

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

Criminal
Case No. 21/847 SC/CRML

PUBLIC PROSECUTOR

v

**HIWA IATA
KAWI KILMA
IATIKA NIAVI**

Date: 16 June 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Tasso
Defendant – Mr G. Takau

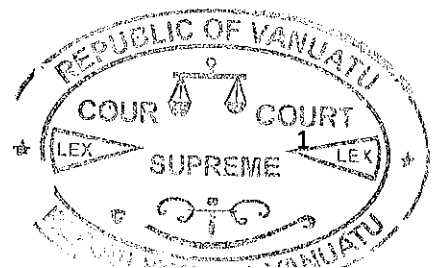
SENTENCE

A. Introduction

1. Kawi Kilma and Hiwa Iata each pleaded guilty to one charge of cultivation of cannabis (Counts 1 and 2 respectively) and Iatika Niavi to one charge of possession of cannabis (Count 3). They are convicted on their pleas and the admitted facts.
2. The maximum penalty for such offending is 20 years imprisonment and/or a fine of up to VT100 million.

B. Facts

3. On 30 December 2020, the Police on Tanna uprooted 5 cannabis plants from Mr Kilma's garden. Testing confirmed these as cannabis weighing 11 kilograms (Count 1).
4. The Police then uprooted 13 cannabis plants from Mr Iata's garden. Testing confirmed these to be cannabis weighing 21 kilograms (Count 2).



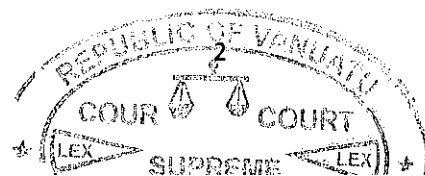
5. When the Police reached Mr Niavi's garden, they saw him cutting down cannabis plants and packing them into a flour bag. He was trying to hide them. Testing confirmed cannabis weighing 7 kilograms (Count 3).

C. End Sentence – Kawi Kilma

6. Mr Kilma is convicted on one count of cultivation of cannabis involving 5 plants weighing 11 kilograms (Count 1). There is no evidence of planting for a commercial purpose. The offending falls within the first category in *Wetul v Public Prosecutor* [2013] VUCA 26. The sentence start point is 18 months imprisonment.
7. One third is deducted for early guilty plea. Mr Kilma has no previous convictions. He is 32 years old, married and has 3 children. He and the other 2 Defendants have performed a custom reconciliation ceremony with the chiefs and community for the wrong they did and promised to never involve in cannabis again. For Mr Kilma's personal factors, I deduct 4 months from the sentence start point. The end sentence is 8 months imprisonment to run from 16 April 2021 to take into account the time served in remand.
8. In view of the lower scale of offending, Mr Kilma's good character and his prospects of rehabilitation, the sentence is suspended for 2 years. Mr Kilma is warned that if he offends again within the next 2 years, he will need to serve his imprisonment sentence in addition to any other penalty that may be imposed on him for the further offending.
9. In addition, Mr Kilma is ordered to complete 50 hours community work and 6 months of supervision.

D. End Sentence – Hiwa Iata

10. Mr Iata is convicted on one count of cultivation of cannabis involving 13 plants weighing 21 kilograms (Count 2). There is no evidence of planting for a commercial purpose. The offending falls within the first category in *Wetul v Public Prosecutor* [2013] VUCA 26. The sentence start point is 24 months imprisonment.
11. One third is deducted for early guilty plea. Mr Iata has no previous convictions. Mr Iata is 25 years old and is single. He and the other 2 Defendants have performed a custom reconciliation ceremony with the chiefs and community for the wrong they did and promised to never involve in cannabis again. For Mr Iata's personal factors, I deduct 4 months from the sentence start point. The end sentence is 12 months imprisonment to run from 4 April 2021 to take into account the time served in remand (2 months, one week and 5 days).
12. In view of the lower scale of offending, Mr Iata's good character and his prospects of rehabilitation, the sentence is suspended for 2 years. Mr Iata is warned that if he offends again within the next 2 years, he will need to serve his imprisonment sentence in addition to any other penalty that may be imposed on him for the further offending.
13. In addition, Mr Iata is ordered to complete 50 hours community work and 6 months of supervision.



E. End Sentence – Iatika Niavi

13. Mr Niavi is convicted of one charge of possession of cannabis, weighing 7 kilograms (Count 3). He was caught red-handed packing the cannabis into a flour bag. I infer the cannabis was for the purpose of supply to others. The sentence start point is 18 months imprisonment.
14. One third is deducted for early guilty plea. Mr Niavi is 26 years old, is in a de facto relationship and has a 10 month old son. He and the other 2 Defendants have performed a custom reconciliation ceremony with the chiefs and community for the wrong they did and promised to never involve in cannabis again. For Mr Niavi's personal factors, I deduct 4 months from the sentence start point. The end sentence is 8 months imprisonment to run from 4 April 2021 to take into account the time served in remand (2 months, one week and 5 days).
15. In view of the lower scale of offending, Mr Niavi's good character and his prospects of rehabilitation, the sentence is suspended for 2 years. Mr Niavi is warned that if he offends again within the next 2 years, he will need to serve his imprisonment sentence in addition to any other penalty that may be imposed on him for the further offending.
16. In addition, Mr Niavi is ordered to complete 50 hours community work and 6 months of supervision.
17. The cannabis is to be destroyed.
18. The Defendants have 14 days to appeal this sentence.

**DATED at Port Vila this 16th day of June 2021
BY THE COURT**

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VM Trief
Viran Molisa Trief
Judge

