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IN THE MAGISTRATES' COURT
OF THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 363 of 2012

PUBLIC PROSECUTOR -V- KIMBERLEY LEIGH LAMB

Coram: Moses Peter
Counsel: Brian Bani for the State Prosecution
Nigel Morrison for the Defendant

Date of Plea: 3rd August 2012
Date of Judgment: 4th of September 2012

Ms. Kimberley Leigh Lamb, on 3rd August 2012, the police charged you with offenses, particulars of which are as follows:

Count 1

Statement of offence

IMPORTATION OF OBSCENE MATERIAL- contrary to section 147 (1) of the Penal Code Act [CAP. 135].

Particulars of the offence

Kimberley Leigh Lamb, sometimes on 22 July 2012 on Qantas Flight QF 375 from Sydney Australia to Port Vila International Airport, you did imported into Vanuatu some sex toys namely vibrator, anal sex toy and a sex whip importation of which is prohibited under the laws of Vanuatu.

Count 2

Statement of offence

DECLARATION BY PERSON ARRIVING IN OR DEPARTING FROM VANUATU- contrary to section 26 (3) © of the Customs Act [CAP. 257]

Particulars of the offence

Kimberley Leigh Lamb, sometimes on 22 July 2012 on Qantas Flight QF 375 from Sydney Australia to Port Vila International Airport, you did failed to declare prohibited goods as required by the laws of Vanuatu Customs.

You pleaded guilty on both charges on 3rd of August 2012 and the Prosecution submitted the brief facts of the case to the following effect:



You are 23 years of age and hailed from North Carolina in the United States of America. The Complainant in this case is police officer namely Basil Talber attached with the Maritime Wing of the Vanuatu Police Force. The Complainant filed a statement of complaint alleging three sex toys materials found in your possession during a search operation in sailing vessel Phocea on 27th July 2012. The search was conducted following allegations of breaches of Customs Act. The Complainant reported these sex toys were found in your suitcase which you confirmed owning these materials, and also confirmed bringing them through Airport and through customs.

A police officer namely Willie Rexona Charlie also filed a witness statement confirming discovering of these materials in your suitcase, in the yacht. He also confirmed you bringing these materials through Airport and through customs on the flight of 22nd July 2012.

On 31st of July 2012, a Customs Officer at the airport namely Johnny Mariki filed a witness statement who confirmed being on duty when you arrived. He confirmed your arrival on 22 July 2012 on flight QF 375 at 14.50 hrs. He said you declared excess cigarette which you brought and nothing else.

You were cautioned by the police officer Whitely Kenneth over the sex toys found on your possession. You confirmed your statement as follows:

- You are from USA;
- The suitcase in which the sex toys were found is yours;
- The sex toys found in the suitcase were yours;
- The sex toys were imported through Port Vila International Airport on 22 July 2012 when you arrived as a passenger;
- After leaving the airport, you were transported with your luggage to a residence in Port Vila and subsequently you boarded the Sailing Vessel Phocea, when the sex toys were discovered during the police search operation;
- You confirmed declaring other materials except the obscene materials;
- You did not know that these materials are prohibited in Vanuatu;;
- You said you did not declare the obscene materials because you did not know that you have to declare them and also you did not tick the box confirming bringing these materials with you because you missed the box in the arrival question card.

You have no previous record of conviction. The Prosecution submitted that proper consideration must be taken by the court in respect of these offences and that adequate punishment must be imposed on the Defendant. The prosecution embarked on the governing legislation dealing with importation of obscene materials, and the impact these materials will have on the lives of the people of Vanuatu, who initially upholds the Christian and moral standards and who considers importation of such obscene materials as taboo.



The Prosecution proposed sentences of fine of money three times the value, to be imposed on the Defendant and seeks an order for destruction of these obscene materials from the court. Moreover, the Prosecution seeks an order for cost of VT 2,000.

Mr. Morrison submitted that the Defendant came to Vanuatu to visit friends through Sydney, Australia, and she brought the sex toys with her. She did not know that these articles are prohibited in Vanuatu. When she checked into her previous destinations, these articles are declared without a problem. Upon coming through Customs in Port Vila, these articles were not confiscated by customs officers. They are kept in plastic wrappers coming through customs and they were still kept in the plastic wrappers when confiscated by the police officer.

He further submitted that these articles are considered very differently in Vanuatu, given the modest standards of dressing and behavior. However, the western cultures are accepting these articles as lawful to be kept for personal usages.

On the value of these articles, Mr. Morrison submitted the value of the article bought in America was USD 50.00. This is equivalent to VT 500 and three times the value would be VT 1,500.

The Defence Counsel submitted that payment of fine would be the starting point, but seeks an order for discharge of the Defendant under section 55 (1) of the Penal Code Act [CAP.135], and a prosecution cost of VT 10,000. The Defendant is a student, and she worked part time to pay for her studies. She came to Vanuatu for holiday and her holiday has been devastated as she had to spend most of the time seeing the police and coming to court.

LAW

Obscene Publications

Penal Code Act [CAP.135] section 147. (1) No person shall-

(a) manufacture, hold for sale, distribution, lease or display, import, export or transport;

(b) display or expose to public view;

© sell or hire;

(d) offer to any person for reward or otherwise;

(e) distribute or deliver for distribution any printed matter, writing, drawing, sign, engraving, printing, photograph, film, sound recording, emblem or other object or representation whatsoever of obscene nature.

Penalty: Imprisonment for 2 years.

Declaration by persons arriving in or departing from Vanuatu



Customs Act [CAP.257] section (3) The following goods or items must be declared to customs whether or not a declaration is required or requested.

© prohibited goods or restricted goods.....

(4) Any person arriving in Vanuatu or departing from Vanuatu who:

(a) fails to make a declaration when required or requested to do so;... ..is guilty of an offence punishable on conviction by a fine of 3 times the value of the goods or imprisonment for not more than 6 months, or both.

VERDICTS

The court took into account the following mitigating factors:

- The Defendant is 22 years of age and domiciled in North Carolina, United States of America;
- She has no previous conviction record;
- She is a student and works part time to fund her studies;
- She pleads guilty at the first instance on the 2 charges;
- She cooperated very well with the police investigators;

The court also considered the Defendant's holiday an embarrassment as she had to see the police and coming to court for hearing. She originated from a country whose lifestyle and culture differs from our country, and it is accepted that she had no intention of violating the laws of the country by failing to declare these articles upon her arrival in Vanuatu. This is evident in the submission of her counsel that the articles were kept in plastic wrappers in the suitcase, and she had not shown any motive of hiding them in her suitcase. Because these articles were accepted for personal keeping in her jurisdiction, she believes the same would apply here in Vanuatu.

However, the differences in cultures and mentality cannot be an excuse to ignore the laws of this country. The Penal Code Act [CAP.135] section 11 (1) reads: "*Ignorance of the law shall be no defence to any criminal charge*".

The court having enquired into the circumstances of the case is satisfied that the articles were not declared by the Defendant upon her arrival at the Bauerfield International Airport on 22nd of July 2012. She boarded the Sailing Vessel Phoea which was subject to police search, and during the search, these articles were discovered to be in possession of the Defendant. She admitted importing these articles, and cooperated well with the police during interrogation to appearance in court for plea. She pleaded guilty to all charges and showed remorse for her actions. She is a student and has part time employment for funding her studies. She paid for her trip to come to Vanuatu to spend holiday, and she has been devastated from having to spend all her holiday on cooperating with police investigators and attending court proceedings.

The Defendant is young, and has potential of completing her studies and venture into making a good fortune in her life and that is an important aspect of one's life that must be respected and encouraged.



Having this consideration, the court is satisfied that the Defendant be discharged in accordance to section 55 (1) of the Penal Code Act [CAP.135].

The Defendant is ordered to pay Prosecution cost of VT 10,000 by 4th of August 2012 at 4.00 pm.

The Police Officer having custody over the said articles namely the sex vibrator, anal sex toy and sex whip shall destroy same immediately upon receipt of this order.

The Defendant has 14 days to appeal if dissatisfied with this decision.

DATED at Port Vila this 4th day of September 2012

BY THE COURT


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MOSES PETER
Magistrate


REPUBLIC OF VANUATU
MAGISTRATE
COURT