

PUBLIC PROSECUTOR – VS – KILU AVIRA & STEVE KAI KALWATMAN

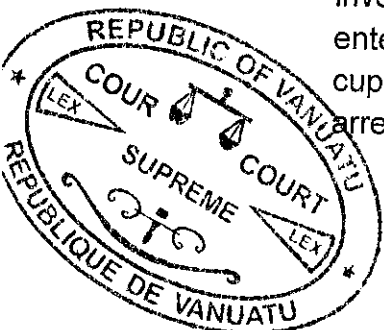
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mrs Losana Matariki for Public Prosecutor and State
Mr Henzler Vira for Defendant*

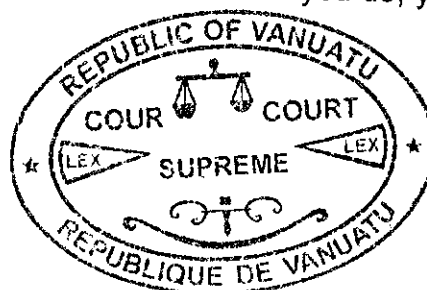
Date of Sentence: *18th June 2014*

SENTENCE

1. Kilu Avira you are in Court today for sentence after you pleaded guilty to one charge of unlawful entry contrary to section 143(1) (count 2) and to attempted theft (count 5) contrary to sections 28 and 125 (a) of the Penal Code Act [Cap 135] (the Act). These are serious offences because unlawful entry carries a maximum penalty of 20 years imprisonment and theft carries a maximum of 12 years imprisonment. Under section 28(4) of the Act, an attempted act is punishable as the actual offence of theft.
2. And you Steve Kalwatman are for sentence today for having pleaded guilty to a charge of unlawful entry (count 3) contrary to section 143 of the Act. This offence carries a maximum of 20 years imprisonment.
3. The facts which both of you have accepted can be summarised from the brief of facts provided by the prosecution in the following manner-
 - a. The house you both entered was a dwelling house belonging to an expatriate who had gone overseas at the time. He left his property to his gardener as caretaker.
 - b. In the evening of 12th February 2014 Mr Stelio Asal, the gardener's brother checked out the house before going home. He found out the house had been broken into.
 - c. He brought this to the attention of his brother who checked the property again at around 6 o'clock pm. He entered the yard and found you Kilu Avira with a black speaker which you had removed from the house.
 - d. Some neighbours assisted the gardener Tony Asal to remove you from the property and the Police were called in who arrived and arrested you and brought you down to the Police station.
 - e. As a result of your arrest the Police went to the house for further investigation on 13th February 2014 at about 11:15am. When they entered the house, they found you Steve Kai Kalwatman hiding in a cupboard in one of the rooms of the dwelling house. They then arrested you and brought you for questioning at the Police station.



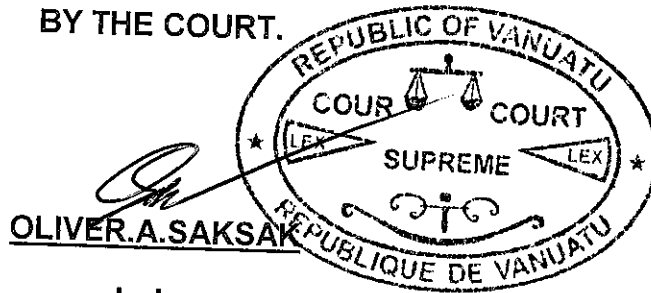
4. It is clear from those facts that you Kilu Avira had unlawfully entered a dwelling house and that you had in fact stolen a speaker, which had you not been found, would have deprived the owner of it permanently. In your mind the offence of theft was committed. The offence was complete upon you removing the speaker from its usual place and carrying it away despite it was only for a short distance and time. You were found with the speaker outside of the house.
 5. And for you Steve Kalwatman, you were found in a cupboard in the house you knew very well belonged to another person. And you had no express or implied authority to be in the house, let alone enter the yard. The only possible inference the Court can draw for you being there was to commit an offence.
 6. In considering and assessing your appropriate sentences, I am assisted by the case of Public Prosecutor v. Farai [2010] VUSC 42 and the case of Henry Kalfau v. Public Prosecutor [1990] VUCA 9 which lays down the clear approach as to how the Court should treat and punish offenders who commit offences of unlawful entry and theft. I will adopt the same approach.
 7. The Court therefore convicts and sentences you Kilu Avira as follows:-
 - a. For unlawful Entry- count 2- A sentence of 8 months imprisonment and
 - b. For attempted theft- count 5- A sentence of 8 months imprisonment to be served concurrently with the 8 months for unlawful entry.
- In effect, you have a total sentence of 8 months imprisonment.
8. In light of your mitigating factors, I Order that your sentence be suspended for a period of 12 months under section 57 of the Act. You must appreciate that this is an opportunity for you as a young man to rehabilitate. I remind you that your sentence is suspended on the strict conditions that you keep the peace in the community and do not commit these offences or any other criminal offences within a period of 12 months. If you do, you will go to prison immediately for 8 months.
 9. And for you Steve Kalwatman, you are also convicted and sentenced to 8 months imprisonment for the unlawful entry charge in count 3. However like Kilu Avira, in light of your mitigating circumstances, I will suspend your sentence for a period of 12 months to give you an opportunity to rehabilitate. Your suspension of sentence is also done under section 57 of the Act on conditions that you keep the peace at all times and do not commit this offence or any other criminal offences within a period of 12 months. If you do, you will go to prison immediately for 8 months.



10. Those are the sentences of the Court. Both of you have a right of appeal against these sentences within 14 days if you do not agree with them.

DATED at Port Vila this 18th day of June 2014.

BY THE COURT.



OLIVER A. SAKSAK

Judge