

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

Criminal Case No. 73 of 2010

**PUBLIC PROSECUTOR
V.
SAKI ROY**

Criminal Case No. 75 of 2010

**PUBLIC PROSECUTOR
V.
SAM ABEL**

Criminal Case No. 76 of 2010

**PUBLIC PROSECUTOR
V.
TOBI FRANK**

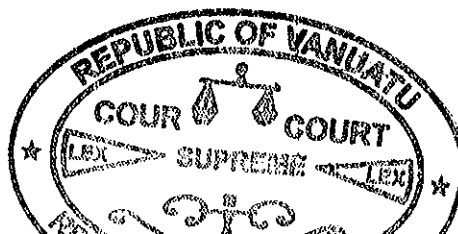
Coram: *Justice D. V. Fatiaki*

Counsel: *Mr. G. Takau for the State
Mrs. B. Pakoasongi for the Defendants*

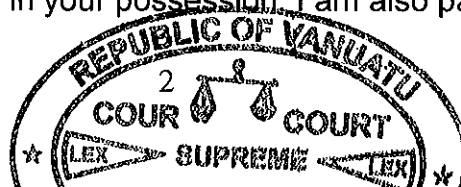
Date of Sentence: *7 October 2010*

SENTENCE

1. Although these three defendants were charged and committed separately, the facts outlined by the prosecutor makes it clear that they were all involved in the one criminal activity and each participated in it albeit in different capacities. I have decided as a matter of convenience to deal with all three cases in one sentencing exercise.
2. Tobi Frank pleaded guilty to an offence of Supplying a Prohibited Substance contrary to section 2 of the Dangerous Drugs Act; Sam Abel pleaded guilty to an offence of Possession of a Prohibited Substance and Saki Roy also pleaded guilty to Possession of a Prohibited Substance. The prohibited substance involved in all three cases was dried cannabis leaves.



3. The brief facts of the case begins with Tobi Frank who comes from Nuvi Village on the island of Epi. He was the immediate source of the cannabis leaves which he transported from his village to the house of Sam Abil where he was staying at Lumbukuti Village on Tongoa island. On arrival at Tongoa his friends pestered him for some cannabis and after unsuccessfully denying that he had any, he relented and gave them the cannabis leaves he had brought from Epi which were wrapped in newspaper. The assembled youths shared the cannabis including Sam Abil who took his share to the house of Toara Alick. At this last house Saki Roy became involved with the cannabis when he began to roll it into cigarettes.
4. Tongoa police acting on information arrived at Toara's house and confiscated the cannabis leaves. Their enquiries as to the source of the cannabis eventually traced it back to Tobi Frank. All three defendants were later arrested and charged. Unfortunately the confiscated cannabis leaves were not weighed and therefore that relevant and important factor cannot be considered in this sentencing exercise.
5. I have received pre-sentence reports on each defendant as well as sentencing submissions from the prosecution and from defence counsel which I have carefully considered. Before dealing with each defendant in turn there are some common mitigating elements that may be conveniently listed as follows:
 - All 3 defendants cooperated with police enquiries and admitted their respective roles in the handling of the cannabis leaves;
 - All pleaded guilty in Court;
 - All are young unmarried men in their early 20s;
 - All are first offenders; and
 - All have been in custody since their committal on 17 August 2010 ie. 1 month and 17 days;
6. I turn next to consider the involvement of each defendant. Tobi Frank you are the eldest of the group with the most schooling and you must bear the greater responsibility for this criminal activity because you were the source of the cannabis leaves and you knowingly transported it from Epi to Tongoa. I accept that you were pestered into supplying the cannabis but that does not excuse you bringing it with you from Epi in the first place. I understand you live in a defacto relationship and have an infant son.
7. Sam Abil you also live in a defacto relationship and I accept the pre-sentence report that you are not a known cultivator or user of cannabis. You are a successful subsistence farmer and have a strong desire to improve yourself in life. You have 1000 kava plants which you hope to sell one day and buy materials to build a modern house. I also accept that this was a "silly mistake" not of your making and whatever cannabis leaves you had were not long in your possession. I am also particularly impressed



by the impassioned plea of your paramount Chief Tinabuamata, your parents, and your village community to spare you from a prison sentence.

8. Finally Saki Roy although you are also charged with Possession of Cannabis, your case is more serious than Sam Abil's in that you were a willing participant in possessing the cannabis leaves and, in fact, you were in the process of rolling it to be smoked when the police intervened. Then when you were questioned by the police you claimed that you were rolling tobacco leaves. In other words you were aware of the illegal substance you were handling and you tried unsuccessfully to avoid detection. You also admit to being a user of cannabis since 2004.
9. In determining the nature and length of sentence I should impose on each of you I have also considered the various sentencing precedents referred to in counsels submissions including: **PP v. Donald** [2003] VUSC 19; **PP v. Eric Kalo** [2009] VUSC 21 and **PP v. Frank and August Ishmael** [2005] VUSC 103 where short suspended prison sentences and other non-custodial sentences were imposed.
10. I do not consider that the circumstances of this case warrants any of you being sent to prison today, but, having said that, I have a duty to ensure that you understand the seriousness of your behaviour and that each of you acknowledges that what you were doing is against the law. You must also be made to realize that the availability and use of cannabis is growing in this country especially amongst young men and its effects are harmful to users as well as to the wider community. It has been described as a "scourge" and a "curse" and the Courts have a duty to prevent it spreading in the community.
11. Accordingly the sentence of the Court is as follows:
12. **Tobi Frank** as the source and supplier of the cannabis leaves you are sentenced to 12 months imprisonment suspended for 2 years. You are also ordered to undergo a sentence of 12 months Supervision with the following special conditions:
 - (i) That you undergo counseling as directed by a probation officer;
 - (ii) That you return to Epi and remain there whilst under supervision;
 - (iii) That you do not travel to Tongoa island whilst under supervision; and
 - (iv) That you perform a custom ceremony to Chief Kora and the Nuvi village community upon your return to Epi.
13. **Sam Abil** as the least culpable person amongst the 3 of you, I propose to take the unusually lenient step of making an order under section 56 of the Penal Code. This means that I will not sentence you today but you must appear for sentencing if you are called upon by the Court in the next 12 months. I am confident that you will stay out of trouble and will not have to be called upon to appear for sentencing for this offence.



14. Finally, I turn to you **Saki Roy**. I have noted your frank admission in your pre-sentence report of having been in trouble in your village in the past and being punished by Chief Tinapua. It is a shame that you have continued with your anti-social behaviour and now have ended up in court and been convicted. I understand however that you have learnt a salutary lesson from your brief experience of life in custody and that you wish to return home. I impose on you a sentence of 9 months imprisonment suspended for 2 years. I also sentence you to 12 months Supervision with the following special conditions:
- (i) That you undergo counseling as directed by a probation officer to address your anti-social behaviour and drug use;
 - (ii) That you return to Tongoa and remain there whilst under supervision;
 - (iii) That you do not travel to Epi whilst under supervision; and
 - (iv) That you perform a custom ceremony to Chief Tinapua, your family upon your return to Tongoa.
15. I must warn you Tobi Frank and Saki Roy that your suspended prison sentences mean that if you commit another offence in the next 2 years and are convicted, you may be required to serve these prison sentences immediately and in addition to any other sentence that may be imposed on you for your re-offending. If however you stay out of trouble for 2 years and comply fully with your Supervision conditions then you will not have to serve these prison sentences. What path you choose to follow in the next 2 years is entirely in your hands but if you do return to court again you can expect to go to prison.
16. You each have 14 days to appeal against your sentence if your do not agree with it.

DATED at Port Vila, this 7th day of October, 2010.

BY THE COURT

