

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

Criminal
Case No. 21/3659 SC/CRML

BETWEEN: Public Prosecutor

**AND: Jimmy Iawia, Noel Aram, Sarlo Stephen, Jose
Kombey, Jean Ialoulou, Karlshem Bongran, Aisik
Abel Sam, Russel Taviri Tamata, Joe Lui Pakoa,
Serge Lewawa, Yvon Basil**
Defendants

Coram: Justice Aru

Counsel: Mr. G. Takau for the Public Prosecutor
Mr. D. Yawah for the Defendant (R. T. Tamata)
Mr. W. Kapalu for the Defendants (J. Iawia and N. Aram)
Mrs. L. Matariki for the Defendant (J. Ialoulou)
Mr. E. Molbaleh for the Defendants (K. Bongran, Yvon Basil, Serge Lewawa)
Ms. L. Bakototo for the Defendants (S. Stephen and J. Kombey)
Mr. C. Leo for the Defendant (J.L Pakoa)
Mr. R. Rongo for the Defendant (A. A. Sam)

SENTENCE

Introduction

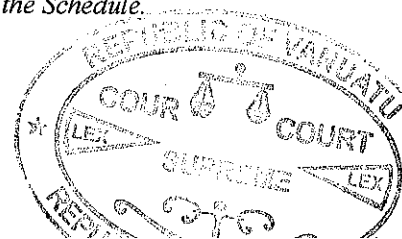
1. The defendants pleaded guilty to a single charge of failure to file their 2020 annual returns pursuant to the Leadership Code Act No 2 of 1998 (the Act) and now appear for their sentence.

The law

2. The defendants held positions which at the relevant time qualified them as leaders as defined by section 67 of the Constitution and section 5 of by the Act.
3. Part 4 of the Act deals with Annual Returns. Section 31 (1), (2) a) and b) states:-

"ANNUAL RETURNS

31. (1) Every leader must complete an annual return for the preceding year setting out details of the leader's assets and liabilities in accordance with the form in the Schedule.



(2) The annual return must be given to the Ombudsman:

(a) within 2 months of becoming a leader; and

(b) by 1 March in each year.

4. Section 33 states:-

"FAILURE TO FILE ANNUAL RETURN

33. A leader who:

(a) does not file an annual return as required by section 31, and after having been warned by the Ombudsman in writing of his failure to do so, fails to file the return within a further 14 days; or

(b) files a return knowing that it is false in a material particular;

is guilty of a breach of this Code."

5. Part 6 of the Act provides for punishment of leaders and s 40 provides for fines or imprisonment .Section 40 (2) a) and b) states:

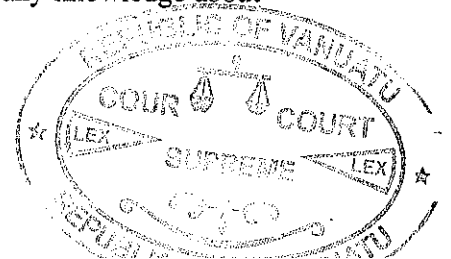
"(2) A leader who is convicted of a breach of section 33 is liable to:

(a) a fine not exceeding VT2,000,000; and

(b) if the offence is a continuing one to a fine not exceeding VT20,000 a day for each day or part day the leader remains in breach."

The facts

6. Between June 2020 and February 2021 the Ombudsman conducted numerous awareness on the requirements to file annual returns by 1 March 2020 through the Vanuatu Broadcasting and Television Corporation, the Ombudsman Office face book page and the government email network. Despite several attempts by the Ombudsman to inform all the defendants to file their annual returns, the defendants failed to file their annual returns by 1 March 2021. A warning letter was issued by the Ombudsman giving a grace period for the annual returns to be filed by 14 March 2021.
7. The defendants continued to ignore the warning letter and did not file their annual returns by 14 March 2021. The defendants were interviewed and all admitted having knowledge about the requirements for leaders to file annual returns except Jimmy Iawia, Noel Aram, Jean Ialoulou and Sarlo Stephen who denied any knowledge about the need to file annual returns.

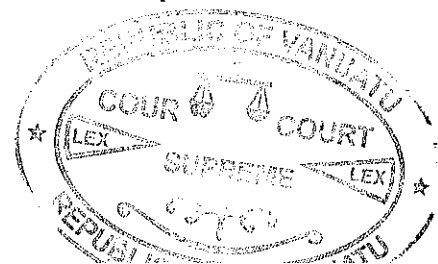


Submissions

8. Mr Takau submitted that the defendants fall into two categories namely non-filers and late filers. Non-filers being Mr Noel Aram, Mr Jose Kombey and Aisik Abel Sam. It was submitted that aggravating factors of their offending are their continuous failure to file their annual return, breach of trust in them as leaders and failing to lead by example. It was submitted that the starting point of their sentence must be a fine of VT 1,000,000. A one third deduction be allowed for their guilty plea and further deductions for other mitigating factors should leave an end sentence of a fine of VT 666,667 and VT5,000 for each day the leader remains in breach.
9. The rest of the defendants are the late filers namely Mr Jimmty Iawia, Mr Sarlo Stphen, Mr Jean Ialoulou, Mr Russel Taviri Tamata, Mr Joe Lui Pakoa, Mr Serge Lewawa, Mr Yvon Basil and Mr Karlshem Bongran. Mr Takau submitted that aggravating factors of their offending are that they breached the trust placed on them as leaders and they failed in their duties to lead by example.
10. It was submitted that the appropriate starting point of their sentence is a fine of VT 500,000. A deduction of one third be allowed for their guilty should leave an sentence of a fine of VT 333, 334. Further deductions may be allowed for other mitigating factors.
11. The gist of the defendants' submissions in response are that this is a first case of its type and the Court should be considerate in its decision as the defendants are all second tier leaders as opposed to Members of Parliament or Government ministers. It was also submitted that most of the defendants are first time offenders and were not aware of the warnings by Ombudsman .They all pleaded guilty at the first available opportunity. It was submitted that the appropriate sentence would be a small fine or a discharge without conviction or sentence.

Sentencing remarks

12. Leaders are required to file their annual returns for the simple reason that as leaders they must not abuse their positions for personal gain. The annual return requires leaders to declare all their assets and liabilities for the previous year. It guarantees transparency in the conduct of a leader. Despite numerous attempts by the Ombudsman to inform the leaders of their responsibility to file their annual returns some of the defendants did not file their 2020 annual returns whilst others filed their returns late, after the grace period had expired. Ignorance of the law is not a defence to any criminal charge.
13. Pre-Sentence Reports were filed in respect of some of the defendants not all. I have extracted the following personal information about those defendants from their reports.



Jimmy Iawia.

14. He is 44 years old and was appointed Second (2) Political Advisor to the Ministry of Finance and Economic Management on 4 May 2020. He completed his education at Year 9. He is married with 4 children and has no past record of offending. He is an active member of his community and involves in community activities. He filed his annual return after the grace period deadline of 14 March 2021. He regrets his failure to do so within time. He says the notice was served on the Ministry of Finance when he was on Tanna and was not notified to respond.

Noel Aram

15. He is 50 years old and was appointed Second (2) Political Advisor to the Ministry of Foreign Affairs on 1 June 2020. He is married with seven (7) children and eight (8) grandchildren. He has no past record of offending. He completed his education at primary school level and is an active member of his community and is the chairman of Entenvui Junior Primary school. He regrets his failure to comply but says his notice was served on the Ministry when he was on Tanna and was sent to him very late. His 2020 annual return remains outstanding.

Sarlo Stephen

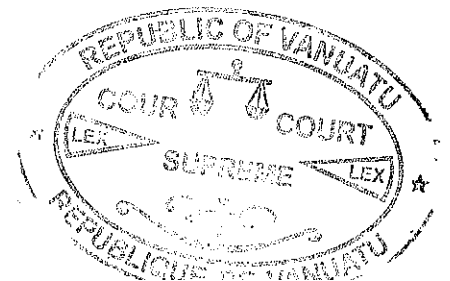
16. He was appointed Second (2) Political Advisor to the Ministry of Health on 21 April 2020. He did file his annual return but it was filed after the 14 March 2021 grace period deadline.

Jose Kombey

17. He is 59 years old with no past records of offending. He was appointed Third (3) Political Advisor to the Ministry of Trade and Commerce on 21 April 2020. He lives in a de facto relationship and has two young children. He completed primary education before undertaking some technical training in joinery. He is a strong and active member of his community and contributes towards community activities as confirmed by his chief. He regrets his failure to comply. He says he spends more time in the community than in the office. His 2020 annual return remains outstanding.

Jean Ialoulou

18. He was appointed Third (3) Political Advisor to Ministry of Foreign Affairs on 1 June 2020. He did file his annual return but did so after the 14 March 2021 grace period deadline.



Karlshem Bongran

19. He was appointed Commander of the Vanuatu Mobile Force on 15 April 2020. He also filed his annual return but it was done after 14 March 2021 grace period deadline.

Aisik Abel Sam

20. He is 64 years old and is married with six children. He has no past records of offending. He is a retired teacher and was elected as a member of the MALAMPA Provincial Council prior to 1 March 2021. He is a retired school teacher. Following completion of his primary education he obtained a certificate in mechanical studies from the Vanuatu Institute of Technology. He is an active member of his community and his chief confirms the defendant's involvement in developing his community. He regrets his failure to comply and says his difficulty was being on the island without access to email. His 2020 annual return remains outstanding.

Russell T Tamata

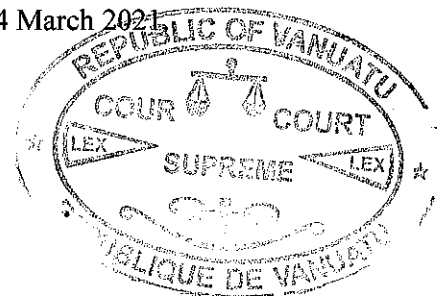
21. He is 53 years old. He is married with children. He has no past records of offending. He was appointed Director General to the Ministry of health on 28 May 2020. He is well educated with tertiary level qualifications in medicine and is an active member of his community. He involves himself in community as well as church activities as an elder in his church. His chief speaks highly of him. He regrets his offending and says he was busy with matters dealing with the COVID 19 pandemic and overlooked the dead line to file his annual return. He did file his annual return but did so after the 14 March 2021 grace period deadline.

Joe Lui Pakoa

22. He was appointed Director of the Department of External Trade on 6 February 2019. He filed his annual return but did so after the 14 March 2021 grace period deadline

Serge Lewawa

23. He is 45 years old and married with four (4) children. He has no past records of offending. He was appointed Director of Planning and Policy on 6 February 2019. He is highly well educated with a Doctor of Philosophy degree in the field of Education. He is an active member of his community and his chief speaks highly of his involvement and participation in community activities. He regrets his failure to comply within time. He says during the COVID 19 pandemic he was busy preparing other reports for the Department of Education and overlooked the deadline. He did file his annual return but did so after the grace period deadline of 14 March 2021.



Yvon Basil

24. He is 49 years old and married. He has no past records of offending He was appointed Director of the Department of Foreign Affairs on 26 February 2019. He is well educated with a degree in Economics. He is an active member in his community and his chief speaks highly of him. He regrets his offending. He says he was dealing with issues relating to the COVID 19 pandemic and omitted to file his annual return within time. He filed it after the 14 March 2021 grace period deadline.

End sentence

25. The defendants who did not file their 2020 annual returns (non-filers) are Noel Aram, Jose Kombey and Asik Abel Sam. To date they remain in breach and have continued to fail to file their 2020 annual returns. Each of them is sentenced to pay a fine of VT 400,000 and VT1,000 per day for each day the leader remains in breach.

26. The defendants who were late in filing their 2020 annual returns (later filers) and only did so after the grace period had expired are Jimmy Iawia, Sarlo Stephens, Jean Ialoulou, Karlshem Bongran, Russel Tamata, Joe Lui Pakoa, Serge Lewawa and Yvon Basil. Each of them is sentenced to pay a fine of VT 300,000.

27. The sentence is to serve as punishment for your failure to file your 2020 annual return. It should also serve as a deterrence to you and other leaders from failing to file your annual returns in future.

28. You have 14 days to appeal if you are dissatisfied with the decision.

DATED at Port Vila this 23rd day of November, 2022

BY THE COURT

