

PUBLIC PROSECUTOR -v- LULU DICK & OTHERS

Coram: Chief Justice Vincent Lunabek

Counsel: Mr Tristan Karae for the Public Prosecutor
Mr Eric Molbaleh for the Defendant, Lulu Dick

SENTENCE

Mr Lulu Dick, you appear today for your sentence. You are born on 16 March 1992. You are now 19 years of age.

On 3 May 2011, you pleaded guilty to one count of Unlawful Entry contrary to section 143(1) of the Penal Code Act [CAP.135], one count of Theft, contrary to section 125(a) of the Penal Code Act. You are then convicted accordingly on all 2 counts. The other 5 Defendants, namely, Brian Michel, Job Norman, Kawa Joe, Richie Napau and Michel Napau failed to appear for pleas on 3 May 2011. Warrants were issued for their arrest and they are still pending execution by the police. The brief facts of the offending are provided by the prosecution in their brief facts. Your lawyer accepted them on your behalf. You entered your guilty pleas on the basis of these facts. They show that you and 5 others grouped together, you planned together to unlawfully enter into Mr Greg Lee's house at Rentabau, South Efate and stole various properties in the house on the night of 23 January 2011. The summary of the facts are as follows:

On the night of 22nd January 2011 you and other defendants broke into Mr Greg Lee's house at Rentabau, South East Efate and stole various items including 1 outback inventory (charger), 3 Tosan Batteries, 1 Panasonic DVD player with its remote, sonic video recorder, a large quantity of DVDs, 2 box of alcohol, a large number of jewelleryes, food, 3 mobile phone, 2 stereo speakers and 1 knife.

Greg Lee and his wife spent the night in Vila when the offence took place. One of his

worker Philimon James who sometimes live with them was at the house Saturday afternoon when he decided to spend the night at Rentabau bridge. He locked up the house and then left. The next morning Sunday 23rd January 2011 on his return he noticed the door for the house was wide open with screen broken and louvers removed. He immediately rang Mr Greg, he also searched around the place and plantation to see if he could find anything except a 1 foot pump lying near the road.

Mr Greg arrived at the scene around 8.30 to 9 and joined Philemon for the search. They could not find any items until Tuesday 25th February 2011 when Mr Philemon went back to Rentabau bridge at your parents' house and there he found you Lulu Dick crying to your parents, confessing that you and other Defendants stole from Greg's house. You also mentioned that you and other Defendants went to the house around 6.00pm at night, Brian broke the screen, removed four louvers from the window and you and 5 others went inside and stole whatever items you could take with you. All food items and alcohols have been consumed. The police were informed, investigated the case and various statement were taken from each witnesses and Defendants voluntarily. Following items were recovered and returned to Mr Greg:

- | | |
|-----------------------------|------------|
| - Outback Inverter/charger | 350,000 VT |
| - 3 Tojan Batteries | 90,000 VT |
| - Panasonic surround stereo | 85,000 VT |
| - Sony Video Recorder | 140,000 VT |

When I consider your sentencing, I take into account the submissions of the prosecution, the submissions of your lawyer and the pre-sentence report filed.

Both counsel refer to the Judgment of the Court Appeal in **Heromanly v. Public Prosecutor** [2010] VUCA 25; Criminal Appeal Case No.02 of 2010 (16 July 2010) and that of **PP v. Andy** [2011] VUCA 14; Criminal Case No.09 of 2011. I will apply both of them in the present case.

Entering into property of another person unlawfully and stole properties of that person once you are in the house are serious offences. The seriousness of these offendings are reflected in the maximum penalties set by law which are: 20 years imprisonment for unlawful entry into a sleeping house and 12 years imprisonment for theft. The seriousness of your offending is aggravated by the following factors:

- There was some degree of planning and pre-meditation; there were some

minor damages to the property to gain access to the shop. The offending was a criminal enterprise as you grouped together to commit these offences and the offendings were committed at night time.

I sentence you to 4 years imprisonment as a starting point.

In mitigation, I consider that you are a youth of 17 years of age; you admitted the offences to the police and cooperated well with the police authorities; you gave back some of the properties stolen to the police; you are a first time offender; you are remorseful; you have been threatened by your co-accuseds that if you did not follow them to steal, they would assault you.

Finally I consider that you pleaded guilty at the first opportunity given to you by the Court and after proper balance, I reduce you sentence to 15 months imprisonment.

I suspend your imprisonment sentence of 15 months for a period of 3 years. During the suspension period, you shall not re-offend. If you re-offend before the end of the 3 years suspension, your current suspended sentence shall be re-activated in addition to your new sentence.

In addition, I order you to undertake 24 months supervision and I set the following special conditions:

- (i) That you should not have any contact with any co-offenders without the supervision of a person approved by the Probation;
- (ii) you must complete the Niufala Programme as directed by the Probation Officer;
- (iii) you undertake any counseling, courses or programmes to address your offending behaviours as directed by the Probation Officers.

You have 14 days to appeal your sentence if you are not happy with it.

DATED at Port-Vila this 6th day of July 2011

BY THE COURT

Vincent LUNABEK
Chief Justice