

**IN THE COURT OF APPEAL  
OF THE REPUBLIC OF VANUATU**  
*(Criminal Appellate Jurisdiction)*

**Criminal Appeal**  
**Case No. 22/1357 COA/CRMA**

**IN THE MATTER OF:** AN APPEAL FROM THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

**BETWEEN:** SARLO STEPHEN and JOSE KOMBEY  
First Appellants

**AND:** JEAN IALOULOU  
Second Appellant

**AND:** PUBLIC PROSECUTOR  
Respondent

**Date of Hearing:** 14 May 2023

**Coram:** Hon Chief Justice Lunabek  
Hon Justice J Mansfield  
Hon Justice R Young  
Hon Justice O Saksak  
Hon. Justice VM Trief  
Hon Justice E Goldsbrough

**Counsel:** L Bakokoto for the Appellants Stephen and Kombey  
L Matariki for the Appellant Ialoulou  
G Takau for the Respondent

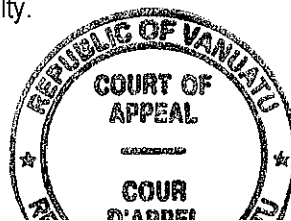
**Date of Decision:** 19 May 2023

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**REASONS OF THE COURT**

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1. Twelve men who were categorised as leaders under the terms of the Leadership Code Act were prosecuted for failing to file annual returns as required, for the year ended 1 March 2021. Three leaders – Sarlo Stephen, Jose Kombey and Jean Ialoulou – who all pleaded guilty to the charge, now appeal their sentences.
2. Their appeal is based on the claim that the sentencing Judge did not follow this Court's guidance in *Public Prosecutor v Andy [2011] VUCA 14* and *Jimmy v Public Prosecutor [2020] VUCA 40* or adequately take into account the relevant facts of their personal circumstances when sentencing them or give appropriate discounts for their early pleas of guilty.



3. The maximum penalty for the offence of failing to file an annual Leadership return is VT2,000,000. Mr Stephen and Mr Laloulou were fined VT300,000 each. Mr Kombey, VT400,000 with a daily continuing fine of VT1,000 until his return was filed. Mr Stephen and Mr Laloulou had filed their return by the time the case came for sentencing in the Supreme Court.
4. The Judge in his sentencing remarks, divided the 12 offenders into two categories. Those who had filed their returns (although late) and those who had not filed their returns at all. All the late filers were fined VT300,000 and all the non-filers VT400,000, together with the VT1,000 per day fine for a continuing offence.
5. In his sentencing remarks the Judge noted the personal circumstances of the appellants as advised by their counsel, and some of the relevant facts relating to the offending itself. For example, the Judge noted that Mr Laloulou and Mr Stephen had said they did not know about the need to file the return until well after the expiry of 1 March 2021, the time limit for filing.
6. However, when deciding the appropriate penalty, the Judge said:

*"25. The defendants who did not file their 2020 annual returns (non-filers) Noel Era, Jose Kombey and Asik Abel Sam. To date they remain in breach and have continued to fail to file their 2020 annual returns. Each of them is sentenced to pay a fine of VT400,000 and VT1,000 per day for each day the leader remains in breach.*

*26. The defendants who were late in filing their 2020 annual returns (late filers) and only did so after the grace period had expired are Jimmy Iawia, Sarlo Stephen, Jean Laloulou, Karlshem Bongran, Russell Tamata, Joe Lui Pakoa, Serge Lewawa and Yvonne Basil. Each of them is sentenced to pay a fine of VT300,000.*

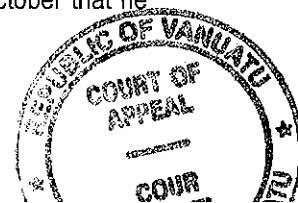
*27. The sentence is to serve as punishment for your failure to file your 2020 annual return. It should serve as a warning to you and other leaders for failing to file your annual returns in future."*

7. We are satisfied the Judge fell into error in failing to take into account the facts of the offending relevant to each of the appellants, and their personal circumstances when deciding on an appropriate sentence. His global approach to sentencing did not fairly reflect the culpability of the three appellants or how their personal circumstances might mitigate any penalty. If the judge had followed this court's guidance in *Andy* and in *Jimmy* such an error would have been unlikely. The Judge also failed to consider the submissions that no conviction should have been recorded under section 55 of the Penal Code.
8. In those circumstances we set aside the Judge's sentences. We have concluded that we are in a position to re-sentence Mr Stephen, Mr Kombey and Mr Laloulou.
9. These were the first prosecutions for failing to file the annual returns for leaders. The obligation to file such returns is an important part of helping ensure Vanuatu has a corruption-free leadership. And so, the obligation to file annual returns is a way for leaders to account to their community. For the first time



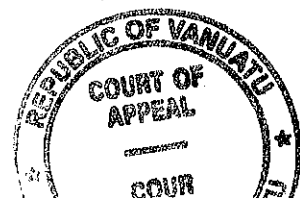
the returns were to be filed with the Ombudsman's Office. The Ombudsman's Office undertook an extensive publicity programme to inform leaders of the obligation to file the annual returns. The obligation was to file the returns by 1 March, but a further grace period was given to leaders, to 14 March, for filing returns. The publicity relating to the obligation to file the returns was primarily on radio, in print media and by email notification to those who were leaders.

10. We turn now to consider the individual appellants.
11. Mr Stephen was a second political advisor at the Ministry of Health, appointed on 21 April 2020. This was the first year of his appointment and therefore the first occasion on which he was obliged to file a return. In March 2021 Mr Stephen was residing at Malekula. He filed his return on 1 October 2021.
12. Mr Stephen's instructions to his counsel, repeated before this Court and the Supreme Court, was that he did not know about his obligation to file his return. The prosecution did not dispute this claim. For the purpose of this sentencing, we accept Mr Stephen's statement about his knowledge of the obligation to file his return. In late August 2021, Mr Stephen was interviewed by members of the Ombudsman's Office. At that time he told the members that he did not know about the obligation to file the annual return. In early October 2021 he went to Port Vila where he spoke to the Public Solicitor and immediately filed his return. When interviewed by the Ombudsman's Office, he apologised to the people of Vanuatu and assured them that he had learned his lesson and would not repeat the offence. He pleaded guilty shortly after being charged.
13. Mr Stephen is a 31-year-old man who was educated at USP and did a three-year public administration and management degree in China. This was his first job. Subsequently, his employment finished but more recently he has been re-employed in a similar leadership position. His village Chief spoke very highly of Mr Stephen, who apparently has been donating VT30,000 of his salary each two weeks, to support his village.
14. In the Supreme Court, counsel for Mr Stephen sought a discharge without conviction (section 55 of the Penal Code Act). That application was renewed before this Court. We are satisfied that the effects of the conviction of Mr Stephen in the circumstances would be out of proportion to his offending. Mr Stephen filed his annual return very shortly after he became aware of his obligation to do so. There was no suggestion that he was hiding anything in the return. He was employed in a relatively modest position of leadership. He accepted responsibility by an early guilty plea. Mr Stephen has the prospect of a valuable career in front of him given his qualifications. His community spirit is to be commended. A conviction in our view would be out of proportion to the potential consequences on his career and life prospects. We therefore discharge him without conviction, pursuant to section 55 of the Penal Code.
15. Mr Ialoulou was the third political advisor to the Ministry of Foreign Affairs and Trade, appointed on 1 June 2020. Mr Ialoulou filed his return on 31 October 2021. This was the first time Mr Ialoulou has been classified as a leader, and therefore the first time he had an obligation to file the Leadership Annual Return. Mr Ialoulou is, and was at the time, a subsistence farmer in Tanna. He did not have access to a computer or email. He told the Ombudsman's office on interview on 11 October that he



did not know about the obligation to file an annual return. Shortly afterwards on 31 October, he went to Port Vila and filed the return. There is nothing to suggest that in his return he was trying to hide anything inappropriate. He pleaded guilty shortly after he was charged.

16. At sentencing through counsel, Mr Laloulou sought a discharge without conviction. That application was repeated before us. Mr Laloulou is no longer a leader but continues as a subsistence farmer in Tanna. He has a wife and six children and a good reputation in his local community.
17. We are satisfied that a discharge without conviction, pursuant to section 55 of the Penal Code Act, is appropriate in this case. Mr Laloulou's culpability is at the lower end of the scale. The prosecution does not dispute the fact that Mr Laloulou did not know about his obligation to file his Leadership Annual Return until interviewed by the Ombudsman's Office. He was living in an isolated area without internet access. Very soon after he knew of his obligation, he filed the return.
18. We are satisfied that a criminal conviction, given its effect on his good name and reputation, would be out of proportion to the facts of the offending, we therefore discharge him without conviction.
19. Mr Kombey is 59 years of age. In his pre-sentence report, he accepted that he knew about the obligation to file the return. He told the probation officer that he was mostly in the community, when he was a leader, with little time in the office. He said that *"time was not on his side to prepare and submit his annual return."* He told the probation officer that he regretted his failure. Mr Kombey has still not filed his return. He has not provided this Court with any reason for his failure to do so.
20. This was a serious failure by Mr Kombey. He knew of his obligation to file the return on time and his continued failure to file the return adds to the seriousness.
21. However, we set his starting point at a modest level, given he was a third level political advisor, and this prosecution was the first under the new filing regime with the Ombudsman's Office. Future starting points for similar acts may well be significantly higher. We therefore set a starting sentence based on the facts, at VT250,000.
22. As to Mr Kombey's personal circumstances he is a first offender. He has a good reputation in his community. He has only a very modest ability to pay a fine. For his personal circumstances, we reduce the starting sentence by VT50,000, to VT200,000. Finally, his guilty plea. This was given at the first opportunity. We deduct one third from the starting sentence being approximately VT65,000, leaving a final fine of VT135,000.
23. Now that the first round of obligations to file the annual returns with the Ombudsman's Office has been completed, and these prosecutions followed, there are likely to be few if any, leaders that are not aware of their responsibility to file their annual return on time in the future. And so, the opportunity for a section 55 discharge without conviction based on ignorance of the obligation to file, may be rare.
24. One final matter, all 12 offenders were charged together in one information. The defendants did not



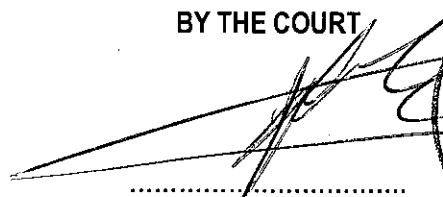
act collectively. Charging them all in one information was not appropriate. Each failure to file was unique to the particular defendant. There should have been separate charges for each defendant.

25. In summary therefore,

- a) Mr Stephen's appeal against sentence is allowed. The sentence is set aside. Instead, he is discharged without conviction pursuant to section 55 of the Penal Code;
- b) Mr Kombey's sentence appeal is allowed. His sentence is set aside. Instead Mr Kombey is fined VT135,000. His obligation to pay the VT1,000 per day until the return is filed, remains;
- c) Mr laloulou's application to appeal out of time is granted. His appeal is allowed, and his sentence is set aside. Instead Mr laloulou is discharged without conviction pursuant to section 55 of the Penal Code].

DATED at Port Vila, this 19<sup>th</sup> day of May 2023

BY THE COURT

  
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Hon. Chief Justice V Lunabek

