

**PUBLIC PROSECUTOR - v - KIOM TOMAKI (GUILLAUME)
JEAN YVES SHEM
BAKON JEAN YVES (ETUL)
JULES SEULE
MOSES KILTON**

Coram: *V. Lunabek CJ*

Counsel: *Mr Tristan Karae for the public prosecutor
Mr Eric Molbaleh for the Defendants: Jules Seule and Moses Kilton
Mr Tom Joe Botleng for Defendants: Guillaume Tomaki, Jean Yves
Shem and Bakon Jean Yves (Etul)*

SENTENCE

Guillaume Tomaki, Jean Yves Shem, Bakon Jean Yves (Etul), Jules Seule and Moses Kilton, each of you appears today before the Court for sentence.

You are each and all charged with one count of unlawful entry, contrary to section 143 of the Penal Code Act [CAP.135] and one count of theft, contrary to section 125(a) of the Penal Code Act [CAP.135].

On 3 May 2011, each of you pleaded guilty to the offence of Unlawful Entry and Theft as charged on the criminal information dated 3 May 2011.

The brief facts are provided by the prosecution on 3 May 2011. Your respective lawyers accept these facts on your behalf before each of you entered each his guilty pleas on 3 May 2011. Those facts are not disputed. The facts show that you committed the offences of unlawfully entering the Simbolo Store at Anaburu area, Port-Vila and stole various items in the store on 2 March 2011 at around 2.00am o'clock in the morning. The following properties are stolen from the store which include material items and cash Vatu:

2 x 25kg Rice (Sun Rice)	7,400VT
2x 25kg (Pearl Rice)	6,900VT
24 x 19kg Rice	36,920VT



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40 x 10kg Rice	45,000VT
1 Sonic Camera	80,000VT
5 Sonic Speaker	15,000VT
20 x 2kg Chicken Wings	19,000VT
Soft Drinks	3,000VT
30 x 120 apple	3,600VT
1 carton, Tuskers	5,520VT
1 dozen Tray egg	1,200VT
18 Perfumes	12,240VT
1 DVD Deck	6,800VT
5 boxes of batteries	5,000VT
6 pairs of slippers	3,400VT
120 rings	42,000VT
5 Macocote Saucepan	41,900VT
1 set of earrings	5,400VT
9 school bags	7,020VT
30 Army Hats	3,450VT
10 pkts of Gross Cigarettes	72,000VT
4 small size cigarettes	24,000VT
Digecel Cards	18,100VT
TVL Cards	10,600VT
Clothes	49,008VT
Cash	30,000VT
School Fees (cash)	10,000VT
Total Cost Items	525,430VT
Total Cash	58,000VT
Total Value	583,430VT

The police made investigations on the case, arrested each of you but Moses Kilton resisted the arrest when the police officers went to collect him at his brother's house. He ran away when he saw the police but was later arrested on the main road at Wilco Hardware Store. He was taken to the police station, cautioned and he voluntarily gave a statement. According to each of you, you said that the mastermind was Jean Yves Shem who planned it all for all of you to steal from Simbolo Store. Jean Yves Shem cut open the lock to the main gate to the store with bolt cutter and you all went inside and took various items and cash Vatu referred to above.

In sentencing you, I take into account of the submissions by the prosecution and your respective lawyers. I take into account also of the pre-sentence report filed on your behalf.

In the present case, your offending is serious. The seriousness and gravity of your offending include the following factors:



- some degree of planning and pre-meditation;
- some damage to property to gain access to the shop;
- grouped together to commit offence – criminal enterprise;
- offence during in the night;
- value of properties stolen (VT583,430);
- Jean Yves Shem has 4 previous convictions on same offences since 2008 – 2010. In addition, today you are earlier sentenced to 2 years and 8 months for similar offences. You escaped while in Court on a Friday and re-arrested on Saturday during your sentence submissions management.
- Moses Kilton, you are not a first time offender. You have many previous criminal records since 2003 until today on unlawful entry and theft offences.

The starting point of the sentence is 4 years imprisonment.

In mitigation, I take into account of what your respective lawyers told the Court in his submissions. What follows reflects your individual situation and corresponding sentence.

1) Guillaume Tomaki you are:

- 19 years of age;
- First time offender;
- Influenced by Jean Yves Shem; and
- Plea of guilty; and
- Remorse.

I reduce your sentence of 4 years imprisonment to 20 months imprisonment suspended for 2 years. I order you to perform 200 hours community work in addition.

2) Bakon Jean Yves (Etul) you are:

- 21 years of age;
- You have previous convictions for offence not related to the present;
- You were influenced by others;
- Items stolen returned;
- Plea of guilty and remorseful.

I reduce your sentence of 4 years imprisonment to 20 months imprisonment



suspended for 2 years. I order you to perform 200 hours community work in addition.

3) Jules Seule you are:

- 18 years of age;
- You are not a first time offender as you are convicted earlier today in Criminal Case No.50 of 2011 (PP v. Willie Mafe & others);
- You are influenced by Mr Jean Yves Shem.

I reduce your imprisonment sentence of 4 years to 24 months imprisonment suspended for 2 years. I order to perform 200 hours community work. I order you to perform 200 hours community work consecutive to your community sentence in Criminal Case No.50 of 2011.

4) Moses Kilton you are:

- 32 years of age and you pleaded guilty at the first opportunity given to you.

I reduce your imprisonment sentence of 4 years to 22 months imprisonment. It is to be served consecutively to your current imprisonment sentence.

5) Jean Yves Shem:

I reduce your sentence of 4 years imprisonment to 2 years and 8 months. It shall be consecutive to your sentence of 2 years and 8 months imposed on you today in Criminal Case No.50 of 2011. This means that after you serve your imprisonment sentence of 2 years and 8 months imposed on you by the Supreme Court in Criminal Case No.50 of 2011, you must also serve this sentence of 2 years and 8 months in this case (Criminal Case No.53 of 2011).

Each of you has 14 days to appeal if you are not happy with it.

DATED at Port-Vila this 8th day of July 2011

BY THE COURT

**Vincent LUNABEK
Chief Justice**

