

**PUBLIC PROSECUTOR -v- ROBEA SAKI
REUBEN HARRY
NICKA SINE
MATHIAS PAKOA**

Coram: *Chief Justice Vincent Lunabek*

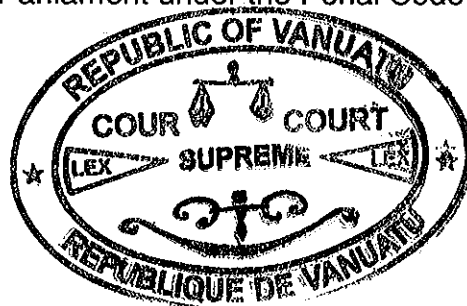
Counsel: *Mr Tristan Karae for the Public Prosecutor
Mr Eric Molbaleh for the Defendants*

SENTENCE

This is the sentence of Robea Saki, Mathias Pakoa and Nicka Sine. On 4 May 2010, each and all you three (3) Defendants except for Reuben Harry, you have entered guilty pleas and you have each been convicted on three (3) separate counts of Malicious Damage to Property, contrary to section 133 of the Penal Code Act, Unlawful Entering of Dwelling House, contrary to section 143(1) of the Penal Code Act and Theft, contrary to section 125(a) of the Penal Code Act [CAP.135]. The Defendant Rueben Harry was not present in Court on 4 May 2010 to take his pleas. A warrant for his arrest was issued on the same date. It is still pending for execution. He will be dealt with separately.

The maximum penalty for an offence of Unlawful Entry into a human habitation is 20 years imprisonment, 12 years imprisonment for an offence of Theft and a payment of a fine of VT5,000 or imprisonment for one year or for both fine and imprisonment for malicious damage to property.

The offences committed by you on 23 December 2009 are very serious offences as reflected in the maximum penalties set by Parliament under the Penal Code Act.



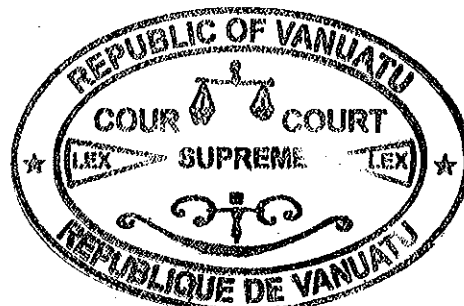
The brief facts are provided by the prosecution. They are accepted by your lawyer on behalf of each of you and they are this.

The complainant of this case is Mr Martin Zhing, a businessman in Port-Vila. On Wednesday 23rd December 2009 at 3:30am in the morning, the complainant was sleeping at his home when you broke into his house. At that time, Rueben Harry took a pinch bar, he gave it to Nicka Sine who cut the fence of the complainant and all of you entered into the complainant's yard. Thereafter, Rueben Harry and Nicka Sine entered the complainant's house from the back and went through the roof by breaking a white kappa while Robea Saki and Mathias Pakoa stayed at the veranda. Once inside the house, Rueben Harry and Nicka Sine then went and opened the main door. At that particular time, the complainant heard the noises from the main door and woke up.

The complainant then went into the bathroom and when he came out, Rueben Harry immediately got hold of him and hit his left hip with the pinch bar to which the complainant felt onto the floor. As a result, the complainant was badly bruised by the blow to his left hip.

On the floor you then threatened the complainant with a knife and you repeatedly continued to threaten the complainant to give money. The complainant at that point was extremely scared and saw that each and all of you were serious; so he begged you not to kill him and that he agreed to give you money. The complainant went to the cupboard and took two million Vatu (VT2 million) and gave it to you. Apart from the two million Vatu (VT2 million), you also took the complainant's hand watch, DVD player and mobile phone.

You then left and went towards the Chief Nakamal where you shared the money amongst you. Rueben Harry was then in charge of the sharing. Rueben Harry gave VT200,000 each to Mathias Pakoa and Nicka Sine while Robea Saki got VT300,000. Rueben Harry kept the rest of the money for himself including the mobile phone and the DVD player.



During the investigations, the police have not recovered any of the items stolen by you to these days.

You were then arrested for caution and the interview. During the interview, you admitted all the allegations put against you by the complainant.

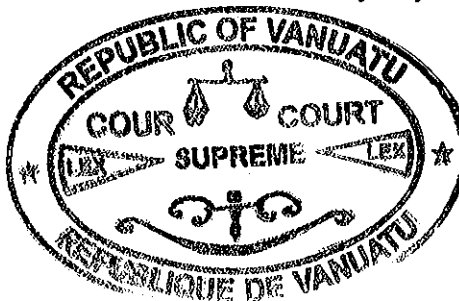
In considering your sentencing, I hear, read and consider submissions from the Public Prosecutor and your lawyer. I have also read the pre-sentence reports filed by the probation office on your behalf. In your sentencing, the Court condemns in the strongest terms your behaviour. It is not tolerable and not acceptable to break into private homes during the night, threatened to kill occupants and stole their money with menaces, threats or violence.

The starting point of an appropriate sentence in the circumstances of this type of offending is between six to eight years imprisonment for unlawful entry; six to eight years for theft and six to eight months for malicious damage to property.

The gravity and the circumstance of your offending include the following aggravating factors:

- Some degree of planning and premeditation;
- It was a joint criminal enterprise. You grouped together to carry out these criminal activities;
- The amount you have stolen from the complainant was a very large sum of money (VT2,000,000);
- You threatened to kill the complainant before you stole his money; and
- You committed those offences during the night.

I sentence each of you to seven years imprisonment for Unlawful Entry, contrary to section 143(1) of the Penal Code Act seven years for Theft, contrary to section 125(a) of the Penal Code Act and seven months imprisonment for malicious damage to property, contrary to section 133 of the Penal Code Act [CAP.135]. I then increase your respective terms of imprisonment for Unlawful Entry by 2 years; your



imprisonment terms for theft by 2 years and your imprisonment terms for damage to property by 2 months to reflect the above aggravating factors.

Each of you receive a total sentence of 9 years imprisonment for unlawful entry; 9 years imprisonment for theft and 9 months imprisonment for malicious damage to property.

In mitigation, the following information is provided by your counsel on behalf of each of you and also from your pre-sentence reports:

Robea Saki

You come from a family of six children and you are the second eldest child of Mrs Amelia Saki and Mr Saki from the Island of Malekula. You are 27 years old and you live in a defacto relationship with your partner and you have two children. You entered guilty pleas on the counts of unlawful entry, theft and malicious damage to property on the first opportunity given to you by the Court. You are a first time offender and you have no previous convictions in your record. You are the only person employed in your family. Your mother and father are unemployed and they all live together including your partner and children. You contribute to your community. You acknowledge the seriousness of your offending and you had expressed remorse for your actions. You have expressed your determination to live a crime free life and not to re-offend. Your supervisor in Remand Centre stated in the report that your behaviour in the Centre is very good. You do not complain or cause any problem. He describes you as a quiet man and always follows the rules.

I reduce your sentences to 5 years imprisonment for both unlawful entry and theft and 5 months for damage to property taking into account of the mitigating factors I mention above. In addition, I am informed you have already spent 4 months and 1 day in custody. It is a substantive period. Instead of reducing this period, I made an assessment in accordance with Withford principle and I give you an allowance of 12 months taking into account of your good behaviour during your pre-trial custody and the fact that you are a first time offender. I sentence you to 4 years imprisonment for both unlawful entry and theft and 5 months for malicious damage to property. You



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shall serve these terms of imprisonment concurrently. This means that you shall serve 4 years imprisonment and this with immediate effect.

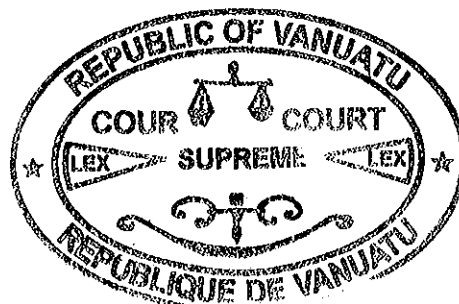
Mathias Pakoa

You are 21 years old. You came from Leiwaina Village in the Island of Tongariki in the Shepherds group of Islands. You have two elder brothers and a young sister. You have good relationship with your mother and step-father. You live with your parents at Switi area, in Port-Vila at the time of your offending. You attended French Primary School of Anabrou and you completed your primary education. You could not attend secondary education because of the school fees problem. Before your offending, you live with your grand parents at Lamine Village, North Efate and help them doing gardening.

You entered guilty pleas on the three counts charged against you of unlawful entry, theft and malicious damage to property. You are a first time offender and you have no convictions in your record. You claimed you were influenced by Rueben Harry to offend. You stated you met Rueben Harry during the day of the offence. You met Harry while swimming at Tagabe River. Mr Rueben invited you to have some kava at Ohlen that evening. You followed Mr Rueben Harry to the Nakamal and Mr Rueben Harry informed you about his plan to offend at the complainant's residence. You were given 200,000VT from the total of 2 million stolen that night. You used it for kava and alcohol drinks. You thought you will never be caught by the police. You now express regret and remorse for your offending.

I reduce your sentence to 5 years imprisonment for both unlawful entry and theft and 5 months for damage to property taking into account of the mitigating factors referred to above.

You have already spent a period of 3 months and 27 days in pre-trial custody. It is a substantive period. Instead of deducting from your total sentence, I give you an allowance of 12 months on the rational of Withford principle taking into account of your age and you good behaviour.



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You are sentenced to 4 years imprisonment for both unlawful entry and theft and 5 months for malicious damage to property. You shall serve these terms of imprisonment concurrently. This means that you shall serve 4 years imprisonment and this with immediate effect.

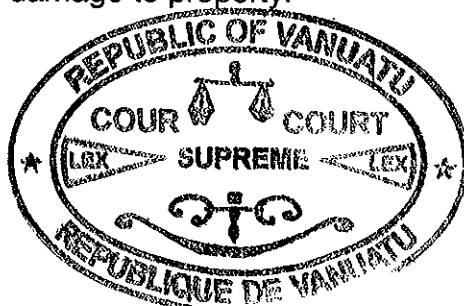
Nicka Sine

You are now 23 years of age. You originate from Aute Village in the northern part of Pentecost Island. You reside with your de facto wife and your two daughters at Ohlen area. You have a deceased son. You completed your primary education and achieve a certificate. You did not continue your secondary education because as you stated you are not interested in school. You have skills in welding, building and producing local timber. Your ambition in life is to buy a land but you said it is not possible due to the current high costs of living. You were employed by a local timber company for more than a year in 2007. In 2009, you were employed by Vate Industries and you were sacked by the Company because you complained about low salary that you earned.

You are not a first time offender. Today you appear for sentencing for committing the offences of unlawful entry, theft and damage to property.

On 28 July 2008, you were sentenced to a 2 year concurrent imprisonment concurrent for unlawful entry and for theft which was suspended for a period of 2 years. You have clearly breached the conditions of your suspended imprisonment sentence as you have re-offended, you were charged and convicted during the period of your suspension.

You will today receive two (2) separate sentences. Your first sentence relates to your offending of 23 December 2009 and subsequent convictions on 4 May 2010. That is the present case. I reduce your sentence to 5 years imprisonment for both unlawful entry and theft and 5 months for malicious damage to property.



I am informed you have spent a period of 3 months and 1 day in pre-trial custody. It is a substantive period. Instead of deducting the period from your total sentence, I give you an allowance of 12 months on the rational of Withford principle.

You are sentenced to 4 years imprisonment for both unlawful entry and theft and 5 months imprisonment for damage to property. You shall serve these terms concurrently. This means that for your present convictions you shall serve a term of 4 years imprisonment with immediate effect.

In addition, as you have breached the conditions of your suspended sentence of 2 years imprisonment by committing the similar type of dishonest offences again, which resulted in your current convictions, I re-activate your suspended 2 years term of imprisonment passed on you on 28 July 2008. I have applied my mind as to whether or not I should apply section 57(1)(d) of the Penal Code Act, however, no circumstance justify it. On the contrary, the pre-sentence report reveals that during your suspension of imprisonment sentence, you failed to carry out the conditions set for your probation.

You shall serve your 2 years terms of imprisonment consecutively to your sentence of 4 years imprisonment passed on you in this case. This means that you shall serve a total of 6 years imprisonment with immediate effect.

Robea Saki, Mathias Pakoa and Nicka Sine, each of you has a right to appeal your sentence if you are not happy with it. You have 14 days to do that from today's date.

DATED at Port-Vila this 27th day of July 2010

BY THE COURT

**Vincent LUNABEK
Chief Justice**

