

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

**Criminal Case No. 79 / 2009
Criminal Case No. 17 / 2010**

PUBLIC PROSECUTOR

V

KEVIN KALO (aka KEVIN ILUL AKAR)

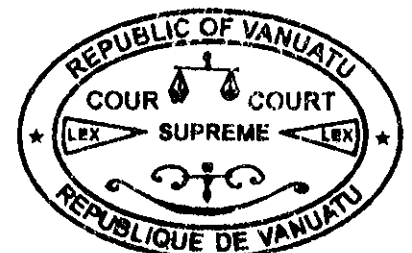
Hearing: *1 August 2011*

Before: *Justice Robert Spear*

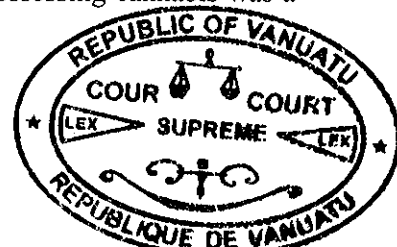
Appearances: *Leon Malantugun for the State
Eric Molbaleh for the Prisoner*

SENTENCE

1. Kevin Kalo (also known as Kevin Akar), you are for sentence on two counts relating to the illegal possession of cannabis.
2. No issue is taken with the summaries of facts that have been presented by the Public Prosecutor.
3. We are able to proceed to sentence today notwithstanding the absence of a pre-sentence report which was, indeed, called for. Mr Molbaleh indicates that there is little that could be covered in a pre-sentence report that could help this prisoner. I note that he has already declared to the Court, through the Police statement, that he takes issue with possession of cannabis being a crime and that he considers that he has committed no wrong. However, it is also clear that he also appreciates that possession of cannabis and dealing with cannabis is against the law of Vanuatu.



4. This is a case where I consider I can proceed to sentence without the further delay that would of course occur if we were now to wait further for a pre-sentence report to be prepared. In short, the prisoner has shown a defiant attitude towards the prohibition of the use of cannabis and his personal circumstances can count for little. Most certainly, there is nothing that has been raised with me by Mr Molbaleh to indicate that the accused has seen the error of his ways and that he would benefit from drug and alcohol counselling.
5. The first offence in time is specified as Criminal Case No. 79 of 2009 (Kevin Kalo) although his conviction was not entered until 16 June 2011 following a trial of the charge. The facts are clear and, indeed, not disputed. On 11 April 2009, the prisoner approached a prison officer at the Ex-British prison and asked if he could see a certain detainee, one Dais Bice, to whom he said he was related. Mr Dais Bice was known to be a long term drug user and obviously the prison officer became very suspicious that the bag being carried by the prisoner might contain illegal drugs. The prisoner was directed to the Women's prison where he as informed that Mr Dais Bice was at that time for reasons that have not been explained. The prison officer then enlisted the assistance of other prison officers and the police and that team stopped the prisoner on the street before he reached the Women's Prison. He was then searched by the Police on suspicion of committing a criminal offence. He was found to have some 46.3 grams of cannabis in packaged form. He admits that it was his intention to give the cannabis to this inmate, Dais Bice.
6. This charge took some time to move through the criminal justice system and this passage was not helped by the prisoner absconding from bail for a significant period of time.
7. I turn now to the second offence in time under Criminal Case 88 of 2010 (Kevin Akar) and again it is a charge of possession of cannabis. The accused was on bail on the earlier matter at the time of this offence. A police undercover operation caught the defendant standing in the market selling cannabis in Port Vila. He was found with some 286.71 grams of cannabis in a bag. He admitted that he had the cannabis to sell it. Subsequently, he appeared and pleaded guilty to this charge.
8. He convinced the Court that he should be granted bail but he then absconded. A warrant for his arrest was issued on 9 September 2010. The prisoner was not located until 3 May 2011. This sentencing hearing was then put on hold awaiting the outcome of the earlier charge Criminal Case No. 79 of 2009 to which charge the accused had pleaded not guilty.
9. That case (79 of 2009) made its way to a trial before me on 16 June 2011. There had previously been a *voir dire* in respect of the lawfulness of the search. Clapham J ruled that the search was admissible. At the trial, and as set out in my decision, no real contest was taken in any event with the prosecution case. Essentially, by this time, the accused simply refused to plead guilty to this charge more as a protest that possessing cannabis was a



crime. I have already dealt with that protest in my decision on the verdict and I do not propose to repeat it except to say that the laws of Vanuatu prohibit the use of cannabis and the prisoner's protest (if that is what he considers it to be) is a vain one indeed.

10. The prisoner is to be sentenced for possessing cannabis in the sum of 46.3 grams that he intended to deliver to prison inmate. That he intended to deliver this cannabis to someone who was in prison is a significant aggravating factor in this case. Furthermore, he is not entitled to any credit for admitting the charge as he did not plead guilty and so he put the State to the expense of a trial.
11. While he was on bail for that earlier offence, he stood in the market as a drug dealer although that was clearly at a significant level for street dealing given the amount of cannabis with which he was caught - 286.71 grams. It is an aggravating feature that he had the cannabis for the purposes of selling it, that it was of such significant and substantial quantity, and that also he was on bail at that time for the earlier offence of trying to supply cannabis to a prison inmate.
12. When I look at the two charges it is clear that there is a need for cumulative sentences to be imposed for each of the two offences given their individual circumstances.
13. Taking the first case (in respect of which the prisoner was convicted following his plea of guilty (Criminal Case No. 88 of 2010)), if that was a stand-alone charge I would have taken a starting point of 2 years imprisonment given the various aggravating features that I have already covered. However as I intend to impose cumulative sentences here I will take the starting point at 18 months imprisonment and I will reduce it by 6 months to reflect his guilty plea resulting in a sentence for that lead offence of 12 months imprisonment.
14. For the second charge (that is in Criminal Case No. 79 of 2009) in my view that warrants a sentence of an additional 6 months imprisonment and there are no mitigating circumstances that could apply.
15. The accumulation of those two sentences results in an end sentence of 18 months' imprisonment. The prisoner has spent a total of 4 months and 2 weeks in custody on remand. Accordingly, to give effect to those sentences, I impose a total sentence of 13 months 2 weeks imprisonment.
16. The prisoner has 14 days to appeal this sentence if he does not accept it.

BY THE COURT

