

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

Criminal Case No. 1345 of 2016

PUBLIC PROSECUTOR

-v-

MICHAEL TABINOK

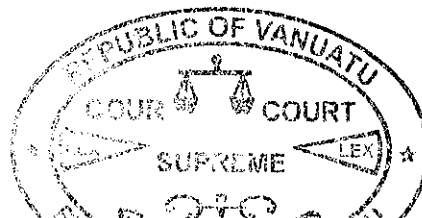
Coram: V. Lunabek- CJ

Counsels: Mr Philip Toaliu for Public Prosecutor
Mr Eric Molbaleh for the Defendant

Date of Delivery: 29th September 2017

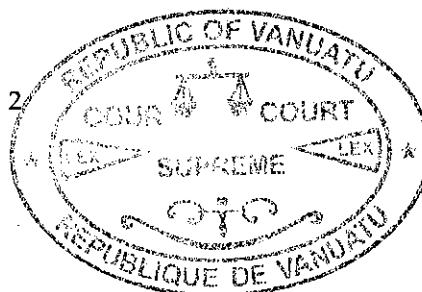
SENTENCE

1. Michael Tabinok, this is your sentence for unlawfully entering Sisbaleh Community Store and taking away without permission an amount of Vatu 1, 096, 000 in that store sometime between 29 October and 30 October 2015.
2. On 23 August 2017, you were found guilty and convicted after a trial on the counts of unlawful entry and theft of that money, contrary to ss.143 and 125 of the Penal Code Act [Cap 135].
3. The detailed facts are contained in the reasons for verdict delivered at Enar, Central Pentecost, on 23 August 2017. Suffice it to say this.
4. The community of Onlapapa Village in 2002 had established a community shop called the Sisbaleh Community Store. This store is run by the committee set up by the community. The shop is looked after by Mr. Ken Rick Tabi and Hardison Tabi as its keepers.
5. Since 2002 the Sisbaleh Community Store has made a profit of VT1, 000, 000 which were in the denominations of VT5,000 notes. This money according to Mr. Hardison Tabi has been kept in store as per agreement by the community and Fr. Derick Bule. For the reasons that the only nearest commercial bank (National



Bank of Vanuatu) is located on the Western side of the island and it is too much of a hassle to go back and forth given the road conditions.

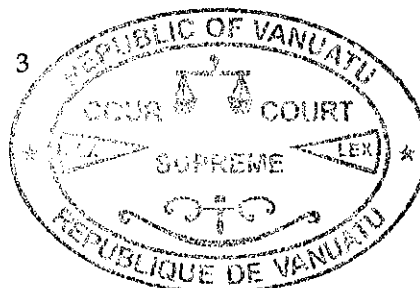
6. Apart from the VT1, 000, 000 the store also kept money raised by the Saint Mark Anglican Church in the sum of VT96, 000 in denominations of VT2,000 and VT1, 000 and VT5,00. This money was raised to pay material in Port Vila to help build the Saint Mark Church.
7. Both monies were kept in a transparent plastic bag and were kept in a white container in a small office in the shop.
8. Prior to the incident both Mr. Kendrick Tabi and Mr. Hardison Tabi took turns to man the shop during opening hours and after hours upon request by customers. On 29th October 2015 before Mr. Hardison Tabi finished his shift as routine he would check and recount the money and ensure that the money was kept safe. Mr. Kenrick Tabi on the 29th of October 2015 also did the same before beginning his shift. Mr Kenrick Tabi worked from the 29th of October 2015 till 1.00am in the morning of the 30th of October 2015.
9. On the morning of the 30th October 2015, he was awoken by a customer by the name of Mr. Nelson who requested to buy rice at the shop. Upon entering the shop Mr. Kenrick Tabi noticed that the door was slightly opened. At first he thought he must have not closed the door before locking it. Inside the shop he noticed that all the items were in place except that all the monies in the plastic bag were stolen. The sum of which was VT1, 096, 000.
10. Mr. Kenrick Tabi then came back to the door and noticed that the pad lock was still locked but the door pin was bent by force to allow the pad lock to slip and release the door pin.
11. In your cautioned statement dated 23 November 2015 and in your records of interview dated 24 November 2015, you admitted you entered into the Sisbaleh Community Store at the Central Pentecost at night time toward the end of the



month of October 2015 between 2.00am and 3.00am o'clock in the morning. You could not recall of the exact date.

12. You forced to open the pin of the pad lock of the wooden door of that store. You opened the door and went inside the store. You used a torch inside the store and you found the money in a transparent plastic bag under the counter. You took the money with you. You said you took an amount of VT300, 000. In December 2015, a search was conducted at witness Anfrida's house in Port Vila where you were living with her while selling your kava in Vila. Upon the search, the police recovered a total of 110, 000 Vatu cash. There were 15 x 5,000VT notes and 31 x 1000VT notes. This was recovered along with some other items that you bought including a solar panel and a bicycle.
13. The total money you took with you at that night was Vatu 1, 096, 000. That was the total amount of money you have stolen from the store.
14. A pre-sentence report was directed to be provided by the Probation office to assist the Court in your sentencing. A report was provided.
15. The prosecution and your defence lawyer also made submissions with comparable case authorities to assist the Court in your sentencing. I read and consider these submissions when I consider your sentencing and what will be the appropriate sentence to pass on you in the circumstances of your offending. I also consider the report and its content in respect to your personal circumstances for your sentencing.
16. The prosecution refers the Court to the following case authorities:
 - *Kalfau -v- PP [1990] VUCA 9* where the Court of Appeal stated:

"It is appropriate to pause and consider the offences of unlawful entry and theft themselves. In a place where such offences are few, it may be possible to pass short sentences and it is clear Port Vila was such a place prior to 1989. But the offence is extremely serious (in itself). Measured in

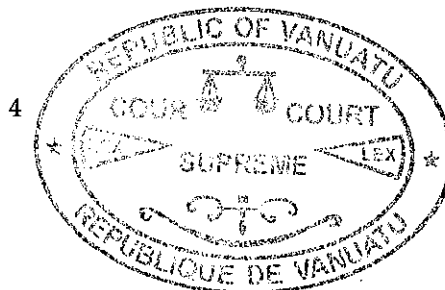


terms of the effect on the victim, many courts place house breaking, particularly at night, in a similar category to crimes of violence. This is not an unreasonable approach.

.....

The house is the most fundamental unit for most families. Many people whose homes have been subjected to a breaking are affected by it for years.... A criminal who is willing to commit such a crime must expect a serious penalty.”

- *Public Prosecutor –v- Killion & Ors [2004] VUSC 17* where the Court imposed a starting point sentence of 6 years for the offence of unlawful entry and theft and an end sentence of 4 years imprisonment on same offence.
 - *Public Prosecutor –v- Saki [2010] VUSC 103*. Four defendants charged. Three defendants pleaded guilty to 3 separate charges of unlawful entry, theft and malicious damages to property inside the sleeping house of the complainant. They got hold of the complainant, demanded money from him or they will kill him. He gave them Vatu 2, 000, 000 and they left. The house and shared the money. They got a starting point sentence of 7 years imprisonment for unlawful entry and theft and 7 months imprisonment for malicious damage to property. They received an end sentence of 4 years imprisonment for unlawful entry and theft and 5 months imprisonment for damage to property All to be served concurrently to each other.
17. Your defence lawyer refers the Court to the case of *Public Prosecutor –v- Kevin Heromanley and Jean Mark Nimbal Criminal Case No. 18, 19, 20, 21, 22, 23, 24 and 27 of 2012*.
18. He submitted on your behalf that the appropriate starting point sentence would be a custody sentence to be partly suspended and an order for community work be made in addition.



19. The relevant provisions of the law are sections 125 and 143 of the Penal Code Act (Cap 135). They provide as follow:

125. Prohibition of theft, misappropriation and false pretences

No person shall cause loss to another –

(a) *by theft;*

...

Penalty: Imprisonment for 12 years.

143. Unlawfully entering dwelling house

(1) *No person shall enter or be in any house, building, tent, vessel or other place with intent to commit an offence therein.*

Penalty: Imprisonment for 20 years where the place is used for human habitation.

Imprisonment for 10 years where the place is not used for human habitation.

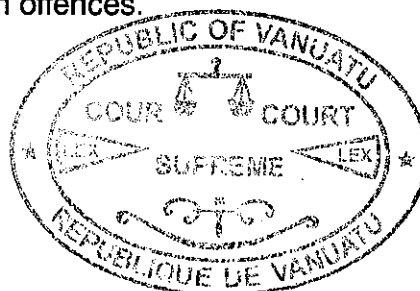
(2) *Subsection (1) shall apply whether or not the offender entered the premises with lawful authority or whether or not he broke any part of the premises in order to enter them and whether or not he obtained entrance by means of any threat or artifice, or by collusion with any person in the premises.*

20. In the present case, not only you committed the offences of unlawful entry into a store and you took away money without permission but the following factors are also present rendering the circumstances of your offending aggravated:

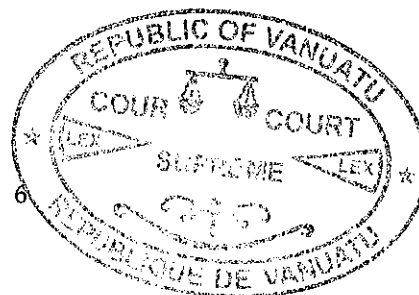
- There was some degree of planning and pre-meditation;
- The offences were committed at night between 2.00 – 3.00am;
- There were damage done to the door pin to gain entry;
- The amount of money stolen was a significant loss;
- The effect on the victims (victims suffered a substantial loss in their community store; and
- The recovery of VT110, 000 leaving the sum of VT986, 000 that is unrecovered.

21. In the circumstances of this case, a starting point sentence between 5 and 6 years imprisonment is appropriate to reflect the seriousness and aggravating circumstances of these offences. In this case, I sentence you to 5 years imprisonment as a starting point on both offences.

5

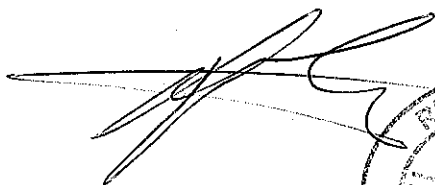


22. In mitigation, you are a first time offender. You are 32 years of age. You are married and you have a young family. The report shows that you are deeply sorry for your offending and you say you will not re-offend again in future. You want to be a positive role model to your children, family and community. You are willing to pursue a custom reconciliation to restore peace and harmony with the victim and families. That is really a matter for you and I believe that you are serious and genuine about what you tell the court today. From the total amount of VT1, 096, 000 stolen, an amount of VT110, 000 cash was recovered and should be paid back members of Sisbaleh Community Store. The actual amount of vatu loss was Vatu 986, 000. I give you a reduction allowance of 4 months to reflect your remorsefulness and apology for your offending as you realised what you did was wrong.
23. The report shows also that you have spent time in custody pending your trial from 29 May 2017 until today. I think the report was not quite accurate. You have spent some time prior to 29 May 2017 in custody before you were bailed with conditions and you have breached the conditions of your bail restraining you from going back to Pentecost Island. You were then arrested on Pentecost and brought back to Port Vila and kept in custody from 29 May 2017 until you are sentenced today. I take it that the time you have already spent before your arrest and remand on 29 May 2017 is rounded up to 1 month. This represents a period of 5 months already spent pending trial and sentence.
24. This period of 5 months will be taken in your favour and be deducted to your total sentence of 5 years imprisonment on both offences.
25. I also take note that the offending occurred in 2015. You were tried and sentenced in 2017. There were then some delays of about 2 years. I note also you have contributed to this delay by breaking your bail conditions and returning to Pentecost Island for some months. Warrants of arrest were issued but not executed until 29 May 2017.



26. Despite your contribution to the delays, I decide to give you some discount of 3 months to reflect that part of the delay committed by the Republic and /or agents of the Republic (Police, Prosecution or Courts).
27. In summary, from your sentence of 5 years a total period of 12 months will be deducted to reflect the mitigating features and circumstances personal to you.
28. Your end sentence is 4 years imprisonment on both counts to be served concurrently. This means that you are going to serve a total of 4 years imprisonment on each of both offences but at the same time.
29. The next question is whether, the circumstances of your offending justify a suspension of that sentence of 4 years imprisonment. I answer in the negative.
30. You are ordered to serve an imprisonment term of 4 years with immediate effect.
31. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence.

DATED AT PORT VILA, this 29th day of September 2017



Vincent Lunabek

Chief Justice

