

**PUBLIC PROSECUTOR – VS – ALICK KALSAKAU**

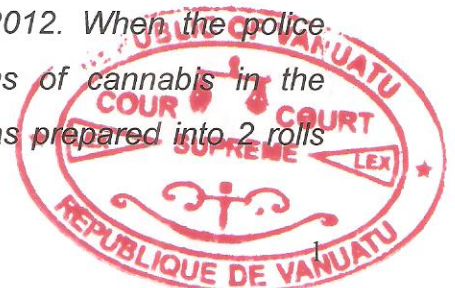
**Coram:** *Mr. Justice Oliver Saksak*

**Counsel:** *No appearance by Public Prosecutor  
Miss Jane Tari for the Defendant*

**SENTENCE**

1. The Court notes the non-appearance for or by the Public Prosecutor today. The Court also notes a request by the Probation Service by letter dated 29<sup>th</sup> April 2013, however the request is declined.
2. It has become necessary to pronounce sentence on this defendant today in view of the fact that the defendant has a current suspended sentence of 6 months imprisonment imposed by the Magistrate Court on 20<sup>th</sup> March 2013.
3. The defendant pleaded guilty to one charge of unlawful possession of cannabis on 5<sup>th</sup> April 2013 contrary to section 2(62) of the Dangerous Drugs Act Cap.12.
4. The maximum penalty for this offence is a fine of up to VT100 Million or imprisonment of not exceeding 20 years, or to both.
5. The facts are quite simple summarised from the facts stated in paragraphs 1-3 in the Prosecution submissions filed on 25<sup>th</sup> April 2013 as follows –

*The defendant a 21 year old boy was arrested by the police on 20<sup>th</sup> December 2012. This arrest was in relation to unlawful entry and theft offences committed against an expatriate by name of Randy Williams. These offences occurred on 18<sup>th</sup> November 2012. When the police searched his person they found 0.150 grams of cannabis in the defendant's trousers pocket. The substance was prepared into 2 rolls*



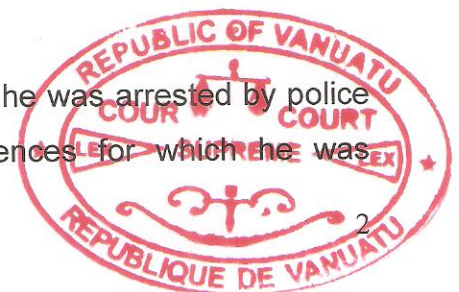
ready for smoking. Upon testing the substance was confirmed to be cannabis. The defendant was charged with unlawful entry of a dwelling house, damage to property and theft on 11<sup>th</sup> December 2012. On arraignment in the Magistrate Court on 20<sup>th</sup> March 2013, the defendant pleaded guilty to two charges and not-guilty to the damage charge. That was withdrawn. He was convicted and sentenced to 6 months imprisonment on the two counts concurrently. The Sentence was suspended for a period of 1 year. In the Magistrate Court the defendant used the name Alick Toa. But he is the same person known as Alick Kalsakau.

6. The Public Prosecutor submitted that the defendant's suspended sentence by the Magistrate Court should not be activated because the defendant committed the drug offence around the same time and during arrest for two offences for which he has already been convicted and sentenced. It would therefore be unjust for his suspended sentence to be activated by this Court. They relied on section 57(1)(a) of the Penal Code Act Cap. 135 in support of their submission.
7. I cannot accept that submission. The Prosecutions made prosecution decision to lay a charge separately from the other three charges and rightly so. They cannot now retract and submit it was unjust to do so.
8. Section 57 of the Penal Code Act must be read as a whole. Subsection © is relevant and it states –

"if, before the end of the period, the person the execution of whose sentence has been suspended in accordance with this section is further convicted of any offence against any Act, Regulation, Rule or Order, the Court shall order that the suspended sentence shall take effect for the period specified in the order made under paragraph (1)(a)....."

(emphasis by underlining).

9. From the facts which the defendant has conceded, he was arrested by police on 20<sup>th</sup> December 2012. He committed the offences for which he was





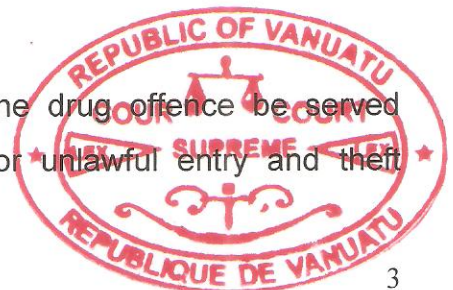
sentenced on 18<sup>th</sup> November 2012. It took more than a month for the police to arrest him. In that process he was found to have in his possession two rolls of cannabis. Clearly, that is a separate offending which has no connection to the first offending. The first charges were laid under the provision of the Penal Code Act. The drug charge was laid under the provision of the Drugs Act. Upon his guilty plea on 5<sup>th</sup> April 2013 conviction was entered. Clearly, there has been a further conviction of the defendant for an offence under the Drugs Act. Section 57 (1) (c) is therefore mandatory by the words “..... the Court shall order that the suspended sentence shall take effect.....”

10.I therefore reject the Prosecution submissions on that point.

11.I have seen defence counsel's submissions in which she concedes that the defendant's suspended sentence of 6 months imprisonment should be cancelled. Counsel refers that Court to the case of Public Prosecutor v. Sope [2004] VUCA 14 where the Court of Appeal upheld a sentence of 3 months imprisonment with suspension for a period of 12 months. The Court accepts that the appropriate sentence will be a custodial sentence of 3 months imprisonment but it will not be suspended. It will however be served concurrently with the 6 months sentence imposed by the Magistrate Court. This is to ensure that the sentence has a deterrent effect on the defendant and others.

12. Accordingly the appropriate orders are –

- (a) The defendant is hereby sentenced to 3 months imprisonment for the charge of unlawful possession of cannabis.
- (b) The 6 months imprisonment sentence suspended on 20<sup>th</sup> March 2013 be hereby activated pursuant to the Court's powers under Section 57(1)(c) of the Penal Code Act.
- (c) The 3 months imprisonment sentence for the drug offence be served concurrently with the 6 months sentence for unlawful entry and theft



offences in Criminal Case No. 320 of 2012 imposed by the Magistrate Court.

(d) The defendants' period of detention shall commence today, 30<sup>th</sup> April 2013.

**DATED at Luganville this 30<sup>th</sup> day of April 2013.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge**

