

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

PAULAS BONG

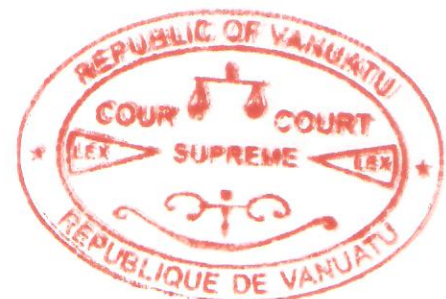
Mr Justice Oliver A. Saksak

Mr P. Wirrick for Public Prosecutor
Miss J. Tari for Defendant

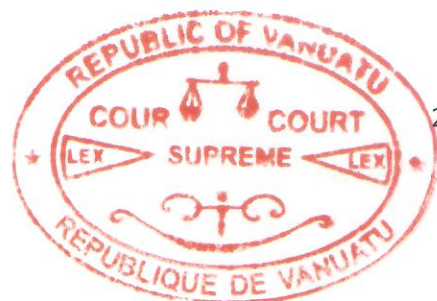
Date of Hearing of Submissions: 24th September 2012
Date of Sentence: 28th September 2012

SENTENCE

1. Paulas Bong was charged with two Counts of Theft (Counts 1 and 3) contrary to section 125(a) and with two Counts of Unlawful Entry (Counts 2 and 4) contrary to section 143 of the Penal Code Act Cap. 135 (the Act).
2. Theft carries a maximum penalty of 12 years imprisonment and Unlawful Entry carries maximum penalty of 10 years imprisonment when carried out at a place not used for human habitation.
3. On his arraignment on 4th September 2012 Paulas Bong pleaded guilty to all four charges.
4. The facts as presented by the Prosecutor:-
 - (a) On 30th June 2011, Thomas Was, an employee of Le Blanc Communications made a routine check to the E-Government Tower Project at Banban Area. Upon arrival he immediately noticed that 7 solar panels had been removed out of the group of solar panels at the site. He then went to the Police and lodged a complaint.



- (b) Paulas Bong and another person by name of Kirby were responsible for these offendings. They were dropped off by a bus at the near end of the Airport runway. They then walked to the site and climbed over the fence. They unscrewed one solar panel with the tools that they had brought with them, and took the panel to the bushy area at the Showground and hid the equipment there.
- (c) Kirby then asked one Sammy Kalomur to find a buyer for the solar panel. A buyer by name of Tensley of Big Bay was found and he bought the equipment for the sum of VT30.000. This money was divided equally between the defendant and his two friends, Kirby and Kalomur.
- (d) The Second offendings were committed also in the month of June 2011 not long after the first offendings. This time the defendant and Sammy Kalomur arrived at the site at about 8.00 p.m and both climbed over the fence.
- (e) At the site, Sammy Kalomur then unscrewed a total of 4 solar panels with tools they had brought with the aid of a torch light. They then took the equipment down and hid them in the bushes at the Showground Area. They later divided the 4 solar panels equally between them. The defendant sold one solar panel to one Jojo of Ambrym for the sum of VT80.000. The other equipment was later recovered by the Police at Sammy Kalomur's residence.
- (f) Sometime after committing these offences, the defendant fled Santo to avoid arrest. He returned to Santo on 22nd August 2012 and was arrested by Police on his arrival at the airport. He was remanded in custody on 23rd August 2012 and during interview on that date the defendant admitted his offendings to the Police.
- (g) The solar panels stolen are special solar panels for use in radio communications. One such solar panel is valued at approximately VT100.000 not including costs of shipment from Australia to Vanuatu. The equipment was purchased and installed by the Vanuatu Government for the benefit of the people of Vanuatu.



- (h) The defendant had actively been involved in the unlawful entry, theft and sale of 5 solar panels, causing permanent loss to the Government and the people of Vanuatu.

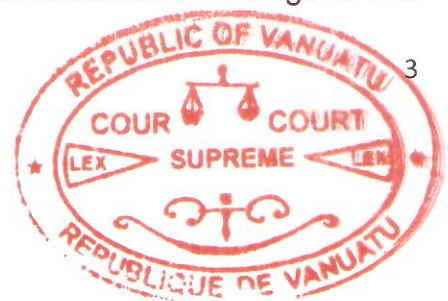
These facts are conceded by the defendant.

5. In considering and assessing appropriate penalties I accept the following aggravating features:-

- (a) The offendings were repeated on two separate occasions.
- (b) They were committed by the defendant acting together with two other persons. (although the other two have not been charged).
- (c) The offendings were well planned.
- (d) The defendant benefitted financially from the offendings in that he received a total of VT90.000 from the sale of the solar panels.
- (e) Only one of the solar panels was recovered by the Police.
- (f) The defendant fled Santo shortly after committing the offences to avoid arrest and was arrested some 15 months later upon his return to Santo on 22nd August 2012.
- (g) The equipment stolen are of significance given their costs, special use and importation from overseas; and
- (h) The victims are the Government and the people of Vanuatu.

6. The Prosecutor submitted that an immediate custodial sentence of somewhere within 12 to 24 months is warranted for the leading offences of theft. He submitted further that if the Court was minded to suspend any terms of imprisonment of the defendant, then an accompanying sentence of Community Service of at least 100 hours would be appropriate. Further that sentences for the separate charges should be served concurrently.

7. The offences of unlawful entry and theft are always very serious offences as indicated by their respective maximum penalties. Further the 8 aggravating features submitted add to the seriousness of the defendant's offendings in this



case. These warrant an immediate custodial sentence as the only appropriate punishment.

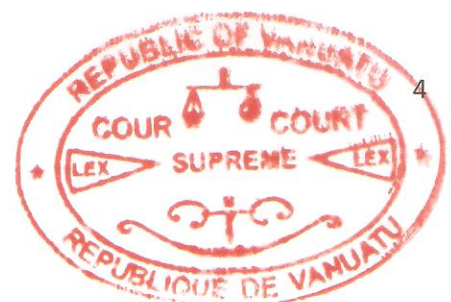
8. Custodial sentences on the defendant will serve the following purposes:-

- (a) To mark the gravity of the defendant's offendings.
- (b) To reflect the public's disapproval and denunciation of the defendant's behavior.
- (c) To act as a deterrence and warning to the defendant and other like-minded persons.
- (d) To punish the defendant appropriately for his actions.

9. A sentence of Community Service, a suspended sentence or a supervision as recommended would be far too lenient so as to amount to an encouragement, rather than as a deterrence.

10. Defence Counsel referred to and urged the Court to follow the principles in the case of Public Prosecutor v. Sylvester John and Mahu Hovuhovu [2012] VUSC; Criminal Case No. 1 of 2012. This was a case where two defendants were convicted of Unlawful Entry and Theft. The first defendant pleaded guilty to 3 charges and the second defendant pleaded guilty to 5 charges after a trial hearing. The two defendants carried out an organized theft of valuables from the same victim on two separate occasions. The stolen items were all recovered. The items included one solar panel. No value was placed on all the items. In the Magistrate's Court, the defendants were convicted and discharged. The Public Prosecutor appealed to this Court. The defence made concessions and the appeal was allowed. This Court quashed the decision of the Court below and re-sentenced the two defendants by imposing concurrent custodial sentences of 9 months imprisonment on both, but suspended the sentences for a period of 2 years.

11. The above case is persuasive only and is not binding on the Court. Each case is decided on its own merits, facts and circumstances. This case is distinguished



from the case referred. The aggravating facts as submitted warrant a custodial term rather than a suspended sentence.

12. Defence Counsel further submitted six mitigating factors to mitigate sentence. Three factors are rejected being age, remorse and peer pressure. The only relevant factors are being a first time offender, cooperation with Police at arrest and guilty plea. There will be some discount allowed for these.
13. Coming finally to sentence, the offence of theft was the lead offence. For the two charges of theft (Counts 1 and 3) the Court sentences you Paulas Bong to imprisonment for a term of 22 months (1 year, 10 months) on each count to be served concurrently.
14. For the Counts of Unlawful Entry (Counts 2 and 4) the Court sentence you to imprisonment for a term of 16 months (1 year, 4 months) on each Count, concurrent. These will be served concurrently with the 22 months imprisonment imposed in respect of the theft charges in Counts 1 and 3.
15. In effect, you will serve a total of 22 months imprisonment. I deduct 6 months in mitigation leaving the balance of 16 months (1 year, 4 months) to serve a concurrent sentence for your offendings.
16. Your sentence commenced on 23rd August 2012 when you were first remanded in custody.
17. You have a right of appeal against sentence within 14 days, if you so choose.

DATED at Luganville this 28th day of September 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

