

**PUBLIC PROSECUTOR**

**-V-**

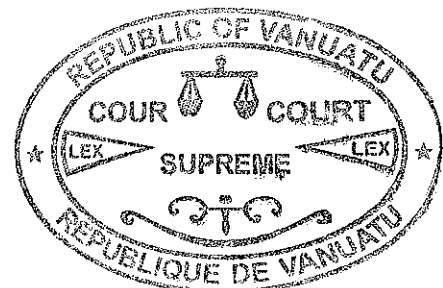
**KILLIEN LOVIS  
NEPI PETER  
CLEN DAVID  
NOEL PETER  
MANSAK LENCY  
JACOB SILAS  
JOSEPH JACK  
JEAN MICHEL**

**Coram:** V. Lunabek – CJ

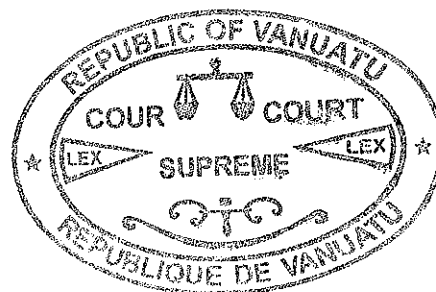
**Counsel:** Mr Simcha Blessing for Public Prosecutor  
Ms Linda Bakokoto for Defendants

**SENTENCE**

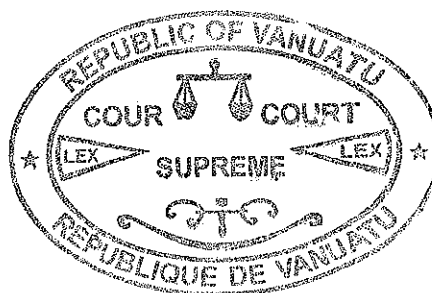
1. This is the sentence of the above named defendants: Killien Lovis, Nepi Peter, Clen David, Noel Peter, Mansak Lency, Jacob Silas, Joseph Jack, mo Jean Michel. Each above named Defendants is charged with cultivation of cannabis, save Defendant Noel Peter who is charged with one count of possession of cannabis.
2. You are all from Bankir village, Malekula.
3. On 28 August 2017, following defendants: Killien Lovis, Nepi Peter, Clen David, Mansak Lency, Jacob Silas, Joseph jack mo Jean Michel entered a guilty plea on the charge of cultivation of cannabis and Defendant Noel Peter entered a guilty on the charge of possession of cannabis.
4. The offences of cultivation of cannabis and possession of cannabis are prohibited and sanctioned by ss.4 and 2(62) of the Dangerous Drugs Act (DDA) [CAP. 12].



5. The penalty for this type of offending is ranging from imprisonment up to 20 years and/or a payment of fine up to 100 million vatu.
6. They are serious offences as reflected by the heavy penalties imposed by law.
7. In this case, the complainant is Chief Manlau Jerry. He filed a complaint against each and all above named Defendants on 28 May 2009. He complained to the police that above named Defendants cultivated cannabis substance in the village of Bankir on Malekula from 2005-2009.
8. Chief Manlau asked his son who is one of the defendants (Mr Killien Lovis) to uproot the cannabis plant in his garden but his son refused.
9. Defendant Clen David told chief Manlau that cannabis is good when they smoked it.
10. One Erick Ali confirmed he saw cannabis plants in the garden of Defendant Nepi Peter. Nepi Peter told him in 2008 that the plant in his garden is cannabis.
11. Mana Joseph took cannabis leaf from Defendant Joseph Jack of Mbankir village and smoked it.
12. Defendants: Killien Lovis, Nepi Peter, Clen David, Mansok Lency, Jacob Sias, Joseph Jack and Jean Michel admitted to the police on 2<sup>nd</sup> June 2009 that they cultivated cannabis since 2008.
13. Defendant Noel Peter admitted to the Police on 2 June 2009, that he had in his possession cannabis substance and he had smoked cannabis.
14. I read and take into account of what your lawyer says on behalf of each of you. I read and consider also the prosecution submissions. I take note of the pre-sentence information (where relevant).
15. Defendant Killien Lovis stated that he committed the offence in 2009. At that time he did not understand well the law against the Dangerous Drugs. Mr Killien stated he cultivated only one plant at the time and had stopped. He is remorseful for what he did.
16. Defendant Nepi Peter stated the incident happened in 2009 and that time he was a single man. He is now a married man. At that time he did not understand the law against the Dangerous Drugs Act. He stated he cultivated only one plant about fifty centimetres high and he had stopped this activity. He was remorseful of his offending.



17. Defendant Noel Peter stated the incident occurred in 2009. At the time he was a single man and now he is a married man. At the time he did not understand the law against the Dangerous Drugs Act. He stated he smoked only some time but now he had stopped. He said he was remorseful.
18. Defendant Mansak Lency stated the incident occurred in 2009. At that time, he did not understand well the law against the Dangerous Drugs Act. He cultivated only one plant about thirty centimetres high. He had stopped and he is remorseful for his offending.
19. Defendant Jacob Silas stated that the incident happened in 2009. At that time he was a single man. But he is now married. At that time he did not understand well the Dangerous Drugs Act. He said he grew only one plant and he had stopped. He is remorseful for his offending.
20. Defendant Joseph Jack stated the incident happened in 2009. At that time he was a single man but he is now a married man. At that time he did not understand well the law against the Dangerous Drugs Act. He stated he planted only one plant about twenty centimetres high but he had stopped. He is remorseful for his offending.
21. Defendant Jean Michel stated the incident happened in 2009 and at the time he was single man. He is now married. He stated he cultivated only one plant about thirty centimetres high. He had stopped and he is remorseful for his offending.
22. Defendant Clen David stated he admitted the allegation. He stated that the incident happened in 2009 because of his church doctrine that cannabis is peace and at that time he was not aware of any law against the Dangerous Drugs Act. He is remorseful for his offending.
23. I take note that the offending happened in 2009. You were all summoned to appear before the Court on 28 August 2017 – some 9 years after the offending. On 28 August 2017, you all admitted the offence charge against each of you. You are a first time offenders. You cooperated with the police. You are all remorseful.
24. I consider the guideline judgment of the Court of Appeal in *Wetul –v- Public Prosecutor* [2013] VUCA 26; Criminal Case No.04 of 2013 (26 July 2013). The relevant part of the court of Appeal judgment is this :



*"We take this opportunity to consider sentencing guidance to cultivation of cannabis cases in the light of developments since this Court Judgment in Naio -v- Public Prosecutor [1998] VUCA 1; Criminal Appeal Case 07 of 1997.*

*In considering the sentencing levels, we are conscious that there has been an increase in cannabis cultivation and dealing, particularly involving the growing of plants in the Islands of the Republic for purposes of sale.*

*We also consider the need for guidance to sentencing Courts as this Court noted in the case of Naio that:*

*"Parliament had fixed the punishment for all drug offences ranging from a fine up to 100 Million Vatu or a term of Imprisonment up to 20 years. The Legislature clearly intends to give the Court a wide range of room within which to move in order to impose appropriate penalties for drug offences based on the circumstances of the particular cases before the Courts. There are offences much more serious than those which the appellants were convicted of. For such offences the Courts will no doubt consider meeting them with severe sentences." (page 4).*

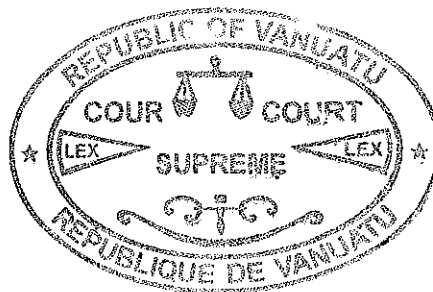
*We consider appropriate to divide cannabis cultivation offending into three broad categories:*

*Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial measure. Where there have been supplies to others on a non-commercial basis the monetary penalty will be greater and in more serious cases or for persistent offending a term of community work and supervision or even a short custody term may be merited. (It is to be noted in this connection that there is no separate offence in relation to a section 4 offence of cultivation for supplying or possession for supply, as opposed to importation, sale, supply or possession.(s.2).*

*Category 2 encompasses small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified.*

*Category 3 is the most serious class of such offending. It involves large-scale commercial growing, usually with a considerable degree of sophistication and organisation. The starting point will generally be four years or more.*

*It is to be understood that the border-line between each category may in specific cases be indistinct and sometimes incapable of exact demarcation. The numbers and sizes of plants are relevant factors for each category depending on the circumstance of each case. However, although relevant, they may not be an adequate guide were intensive cultivation methods are being employed with a view to enhancing the yield of usable cannabis for example by producing plants with higher narcotic levels."*



25. Your offending is within the lower end of the scale of the first category in Wetul case. There is no need for imprisonment sentence. And therefore, a starting point sentence is not appropriate in this case.
26. You are each and all sentenced to 50 hours of community work and 6 months probation. If you were sentenced earlier, you would have got heavier penalties.
27. I make this comment specifically toward Defendant Clen David. The report show that you stated also that because of your Friday Church belief you will continue to growing cannabis in future. I take it that you do not understand what you say. You are now aware that it is against the law to cultivate cannabis (marijuana). You are warned to stop breaching the law by cultivating cannabis as you stated. You are advised to become a law abiding citizen in the future.
28. You have 14 days to appeal this sentence if you are unsatisfied with it.

**Dated at Lakatoro, Malekula this 1<sup>st</sup> day of September 2017**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**

