

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

Criminal Case No.2 of 2011

**PUBLIC PROSECUTOR –VS- BEN LUKE**

*Coram: J. Weir*

*Counsel: T. Karae for the Public Prosecutor*  
*J. Kausiama for the Accused*

**SENTENCE**

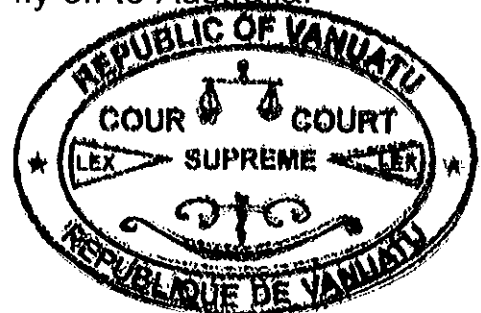
The Accused appears for sentence on 2 charges

1. *Unlawful Entry into a vehicle (s.143)(1)*
2. *Theft s.125(c)*

The agreed brief summary of facts is as follows:

On or about the 8<sup>th</sup> December 2010, the complainant, a woman of 48 years and owner of Apa Bakery, left home around midday, in a rush to go see her sister and drop off a carton. The complainant arrived at Hibiscus Motel where her sister was staying. The complainant parked the car in front of the Hibiscus Motel, close to the entrance of the building and walked in without locking her vehicle. She was in the Motel less than 2 minutes when she told the house girl to go and bring the carton that was in the vehicle.

After the house girl brought back the carton she then left and drove home. She was rushing at that time so that she did not realize that her bag was missing from the vehicle. When she arrived home she noticed that her bag was missing and did not know who had stolen her bag. At that time also she did not have time to report the missing bag at the police station because she had to fly off to Australia.



On the 9<sup>th</sup> December 2010, the mother of the defendant made a report to the police that she was suspicious about how her son the defendant had hands on a lot of cash, as her son is not employed.

On the 17<sup>th</sup> of December 2010, the complainant filed a complaint. Investigations carried out by the police led to the defendant Mr. Ben Luke. Mr. Ben was cautioned and interviewed on the 17<sup>th</sup> of December 2010 and admitted to taking the bag belonging to the complainant and had used up most of the money. However the complainant had received back VT85,000 including her bag and some documents.

It is clear that the offending was opportunistic and there was no premeditation. Nevertheless people should be able to leave their cars unlocked for short periods of time without the risk of them being interfered with by a common thief such as you.

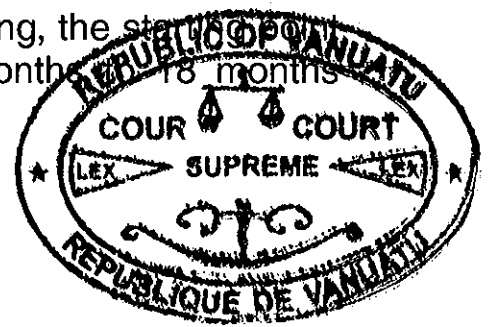
The Probation report refers to the fact that you had a good childhood but you dropped out of school and you freely admit that your abuse of alcohol & drugs has been the cause of your offending.

In relation to this offending you say that you had been drinking whisky the time that you committed the offence and you remember very little about it except that you do remember giving VT85,000 to your mother. The total amount taken was apparently VT380,000 leaving a shortfall to the victim of VT295,000. You are in no position to make reparation.

Both your counsel and the public prosecutor are agreed that the starting point for the lead charge should be 1 of 12 months imprisonment.

It is an aggravating factor that you have 2 previous convictions for similar offences in 2000 and 2009 for unlawful entry and theft. On both occasions you were dealt with by way of fines and also on the 2<sup>nd</sup> occasion, a suspended sentence of imprisonment was imposed.

To take account of your previous criminal offending, the starting point of 12 months imprisonment is uplifted by 6 months to 18 months imprisonment.



You are entitled to remission of one third of that sentence to give you credit for your confession and your early plea of guilty. The end sentence is 1 of 12 months imprisonment. From that must be deducted the amount of time you have spent in custody – approximately 4 months.

On the lesser charge of theft, you are sentence to 3 months imprisonment which is a concurrent term.

You have the right to appeal this sentence but any such appeal must be filed within 14 days.

**DATED at Port Vila this 16<sup>th</sup> day of April, 2011.**

**BY THE COURT**

  
**J. WEIR**  
Judge

