

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

Criminal  
Case No. 25/327 SC/CRML

PUBLIC PROSECUTOR

v

ISHMAEL TAVUE

Date of Plea: 19<sup>th</sup> May 2025  
Before: Justice Josaia Naigulevu  
Counsels: Acting Public Prosecutor – Ms. Josephine Tete  
Defence Counsel - Mr. Rollanson Willie

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## SENTENCE

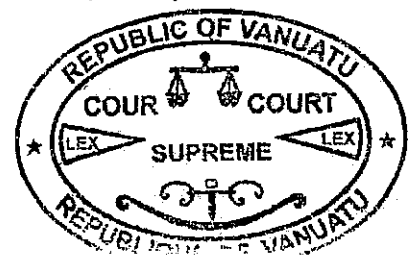
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### Introduction

1. Mr. Ishmael Tavue, you appear before this Court to be sentenced, having entered a plea of guilty and accepted the summary of facts presented by the prosecution in relation to the charge preferred against you: one count of possession of prohibited substance, namely cannabis contrary to section 2 (62) of the Dangerous Drugs Act [Cap 12].
2. You were duly convicted on your plea.

### Facts

3. Following police surveillance and an earlier enquiry by the police, a search was conducted of the accused person's house at the Showground area on Santo Island where a container containing cannabis was found. The earlier enquiry by the police resulted in the seizure of a container containing cannabis substance, and another containing money that was said to be the proceeds from the sale of cannabis. The latter two containers were handed to the police by the accused person's niece. She was engaged as a shopkeeper for the accused person, in the shop owned by him.
4. A test of the substances, which recorded a total net weight of 151.6 grams, yielded positive confirmatory results.



5. The accused person is charged with one count of possession of prohibited substance in this Information. The Court is concerned however about how restraint seems to have prevented the legitimate use of the law when evidence was admitted and clearly available of more serious offending. The evidence on the summary facts pointed to possible charges of the sale of prohibited substances and offences under the Proceeds of Crimes Act. Why these were not explored is unclear.

### **Sentencing Guidelines**

6. There are several principles that guide the sentence to be imposed on you. They include the proposition that you must be held accountable and must take responsibility for your action. Additionally, your action is the kind that is denounced by society, and that similar future acts by you and others must be deterred.
7. Equally important is that you must be given ample opportunity to rehabilitate and reintegrate.
8. The approach taken in the presents case follows the guidance given by the Court of Appeal in the case *Philip v Public Prosecutor [2020] VUCA 40*.

### **Aggravating Factors**

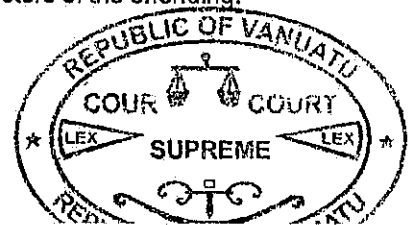
9. The following circumstances constitute the aggravating factors in the present case:
  - a) The ultimate intention, on the facts of this case was the illegal sale of this addictive substance;
  - b) The sale of cannabis in the past was being conducted through an otherwise legitimate commercial outlet located within the community and owned by the accused person. It was called the Awewe Store. This potentially amounted to a breach of trust owed to members of the Showground Community;

### **Statutory Sentence**

10. The maximum sentence of the offence of possession of prohibited substance is a fine not exceeding VT 100, million, or imprisonment up to 20 years or both a fine and imprisonment.

### **Starting Point**

11. In assessing the appropriate starting point, I have taken into account the statutory maximum sentence, as well as the aggravating and mitigating factors of the offending.



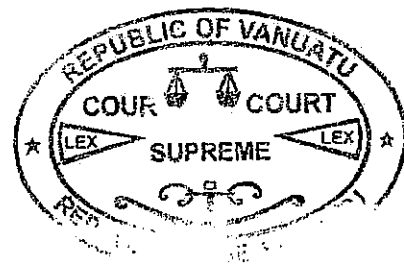
12. I have also taken into account the submissions of both counsels and the authorities they referred to for the Court's consideration. Your counsel and the prosecuting counsel both suggest that the three categories stated by the Court of Appeal in the case *Wetui v Public Prosecutor* [2013] VUCA 26 are applicable to the instant case. In this case, the sole count is one of possession and not cultivation. Your counsel submits that this case falls into the 1<sup>st</sup> category.
13. This Court cannot agree with this proposition. Both the introductory statement by Court and the narration of each category specifically refer to the different levels of culpability where cultivation is the offence charged. The offences of cultivation is legislated by section 3, and is by nature very different from the offence of possession created by section 2 of the Dangerous Drugs Act.
14. The statement of the Court of Appeal in the case *Tukoro v Public Prosecutor* [1999] VUCA 9 is both instructive and on point:

*"Drug offences like any other offences against the criminal law are capable of being committed with varying degrees of culpability and seriousness..."*

15. Accordingly, the offences of possession and cultivation cannot be treated as indistinguishable. As a logical extension of what the Court said in the *Tukoro* case, each of these offences have distinct levels of culpability and seriousness. In the future, it is possible that the Courts may develop a sentencing guideline for the offence of possession, with distinct categories determined perhaps by circumstances such as the weight of the substance, how they were procured, the purpose for which they were acquired and possessed, and whether it was intended to be disposed by selling directly to a customer or was it intended to be traded further.
16. This Court has reviewed a number of recent cases, and they have assisted in determining the appropriate starting point. In *Public Prosecutor v Richard Maldu*, this Court set a starting point of 18 months, and in *Public Prosecutor v Wilfred Tito*, the starting point was 15 months. The prosecuting counsel referred this Court to the case of *Public Prosecutor v Marongo* [2024] VUSC 289. In that case the Court set the starting point at 24 months.
17. In this case, the starting point is set at 21 months. The Court notes again the aggravating factors.

#### **Guilty Plea**

18. You pleaded guilty to this Court at the earliest opportunity. As a result, you are entitled to a discount of 7 months. This period is deducted from the starting point.

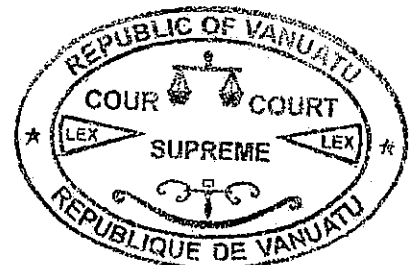


### Mitigating and Personal Factors

19. You are 46 years old, are married and have two children.
20. You are self-employed, and earn a living by running a shop at the Showground area. You have never been convicted of an offence in the past.
21. Your counsel asserts that you were obliged to sell the cannabis in order to help relatives pay their children's school fees. It is the same justification that you conveyed to the probation officer who authored your pre-sentence report. There are two points that can be said about this excuse. The first is that the excuse does not demonstrate that you are truly sorry for your wrong doing.
22. The second is that there has been no evidence from any parent confirming your goodwill, and that your action in selling cannabis to the young people in the community overlooks the potential greater and adverse effects on the psychological and social wellbeing of the people who purchase the drugs from your shop. It possibly explains why the chiefs were reluctant to accept your approach to reconcile. Your willingness to sell drugs can hardly be regarded as a humanitarian gesture. Selling cannabis is an illegal act that must be prevented.
23. These factors reduce your sentence by 3 months.

### End Sentence

24. I have taken into account all these matters and impose an end sentence of 11 months imprisonment. Your counsel urges me to suspend any sentence that this Court intends to impose. I will return to this point.
25. In addition to the term of imprisonment, you are fined a sum of VT 120,000.
26. In relation to the term of imprisonment, I have taken into account the circumstances and the nature of the charged, offence, as well as your character, and have decided to suspend your entire sentence for a period of 18 months.
27. The Court notes how your present health condition may prevent you from undertaking community work, and feels that a supervision order for 12 months is appropriate. It is ordered accordingly. In addition, you are ordered to attend a drug awareness and rehabilitation program to be coordinated by the Probation Office of the Department of Correction over the same period.
28. You have 14 days to appeal this sentence.



DATED at Port Vila this 22<sup>nd</sup> day of May 2025  
BY THE COURT

Hon. Josaia Naiguis  
Justice

