

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

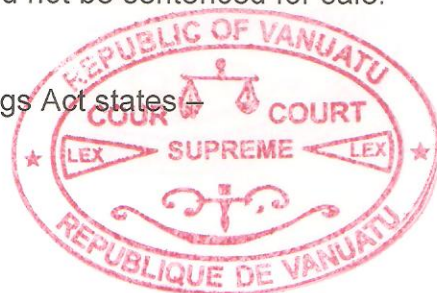
**ANDRE JACK  
KASTINO JACK**

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

**Mr P. Wirrick for Public Prosecutor  
Miss Jane Tari for the Defendant**

### **SENTENCE**

1. Andre Jack and Kastino Jack the Court hereby convicts and sentences you both on your own guilty pleas to one charge of unlawful possession of cannabis contrary to Section 2(62) of the Dangerous Drugs Act Cap 12. Each of you are sentenced to 6 months imprisonment suspended for a period of 12 months. The conditions are that (a) you both must not re-offend under the Drugs Act and (b) that you both must undergo supervision by the Probation Office within 12 months period.
2. In sentencing you, I have accepted to follow the sentencing principles in the case of PP v. Tuke Sope [2004] VUCA, PP v. Kalfau [2006] VUSC 71 and PP v. Joe [2011] VUSC. The facts of each case differ from each other in several aspects.
3. Defence Counsel argued that you were not charged separately for the sale of cannabis and therefore should not be sentenced for sale.
4. Section 2 (62) of the Dangerous Drugs Act states



*"The importation, sale, supply or possession in Vanuatu of the following substances and materials .....is prohibited – Cannabis."*

This Section is technical. Once a charge is laid under that section it includes all the four activities specified therein by term "or". Sentencing then falls within the discretion of the sentencing Judge. In most cases as here, the Judge should treat the matter as aggravating feature of the offending.

5. The Court in sentencing you takes into account your mitigating factors which are –
  - (a) Being first-time offenders;
  - (b) Good cooperation with Police; and
  - (c) Guilty plea at the earlier opportunity.
6. For those reasons, it is the view of the Court that a custodial sentence be imposed but suspended to allow some supervision to redirect the defendants on the right path, so they do not re-offend in the future.
7. The Court has power to made a suspended sentence into a supervision order under Section 58 G of the Penal Code Act.
8. That is the sentence of the Court.

**DATED at Luganville this 11<sup>th</sup> day of April 2011.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**  
Judge

