. If you are inclined to do that you should speak to Mr Kapalu immediately after this hearing so that he can take the necessary steps.

BY THE COURT

