

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

Criminal Case No. 15 of 2010

**PUBLIC PROSECUTOR**  
**V.**  
**KNOX KALSAKAU**

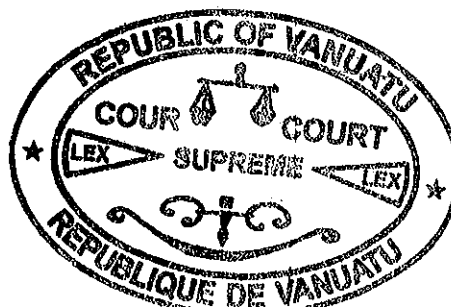
**Coram:** *Justice D. Fatiaki*

**Counsel:** *Mr. Tristan Karae for the State*  
*Mrs. Bertha Pakoasongi for the Defendant*

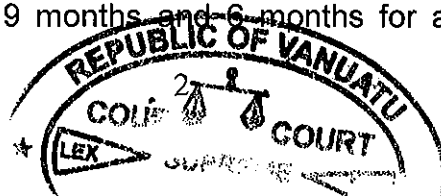
**Date of Sentence:** *14 June 2010*

**SENTENCE**

1. Knox Kalsakau on 2<sup>nd</sup> March 2010 you pleaded guilt for Possession of a Prohibited Substance namely 0.99gms of cannabis. This is an offence against section 2 (13) of the Dangerous Drugs Act [CAP. 12] and carries a maximum penalty of a fine up to VT100 million and/or imprisonment for up to 20 years or both.
2. The brief facts are that you were arrested by police following a complaint by your parents that you had been smoking a lot of marijuana and had at one time, threatened them with a knife. Knox Kalsakau in case you need reminding let me say this to you, it takes a lot for parents to complain to police about their child. Your behaviour was so out-of-control that they overcame their natural instinct to protect you and in desperation, they lodged a complaint with the police. That is an indictment of your behaviour towards your parents.



3. When you were arrested at Malapoa you tried to stall the police officers but eventually you gave them your wallet and when it was opened, the officers found some seeds, dried leaves and 2 joints wrapped together in a parcel. The leaves later tested positive for cannabis. When interviewed you frankly admitted buying the cannabis from some unknown woman and you admitted you had been using cannabis for over 2 years. You started using cannabis as a result of succumbing to peer pressure and because you wrongly thought it might help you with memorizing your school work. Nothing could be further from the truth.
4. Knox Kalsakau your pre-sentence report indicates that you come from a loving and supportive family and are the eldest of 4 children. As the eldest child you have a responsibility to be a good example and role model to your younger siblings. Smoking marijuana and threatening your parents is not the behaviour of a good role model. You are currently attending year 12 at Onesua Presbyterian College and you hope to graduate in December 2010 and find a job.
5. Knox Kalsakau you are a student with your whole life still ahead of you. This is your first offence and I understand that you have personally apologized to your parents and family for your misbehaviour. You have remained out of trouble for the past 2 years since this offence<sup>27</sup> was committed and you have returned to school.
6. The Probation Officer who prepared your pre-sentence report states that you present a "low risk of re-offending" and he recommends that this Court discharge you without conviction so as not to prejudice your future chances. Prosecuting and defence counsel are united however in urging a suspended sentence of imprisonment as the appropriate penalty in this case.
7. In *Tukoro v. PP* [1999] VUCA9 the Court of Appeal substituted suspended prison sentences of 9 months and 6 months for a sentence of 5 years



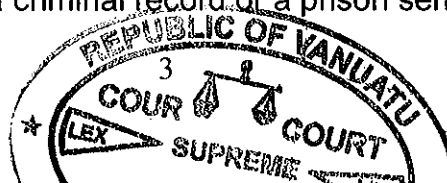
imprisonment in a case involving the importation and possession of 134 cannabis seeds and cultivating cannabis. That was undoubtedly, a much more serious case than the present.

8. Similarly in PP v. Ananias Bula [2006] VUCS91 which was a case of possession of 622.8gms of cannabis and attempting to sell cannabis the Chief Justice said:-

*“Cannabis is now spreading in Vanuatu despite the prohibition by Parliament. It is a serious offence. The range of aggravating within the local context is from use and possession of cannabis in the middle range and cultivation which is the highest range on the local scale of individual drug offenders.”*

In that case, the defendant who pleaded guilty, was sentenced to concurrent sentences of 2 months imprisonment suspended for 2 years.

9. In terms of the range of offending, the defendant's offending in this case must be considered as being at *“the lowest range”*. He is also assessed as having good future prospects and is not a threat to the community. He has the support of his parents, chiefs and community and this Court must consider the possibility of keeping the defendant within that productive and supportive environment.
10. The Defendant is a first offender and readily admitted and apologized for his misbehaviour. He has been variously described in the pre-sentence report as being *“16 years of age”* and *“15 years of age at the time of offending”*, although his date of birth is given as 01 May 1987 which would make him closer to 21 years of age at the date of the offence.
11. Knox Kalsakau I am willing to give you the second chance you ask for. I am also very conscious that the complainants in this case, your parents, could never have imagined that their desperate cry-for-help would result in giving you, their son, a criminal record or a prison sentence.



12. In all the circumstances I am satisfied that this is an appropriate case for the exercise of section 55 of the Penal Code Act [CAP. 135] Knox Kalsakau you are accordingly discharged without conviction. In doing so I hope that you have learnt the error of your ways and the dangerous effects of using cannabis, and, I trust you will not abuse or waste this opportunity given you to become a productive and law-abiding citizen.
  
13. Finally in exercise of section 18 (1) of the Dangerous Drugs Act [CAP. 12] I order the forfeiture and destruction of the cannabis seeds and leaves recovered from the Defendant.

**DATED at Port Vila, this 14<sup>th</sup> day of June, 2010.**

**BY THE COURT**

