

PUBLIC PROSECUTO-Vs-

JEAN PAUL MOLI  
ALICK ESAU  
CLEMENT JAMES  
NICHOLSON DICK

Coram: Mr. Justice Reggett Marum

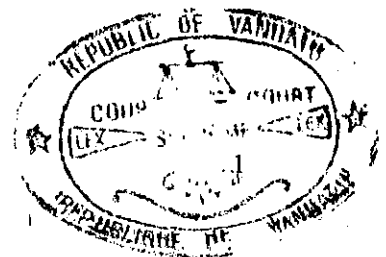
Mr. Less J. NAUPATI for Public Prosecutor for the State  
Mr. Hilary Toa for the Plaintiffs/ Appellants.

### JUDGEMENT

This was an appeal brought by the Public Solicitor on behalf of the four appellants. The grounds of appeal are those contain in the memorandum of appeal dated the 8<sup>th</sup> December 1999. The defendants were not represented at that time. After the magistrate finding the defendants guilty he defers conviction and sentence and ordered the matter for reconciliation. Reconciliation took place however; the complainant did not accept what was offered in reconciliation and place his own suggestion. The court than made out probation orders on the failure of reconciliation. In this appeal the appellant only disputed paragraph 1 of the probation order and not the finding of the magistrate which reads;

*That (they ) shall remain in the Island of Efate under the supervision of his probation officer to carry out any manual work, for seven hours per day for community work and also requested by Mr. Willie Jimmy from time to time.*

As advance by their counsel that the work they did was to hard for them to perform and need to be change. Also their counsel advances that their respective parents have mention similar concern. Paragraph 1 of the probation order refer to all four defendants.



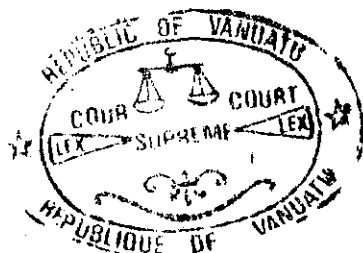
Hilary also advances that they started doing some work already as of 10 October to 7 December 1999 and stops after lodging this appeal until today. Hilary also advances that instead of doing work for the complainant they should only pay compensation to him for the loss or damages done to his property.

Law.

S.47 and s.48 of the Penal Code refers to two types of condition. That is s.47 refer to *general condition* that the court can specify in the probation order or under s.48 which refer *special condition*.

Section 47 & 48 of the P.C does not make optional powers for the court to make apart from those specified under section 47& 48 of the P.C. This means that Magistrate can not impose any general probation order as they wish apart from those that are in section 47 & 48. And to include in paragraph 1 of the probation order that "*and also requested by Mr. Willie Jimmy from time to time*" was made against the provision of S.47 & 48. And I find that the inclusion of such order was wrong in law, and be deleted. In deleting that part of the order than the appellants should only pay the complainant compensation instead of working for him as advances by the counsel for the appellants. And this will reflect the requirements of s.48 (f) of the P.C and to be included in the probation order of the 14<sup>th</sup> of October 1999 as part of the probation order, where the defendant to compensate the complainant for loss or any damage to his property. And in the event that the Appellants fail to comply with such probation orders than section 50. of the P.C can be enforced against them, by application by the prosecutor to revoke the probation order and the appellants can be called upon for sentence for the actual offence found guilty of and that should complete the matter.

The finding of the Magistrate was not the subject matter of the appeal but only probation order. And for these reasons I now will exercise the power under section 207 (1) (b) of the C.P.C to alter paragraph 1 of the probation order in deleting "*to carry out any manual work for seven hours per day or for community work and also requested by Mr. Willie Jimmy from time to time*" and the condition in section 48 (f) of



the Penal Code *that is to compensate Willie Jimmy for damages or loss caused to him to the value as found by the magistrate* be substituted in compliance with Section 47 & 48. So the new paragraph 1 of the probation order of the 14<sup>th</sup> of October 1999 should read;

*That shall remain in the Island of Efate under the supervision of his probation officer and to compensate Willie Jimmy for damages of loss caused to him in committing the offence.*

The appellants have complied with the probation order for a period of 2 months already. And this should be taken into account as work done already under the probation order to the value of lost by the complainant. Counsel for the appellant advances that the value of damages and loss caused to the complainant was VT 888,720. The probation order was to last 8 months. Therefore, in calculation 222,180 Vatu should be deducted from the total of 888,720 Vatu and remaining amount to be paid by the appellants under the probation order to the complainant is 666,540vt. And further I will extend the period of 8 months under the probation order to begin as from today 28<sup>th</sup> June 2000.

And in the event they fail to comply with the probation order issued on the 14<sup>th</sup> October 1999 including this amended order then they shall all be called upon for conviction and sentence afresh under section 50 of the Penal Code for those offences they were found guilty of before the Magistrate Court.

Dated at Port Vila, this 28<sup>th</sup> day of June 2000.

