

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(CRIMINAL JURISDICTION)

CRIMINAL CASE No. 64 OF 2014

PUBLIC PROSECUTOR

V

GEORGE IAKEI

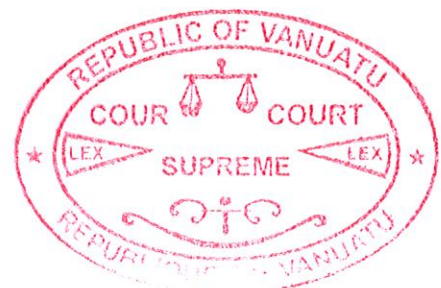
Coram: Justice Mary Sey

Counsel: Losana Matariki for the Public Prosecutor
Jacob Kausiama for the Defendant

Date of Decision: 19 December 2014

SENTENCE

1. Mr. George lakei you are for sentence today having pleaded guilty on 25 August 2014 to one count of cultivation of cannabis contrary to section 4 of the Dangerous Drugs Act [CAP.12] and one count of possession of dry cannabis leaves contrary to section 2 (62) of the Dangerous Drugs Act [CAP.12].
2. You take no issue with the prosecution's scanty summary of facts. On 7 May 2012, a police officer spotted you at Lenakel wharf and he searched you and found cannabis inside your bag. You were arrested and taken to the police station where you were cautioned and you admitted that you had cannabis in your possession and that you had also cultivated cannabis in your garden. The police located **535** cannabis plants with a total weight of 95 Kilograms which you had cultivated in your garden.



3. As His Lordship Harrop J. observed in his oral ruling on this matter on 28 August 2014, "on any view this is a case of very substantial cultivation of cannabis..... It cannot be a case of naive dabbling in cultivation and it is well beyond the level at which it could be said this was for personal use and had no commercial element."

4. **The Law**

Section 2 Dangerous Drugs Act [CAP 12]

Prohibited Substance and Materials

The importation, sale, supply or possession in Vanuatu of the following substances and materials except as provided in section 3 is prohibited-

".....

(62) Cannabis....."

Section 4 of the Dangerous Drugs Act [CAP 12]

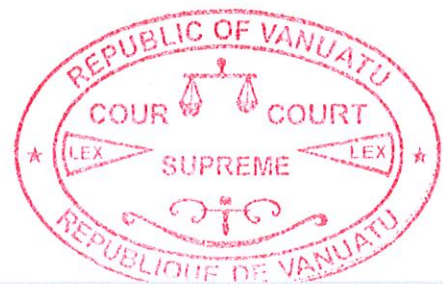
Prohibition of Cultivation of Cannabis Plants

"The cultivation of any plants of the genus Cannabis shall be prohibited."

Section 17 of the Dangerous Drugs Act [CAP. 12] provides for the penalty for the above offences.

A fine of VT100,000,000 or to a term of imprisonment of 20 years or both.

5. Sentencing guidelines for cannabis cultivation offending can be found in the case of **Columbus Wetul v Public Prosecutor** [2013] VUCA 26 where the Court of Appeal adopted the three broad categories which were applied by the Court of Appeal of New Zealand in **The Queen v Maria Dallas Terewi** [1999] 3 NZLR 62.



6. In the **Wetul** case, the Court of Appeal considered it appropriate to divide cannabis cultivation offending into three categories:

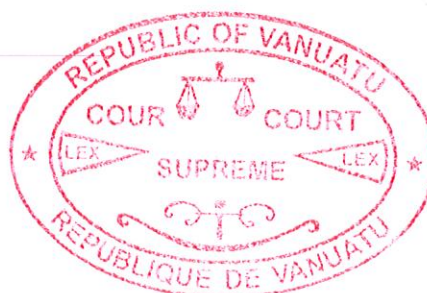
" Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other non-custodial measure. Where there have been supplies to others on a non-commercial basis the monetary penalty will be greater and in more serious cases or for persistent offending a term of community work and supervision or even a short custody term may be merited. (It is to be noted in this connection that there is no separate offence in relation to section 4 offence of cultivation for supplying or possession for supply, as opposed to importation, sale, supply or possession (s.2).

Category 2 encompasses small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified.

Category 3 is the most serious class of such offending. It involves large-scale commercial growing, usually with a considerable degree of sophistication and organization. The starting point will generally be four years or more.

The Court went on to state that: "It is to be understood that the border-line between each category may in specific cases be indistinct and sometimes incapable of exact demarcation. The numbers and sizes of plants are relevant factors for each category depending on the circumstance of each case.

However, although relevant, they may not be an adequate guide where intensive cultivation methods are being employed with a view to enhancing the yield of usable cannabis for example by producing plants with higher narcotic levels."

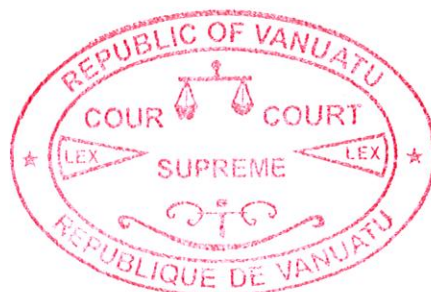


7. The Court of Appeal also made it clear in the **Wetul** case what assistance is regarded as helpful by the Court from prosecutors. It said:

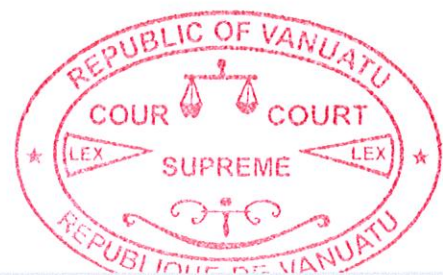
" We consider that it will be helpful to sentencing Judges if prosecutors bring evidence of likely amounts of annual gross revenue, or turnover, obtained by the offender from a cannabis growing operation or which the offender must have anticipated deriving from the activity. That will reflect crop cycles and yields and will be a better measure of the size of an operation than simple reference to the number of plants which have been found. The sentence should take into account the period over which the offending has continued.

When relevant, the Prosecution should produce likely price figures for the particular situation as an indication of potential yields and profit from production methods."

8. In paragraph 9 of Justice Harrop's oral ruling of 28 August 2014 which I had earlier referred to, he had intimated that what he required, as any Judge would, is evidence and submissions from the Public Prosecutor along these lines. He remarked that it is not a case where there is any evidence of previous sales so it is a case where the Prosecutor needs to estimate as far as possible what kind of profit Mr. lakei was likely to have received if he had been able to sell the cannabis taken from the 535 plants. Harrop J. said that this would require evidence from a Police Officer by sworn statement as to the price at which such cannabis is sold on Tanna.
9. Regrettably, this very important information has not been furnished to the Court to enable it make an appropriate assessment of Mr. lakei's level of offending and determine sentence.



10. Nonetheless, Mr. lakei appears to fall into category 2 as outlined above. This encompasses a small scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit.
11. In my considered view, there is a need for a prison sentence to mark the seriousness of the offending and to send the appropriate deterrent message to other likeminded people who might contemplate possessing and/or cultivating cannabis for commercial purposes. I therefore adopt a starting point here of 3 years imprisonment.
12. You pleaded guilty at the first available opportunity and so you are entitled to full credit of one third reduction which leaves an end sentence of 2 years imprisonment.
13. I have perused the pre-sentence report which outlines your personal circumstances. You are from Epnaitaleng village, South Tanna. and you are 63 years of age, married with 9 children. You live under the community care of Chief Kasakwal and you have a good relationship with the chief and community members. You have never attended school but you have skills in Agriculture and you are a farmer planting kava and other root crops to sell and sustain your family.
14. I also note a number of mitigating factors such as - that you are a first time offender and you admitted the offence at first instance and cooperated with the Police. You are deeply remorseful and now fully understand the consequences of your offending.
15. However, I am mindful of the Court's pronouncement in **Terewi** that: *"As with any drug offending for the purpose of profit making, the personal circumstances of the offender whose activities fall within categories 2 and 3 are usually **not** to be given much significance in the sentencing process, save for a guilty plea. The*



fundamental requirement is that the sentence imposed should act as a deterrent to the other persons minded to engage in similar activity.

16. In the circumstances, Mr. lakei, you are hereby sentenced to 2 years imprisonment suspended for 2 years. In addition, You are sentenced to 80 hours community work and 6 months supervision.
17. You have 14 days within which to file a notice of appeal against this sentence if you do not like it.

Dated at Isangel, Tanna this 19th day of December, 2014.

BY THE COURT



M.M.SEY
Judge

