

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil Case No. 50 of 2005

PUBLIC PROSECUTOR

-v-

**PETER MARCEL
TOM KALIWAK
BLACKWELL TAMARU**

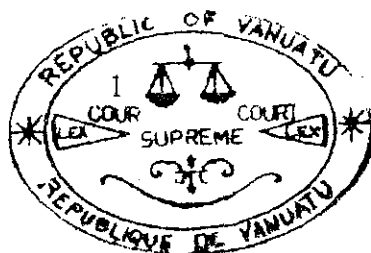
Coram: Justice Tuohy

Mr. Alain F. Obed for Public Prosecutor
Mr. Kausiama for Accused

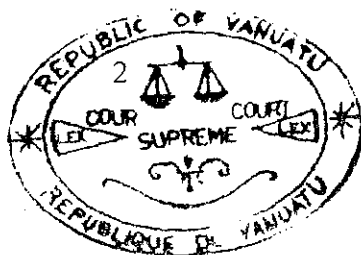
Date of Sentence: 24 November 2006

SENTENCE

1. Peter Marcel you appear for sentence having pleaded guilty to 1 count of unlawful entry contrary to section 143 of the Penal Code Act [Cap. 135] for which the maximum penalty is 20 years imprisonment because the place you entered is used for human habitation and 1 count of kidnapping contrary to section 105 of the Penal Code Act [Cap. 135] for which the maximum penalty is 10 years imprisonment.
2. These offences were committed jointly with you Blackwell Tamaru and you appear also for sentence in respect of them.



3. Peter Marcel you appear also on two further counts which are 1 count of false imprisonment contrary to section 118 of the Penal Code Act [Cap. 135] for which the maximum penalty is 10 years imprisonment and 1 count of inciting and soliciting kidnapping contrary to section 105 of Penal Code Act [Cap. 135] for which the maximum penalty is 10 years imprisonment.
4. These offences were committed jointly with you Tom Kaliwak and you appear for sentence in respect of them. All of these offences were committed as long ago as 20 February 2003 and I will have some more to say about that later.
5. These are very serious crimes as the maximum penalty of 10 and 20 years imprisonment makes clear. It must have been a very frightening thing for Owen Roger and a hurtful thing, without warning and without the chance to defend himself to be expelled from the village and community - his family had been living in it for 2 generations - for something which he was unjustly accused of because all educated persons will know that the idea that anyone can cast spells and cause death or illness in that way is wrong and not accepted by the Christian churches to which you belong.
6. Mr. Kausiama, who made fine submissions for the defendants, says that this is a classic illustration of a clash of custom with



the Western system of law. I do not know if custom permits what these 3 did – but what they did is certainly against the law of the Republic of Vanuatu. It is true that the law of the Republic in this area has its roots in Western thinking and that in turn has its roots in Christian principles. But it is not correct that the laws of the Republic of Vanuatu are laws made by Westerners. These laws in the Penal Code Act against kidnapping, burglary, and false imprisonment were made by the Parliament of Vanuatu – they are based on principles set out in the Constitution of Republic, mama loa blong Vanuatu, made not by Westerners but by the founding fathers.

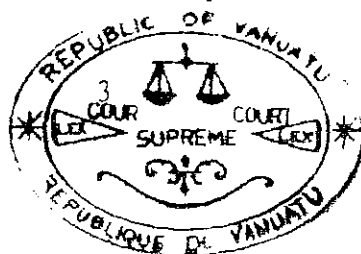
7. Article 5 (1) of the Constitution of the Republic of Vanuatu recognizes that all person are entitled to the following fundamental rights and freedoms of the individual:

- (h) liberty
- (i) freedom of movement
- (f) protection for the privacy of the home
- (d) protection of the law

8. Article 7 says:

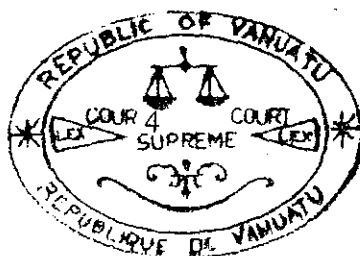
“Every person has the following fundamental duties to himself and his descendants and to others:

- (a) respect and act in the spirit of the Constitution***



(f) *to respect the rights and freedoms of others."*

9. In mitigation, as well as explaining the custom background to the offending, Mr. Kausiama submits that the defendants have pleaded guilty at the first opportunity as their sign of remorse, the defendants are first time offenders and they apologize to the victim and to the Court. He also explained to the Court the personal lives of each and that was helpful. You, Peter Marcel and John Kaliwak hold leadership positions in the community and have responsibilities in your communities and families. He submitted that a custodial sentence should be imposed but should be suspended.
10. Mr. Obed submitted that all of you took the law into your own hands and he referred to some cases of sentences for similar charges but different circumstances. He also submits that a custodial sentence is appropriate but that it be suspended and pointed out that these charges dated from 2003.
11. I consider these are serious offences and deserving of imprisonment as counsel acknowledge. I consider that there needs to be a differentiation between the 3 of you. You Peter Marcel are facing 4 charges, and Tom Kaliwak and Blackwell Tamaru only 2 each.



12. I consider that you Peter Marcel were the ringleader and Tom Kaliwak your lieutenant. You are both older men in leadership positions. Blackwell Tamuru has lesser guilt as only a young man and directed by the other two.

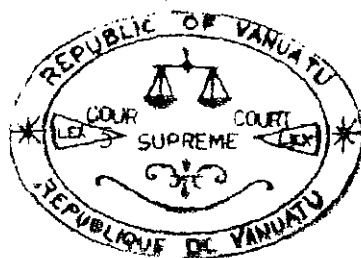
13. I consider terms of imprisonment should be:

Peter Marcel	-	3 years imprisonment
Tom Kaliwak	-	2 years imprisonment
Blackwell Tamuru	-	1 year imprisonment

14. I consider whether, as both counsel submit, the terms should be suspended. They have referred me to other cases of kidnapping and false imprisonment where that has been done.

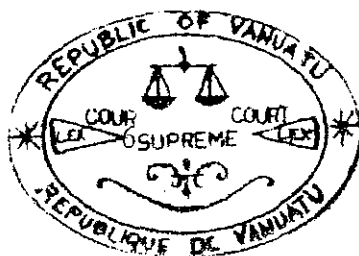
15. In my view, the time must surely have come when the Courts need to demonstrate that kidnapping and imprisoning and removing people is unacceptable and cannot be excused by claims of custom practice. These are basic laws protecting the liberty of the citizen of Vanuatu. If these offences had been committed in 2006, I would not have considered suspending the sentences.

16. However, I simply cannot ignore the fact that these offences took place in February 2003, nearly 4 years ago. Nothing has happened since then. It strikes me that it would be unfair to now



impose imprisonment nearly 4 years after the event, when the delay has been no fault of the defendants.

17. I want to say something publicly about this delay because it is unacceptable. The complaint was laid in the Court by the Public Prosecutor on 28 May 2005 – more than 2 years after the event. But the file shows that all the Police statements were taken within the first months of 2003 except one, the latest 16 January 2004 – so I assume the file was sent to Public Prosecutor's Office shortly after that but no complaint laid till end of May 2005. That is not good enough. The people of Tanna are entitled to expect that when serious crimes are committed in the community they will be investigated and the people responsible prosecuted within a reasonable time – and more than 2 years is not a reasonable time. It is also not fair on the Police who spent a lot of time investigating this important case. They deserve that their investigations are considered and acted upon in a timely manner.
18. Then there has been a further serious delay, I do not know why, in the Court system in having the preliminary enquiry which did not take place until more than 1 year after the complaint laid for reason I do not know. The only place there has been no delay is, I am pleased to say, in the Supreme Court. The defendants were called on to plead, convicted and sentenced in the 1st session after committal to Supreme Court.

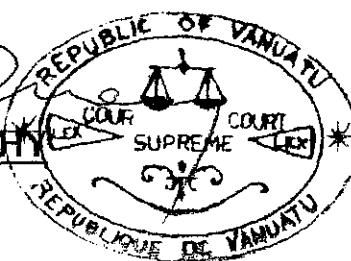


19. It is not good enough for this delay in criminal justice. Police, Public Prosecutor and Court must all have systems and policies in place so there are time limits in completion of investigations, laying complaints and disposing of charges and questions should be asked if those are not met. However purely because of these delays and the time passed since the offending, I intend to suspend each of these sentences for 2 years.
20. If you do not offend in the next 2 years the sentence will be cancelled. However, if you are convicted of any other offences, whether against this complainant or anyone else, it will go into effect in addition to anything you get for the other offending.
21. The sentences of 3 years – Peter Marcel, 2 years – Tom Kaliwak and 1 year – Blackwell Tamuru will be imposed on each charge you each face but concurrently.
22. You have 14 days to appeal this sentence if you are not satisfied with it.

DATED at Port Vila on 24 November 2006

BY THE COURT

C.N.
C. N. TUOHY
Judge

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME" are written, with "LEX" on either side of the scale.