

**BETWEEN: Public Prosecutor**

**AND: Victor Emmanuel Chu Van**  
Defendant

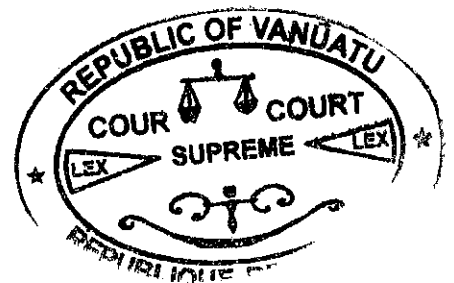
*Date of Sentence:* 27<sup>th</sup> January 2023  
*Before:* Justice EP Goldsbrough  
*Appearances:* Massing, K for the Public Prosecutor  
Karu, K for the Defence

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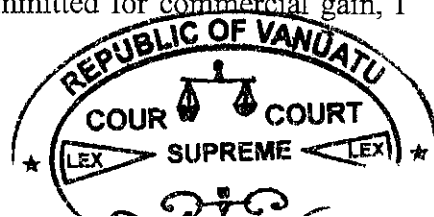
**SENTENCING REMARKS**

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1. Victor Emmanuel Chu Van, you have pleaded guilty to five offences. The first offence is making a false declaration under the Customs Act, in that you failed to declare firearms and ammunition, pornographic material and two sex toys. The second offence involves the same items and that your false declaration was with intent to avoid payment of duty, thirdly bringing in the same items that are prohibited items under Customs legislation and fourthly prohibited imports under the Firearms legislation and finally prohibited importation under the Obscenity Act.
2. You had asked Agence Gauchet to prepare on your behalf the documentation required to import your personal effects, sometime in November 2019. The import, in two containers, was inspected to ensure compliance. It was during those inspections that the prohibited and undeclared items were discovered. You have subsequently admitted failing to declare these items and bringing in prohibited items and items for which you had not applied for permission to possess.
3. The maximum penalties for these offences are varied. The first charge is six months imprisonment or a fine of VT 5 million. The second charge, defrauding the revenue is 5 years imprisonment or a fine of VT 10 million. The third charge attracts only a fine, again a maximum of 10 million vatu. The fourth charge, six months imprisonment or a fine of VT 20,000 and the fifth a fine of VT 100,000 or imprisonment for one year.
4. Those maximum penalties together with the facts of the offences, in particular those facts which makes these offences more serious, inform the Court as to the correct penalty to be imposed in the particular case.



5. The initial suspicion was aroused because of mistakes made in the completion of the forms and the attempts to benefit from exemptions that were not available in the case of this importation. There will no doubt have been further suspicion aroused when one of the two vehicles imported was removed from its container prior to the customs inspection. You imported two vehicles even though you are not accompanied on the posting.
6. Whatever the reason, a customs inspection was scheduled and carried out. It led to the discovery of the undeclared items, the firearms and ammunition and the pornographic material and toys.
7. You have agreed that the statement of facts which has been produced by the prosecution summarizing the events is correct and accurate. Today you have agreed that the amount of duty avoided was in excess of one half million vatu.
8. Counsel on your behalf suggests that the court should consider a starting point for this case as a fine of Vt 2 million. The prosecution suggest a starting point of Vt 1 million or a sentence of imprisonment. Both counsel suggest that the most serious offence, because it attracts the highest maximum penalty is the charge of attempting to defraud the revenue. Yet neither counsel has attempted to show how much the state may have lost in terms of revenue. In the case of the goods prohibited per se (pornography and toys) nothing could have been lost by the state because the items were not allowed in at all. There may be circumstances where an individual might, if they have the relevant licences, bring in firearms and ammunition but even if that were the case (which it was not) no attempt to show what revenue that would have attracted has been made.
9. The cited authority and other precedents referred to relate to a commercial setting, where the rationale for the offences was to increase commercial profit. This is not such a case. The items not declared were not items that could lawfully be imported by this defendant. That is surely the primary reason for not declaring them as opposed to seeking to avoid duty.
10. The Court does agree with the submissions that all of the offences are concerned with one importation of the prohibited goods all taking place at the same time and therefore should attract one global penalty. As far as concurrence is concerned, that may only arise when and if the Court is considering imprisonment as a penalty.
11. Counsel for the accused has not given any indication of means available to the accused to pay any fines. It is important when assessing the level of financial penalty (as indeed counsel recommends) that the means of the individual to pay are made available to the court. Does he or she have savings and what income do they have? If the individual is wealthy and can easily settle a multi-million dollar fine, its deterrent effect is much less than the same fine imposed on a person of modest means. Yet that information has been lacking in submissions but has now been provided in Court at the same time as the potential loss to the revenue thus allowing the court to know how much revenue was lost by the state. That loss to the state is agreed to be VT 510,625.
12. Clearly orders must be made for the confiscation and destruction of the items seized. That order is made with destruction to be properly witnessed and notarised.
13. The loss of the weapons and ammunition is itself a penalty. Rather than looking at the authority of *PP v Yao*, which was about offences committed for commercial gain, I

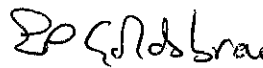


have considered cases involving firearms. That lead the Court to *PP v Kalmet* [2018] VUSC 63 where the accused attempted to import two firearms without declaring the same. He intended those for shooting game. The sentencing judge was conscious that the firearms although intended for a particular purpose may fall into the wrong hands and cause serious harm. He also set out the reasons why an offender can expect a serious penalty when committing such offences.

14. In that case a starting point was set at 6 months imprisonment. When that was affected by the reduction for early plea, the judge felt that the resulting sentence of imprisonment would be too short to properly reflect the serious nature of the offences and instead imposed a sentence of community service. I do not consider such a sentence appropriate in this case given that the offender already has a full time job and will live in Malekula if he remains in the jurisdiction. That is a further difference with *Kalmet*, who was Ni-Vanuatu and not subject to immigration decisions. You, the Court has been told, are a French citizen here on a work permit.
15. Having heard about the value of the firearms and the duty avoided together with your financial circumstances, I am satisfied that an appropriate financial penalty may be imposed together with an order for the forfeiture and destruction of the firearms and ammunition, the DVD's and the toys.
16. The penalty imposed reflects the loss from the order made for confiscation and destruction of the unlawfully imported goods, the loss of your good character and the potential impact on your immigration status as well as the delay in finalizing the case. It is also intended to reflect the amount of duty you tried not to pay. The total penalty imposed is one and one half million vatu, payable within three months from today but in the meantime, as you dispose of assets, at the rate of 50,000 vatu per fortnight. A further order is made for the forfeiture and destruction of the firearm ammunition pornographic material and sex toys imported. The Department of Immigration is hereby informed of your conviction and sentence.
17. You have a right of appeal against this decision but you must begin to exercise that right within 14 days of today.

Dated at Port Vila this 27<sup>th</sup> day of January 2023

BY THE COURT



Justice E. Goldsborough

