

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

**KEVIN HEROMANLEY
DAVID TANGA
CHARLOT JEAN BAPTISTE
KELLY HEROMANLEY
NANDO KAI
ALBERT TANGA
FRED JOSEPH
JACK BERNARD
RODRICK PAUL
ROCK TURA
MICHAEL PAUL
FELIX KAI
MARCELIN RUVU
TERRY JEAN BAPTISTE
AMOS ROY**

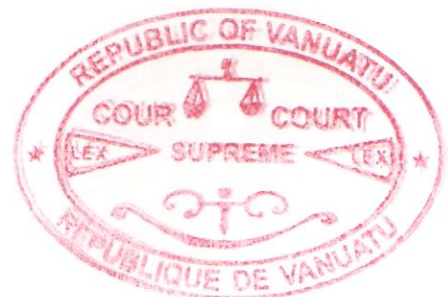
**Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk**

**Mrs Kayleen Tavoa – Public Prosecutor
Mr Henzler Vira for the Defendants**

**Date of Pleas: 25th February and 15th March 2010
Date of Sentence: 8th April 2010**

SENTENCE

1. This group of 15 defendants were charged as follows:-
 - (a) For Unlawful Entry – Section 14 3(1) – Kevin Heromanley, David Tanga and Charlot Jean Baptiste.
 - (b) For Aiding Unlawful Entry – Sections 30 and 14 3(1) – Kelly Heromanley and Nando Kai.



(c) For Malicious Damage to Property – Section 133 – Kevin Heromanley, David Tanga and Charlot Jean Baptiste.

(d) For Theft – Section 125(a) – Kevin Heromanley, David Tanga, Charlot Jean Baptiste, Kelly Heromanley and Nando Kai.

(e) For Receiving Property Dishonestly Obtained – Section 131 – Albert Tanga, Fred Joseph, Jack Bernard, Roderick Paul, Rock Tura, Michael Paul, Felix Kai, Marcellin Ruvu, Terry Jean Baptiste and Amos Roy.

2. On 25th February 2010, the Court entered the following pleas –

(a) For Unlawful Entry – Kevin Heromanley, David Tanga, Charlot Jean Baptiste pleaded guilty.

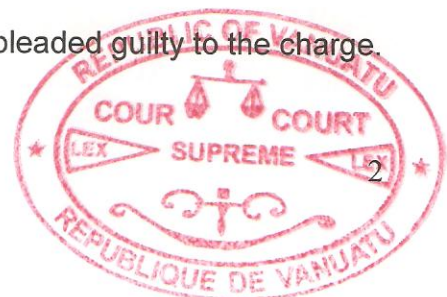
(b) For Aiding Unlawful Entry – Kelly Heromanley and Nando Kai pleaded guilty.

(c) For Malicious Damage to Property – Kevin Heromanley pleaded guilty while David Tanga and Charlot Jean Baptiste pleaded not-guilty.

(d) For Theft – Kevin Heromanley, David Tanga, Charlot Jean Baptiste, Kelly Heromanley and Nando Kai all pleaded guilty.

(e) For Receiving Property Dishonestly Obtained – Albert Tanga, Michael Paul and Felix Kai pleaded guilty while Fred Joseph, Roderick Paul, Rock Tura, Marcellin Ruvu, Terry Jean Baptiste and Amos Roy all pleaded not-guilty.

And on 15th March 2010, Jack Bernard pleaded guilty to the charge.



3. The amount of money stolen was VT6.100.000 in hard cash. From the facts, the sum of the VT3.100.000 have been recovered by police. The amount still missing and unaccounted for is VT3.000.000.

4. From the facts which are not disputed, Kevin Heromanley took VT2.700.000 and distributed it to –

(a) David Tanga – VT360.000 who used VT150.000 on alcoholic drinks.

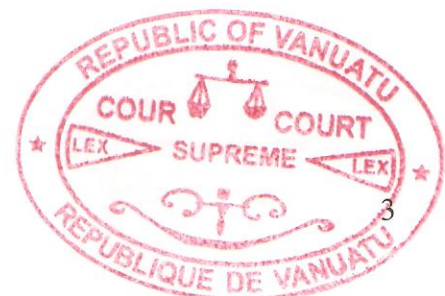
(b) Nando Kai –	VT10.000
(c) Kelly Heromanley –	VT60.000
(d) Charlot Jean Baptiste –	VT4.500
(e) Albert Tanga –	VT10.000
(f) Michael Paul –	VT450.000
(g) Felix Kai –	VT20.000
(h) Jack Bernard –	<u>VT50.000</u>
Total -	<u>VT964.500</u>

5. The facts also show that David Tanga took between VT1.500.000 – VT3.000.000 and distributed it to –

(a) Nando Kai – VT12.000.

6. The other items stolen from a dwelling house were –

- (a) 2 mobile phones;
- (b) Cigarettes;
- (c) Alcoholic liquor;
- (d) 2 cameras;
- (e) 1 laptop;



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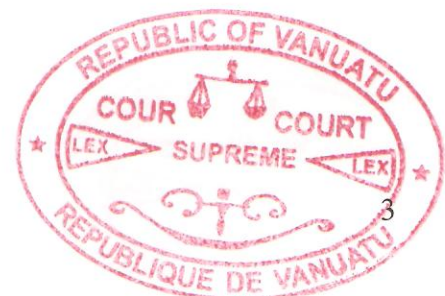
(b) Nando Kai –	VT10.000
(c) Kelly Heromanley –	VT60.000
(d) Charlot Jean Baptiste –	VT4.500
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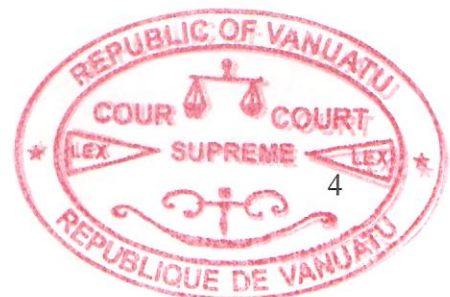


(f) 1 MP3 player; and

(g) 1 CD walkman.

It is not apparent from the facts whether these items were recovered by Police.

7. The loss to the victim, an expatriate businessman is enormous and it is not surprising that he strongly opposed any proposal for reconciliation according to the pre-sentence reports.
8. There can be no doubt that the commission of the offences of unlawful entry, aiding and theft were well planned in advance. It was submitted by the Public Prosecutor that the offences of unlawful entry, theft and aiding should attract custodial sentences and that the starting point be 7 years. Two cases were cited in support of this submission. These were Public Prosecutor v. Moses Kilton and others Criminal Case 29 of 2002, and Public Prosecutor v. Kenneth Atuary Criminal Case No. 26 of 2007.
9. Defence Counsel submitted the case of Moses Kilton was more serious in that it involved intentional assault and the use of force as well. Whilst the submission is correct, the Court accepts the case as authority for ordering restitution against the defendants further to any other sentence or penalty, the Court may see fit to impose. Equally, the Court accepts that Kenneth Atuary's case is applicable as authority for imposing a custodial sentence on an offender who commits burglary.
10. In considering sentence, the Court takes into consideration as mitigating factors:-
 - (a) Guilty pleas at first available opportunity.



(b) Ages of the offenders ranging from 16 years, (Nando) 17 years (Kelly H), 18 years (Kevin H) and Charlot Jean Baptiste, 21 (Michael Paul), 24 years (David Tanga, Albert Tanga and Felix Kai), and 44 years (Jack Bernard). Jack Bernard's age becomes an aggravating feature rather than a mitigating factor.

11. Consideration have been given to those defendants who pleaded Not-Guilty. The prosecution has not indicated any intention to proceed to trial against them and they have not presented any evidence to prove guilt. For this reason, the Court arrived at the conclusion that –

(a) The charge of Malicious Damage to Property against David Tanga and Charlot Jean Baptiste be dismissed against them and that they be discharged and acquitted accordingly of that charge.

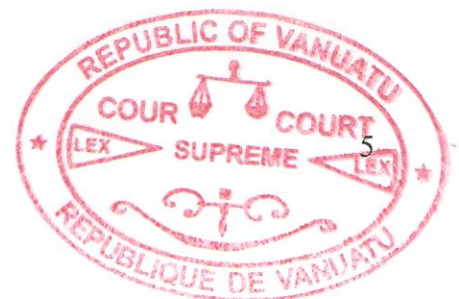
(b) The charges of Receiving Property Dishonestly Obtained against Fred Joseph, Roderick Paul, Rock Tura, Marcellin Ruvu, Terry Jean Baptiste and Amos Roy be dismissed against each of them, and they be discharged and acquitted accordingly of those charges.

12. As for the remaining defendants, the Court convicts –

(a) Kevin Heromanley, David Tanga and Charlot Jean Baptiste for Unlawful Entry.

(b) Kelly Heromanley and Nando Kai for Aiding the commission of Unlawful Entry and Theft.

(c) Kevin Heromanley, David Tanga, Charlot Jean Baptiste, Kelly Heromanley and Nando Kai for Theft.



(d) Kevin Heromanley for Malicious Damage to Property.

(e) Albert Tanga, Michael Paul, Felix Kai and Jack Bernard for Receiving Properties Dishonestly Obtained.

13. The following sentences were imposed –

(a) Kevin Heromanley

For Unlawful Entry – 3 years imprisonment.

For Malicious Damage – 2 years imprisonment.

For Theft – 3 years imprisonment.

These sentences are to be served consecutively making a total of 8 years imprisonment at the Correctional Centre in Luganville. There is a parole eligibility after having served up to half of the total sentence.

Restitution – Section 58 Z D

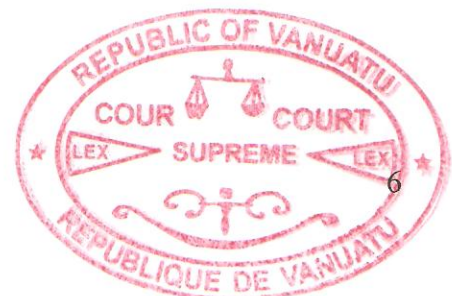
I hereby Order the defendant to repay the sum of VT1.736.000 within 24 months after he has completed his sentence. All payments must be made to the Registry of the Court in Luganville. Failure to pay will result in imprisonment for 1 week for every VT1.000 which remains unpaid.

(b) David Tanga

For Unlawful Entry – 3 years imprisonment.

For Theft – 3 years imprisonment.

These sentences are to be served consecutively making a total of 6 years imprisonment at the Correctional Centre at Luganville. There is a parole eligibility after having served up to half of the total sentence.



Restitution – Section 58 Z D

I hereby Order the defendant to repay the sum of VT1.488.000 within 24 months after he has completed his sentence. All payments must be made to the Registry of the Court in Luganville. Failure to pay will result in imprisonment for 1 week for every VT1.000 which remains unpaid.

(c) Charlot Jean Baptiste

For Unlawful Entry – 3 years imprisonment.

For Theft – 3 years imprisonment.

These sentences are to be served consecutively making a total of 6 years imprisonment at the Correctional Centre, Luganville. There is a parole eligibility after having served up to half of his total sentence.

Restitution – Section 58 Z D

I hereby Order that the defendant pays the sum of VT4.500 within 6 months after he has completed his sentence. Payment must be made to the Registry of the Court in Luganville. Failure to pay will result in imprisonment for 1 week for every VT1.000 remaining unpaid.

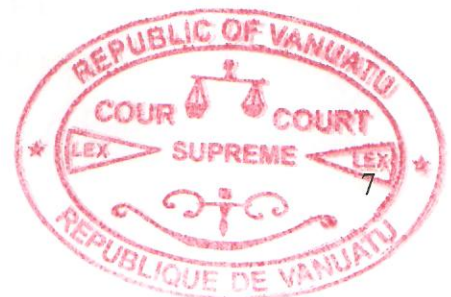
(d) Kelly Heromanley

For Aiding Unlawful Entry – 3 years imprisonment.

For Theft – 3 years imprisonment.

These sentences are to be served concurrently making a total of 3 years at the Correctional Centre, Luganville. There is a parole eligibility after having served up to half of the total sentence.

Restitution – Section 58 Z D



I hereby Order that the defendant pays the sum of VT60.000 within 12 months after he has completed his sentence. Payments must be made to the Registry of the Court in Luganville. Failure to pay will result in imprisonment for 1 week for every VT1.000 remaining unpaid.

(e) Nando Kai

For Aiding Unlawful Entry – 3 years imprisonment.

For Theft – 3 years imprisonment.

These sentences will be served concurrently making a total of 3 years imprisonment at the Correctional Centre in Luganville. There is a parole eligibility after having served up to half of the total sentence.

Restitution – Section 58 Z D

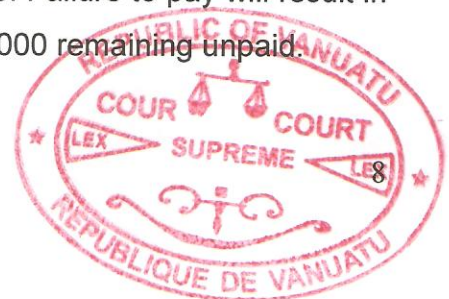
I hereby Order the defendant to pay the sum of VT22.000 within 6 months after he has completed his sentence. Payment must be made to the Court Registry in Luganville. Failure to pay will result in imprisonment for 1 week for every VT1.000 remaining unpaid.

(f) Michael Paul

For Receiving Property Dishonestly Obtained – 10 months imprisonment at the Correctional Centre in Luganville. There is an automatic release on parole after having served up to half of the total sentence.

Restitution – Section 58 Z D

I hereby Order the defendant to pay the sum of VT450.000 within 12 months after he has completed his sentence. Payment must be made to the Court Registry in Luganville. Failure to pay will result in imprisonment for 1 week for every VT1.000 remaining unpaid.



(g) Albert Tanga

For Receiving Property Dishonestly Obtained – He is sentenced to 40 hours of Community Work under Section 58 N and 58 P(1) of the Act.

Restitution – Section 58 Z D

I hereby Order the defendant to pay the sum of VT10.000 into the Court Registry in Luganville within 6 months after he has completed his 40 hours of Community Service. Failure to pay will result in imprisonment for 1 week for every VT1.000 remaining unpaid.

(h) Felix Kai

For Receiving Property Dishonestly Obtained – He is sentenced to 40 hours of Community Service under Sections 58 N and 58 P(1) of the Act.

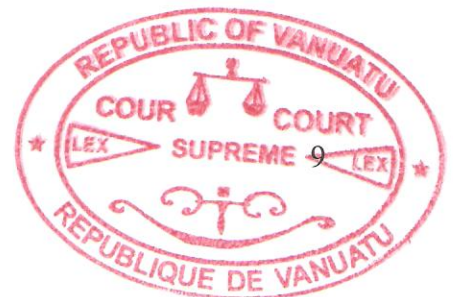
Restitution – Section 58 Z D

I hereby Order the defendant to pay the sum of VT20.000 within 6 months after completion of his 40 hours of Community Service. Payment must be made to the Court Registry in Luganville. Failure to pay will result in imprisonment for 1 week for every VT1.000 remaining unpaid.

(i) Jack Bernard

For Receiving Property Dishonestly Obtained – He is sentence to 50 hours of Community Service under Sections 58 N and 58 P(1) of the Act.

Restitution – Section 58 Z D



I hereby Order the defendant to pay the sum of VT50.000 within 6 months after completion of his 50 hours of Community Work. Payment must be made to the Court Registry in Luganville. Failure to pay will result in imprisonment for 1 week for every VT1.000 remaining unpaid.

14. The Court imposes these sentences to –

- (a) Act as a deterrence to both the offenders and others; and
- (b) To punish the defendants adequately.

DATED at Luganville this 8th day of April 2010.

BY THE COURT



OLIVER A. SAKSAK

Judge

