

**PUBLIC PROSECUTOR**  
**V**  
**DANI KALPUKAI**

**Coram:** *Hon. Chief Justice V. Lunabek*

**Counsel:** *Ms Josephine Tete for the State*  
*Mr Francis Tasso for the Defendant*

**Date of Plea:** *07 June 2022*  
**Date of Sentence:** *8 July 2022*

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**SENTENCE**

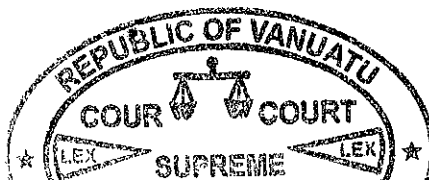
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**A. Introduction**

1. Dani Kalpukai, you appear for sentencing today having pleaded guilty and convicted by this court of one count of possession of cannabis plants, contrary to Section 2(62) of the Dangerous Drugs Act (DDA) [CAP. 12].

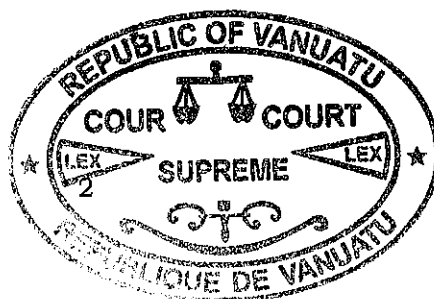
**B. Summary of Facts**

2. A brief of facts was provided by the prosecution on the 1<sup>st</sup> day of June 2022 to the following effect and Dani Kalpukai agreed with these facts:
3. On the 11<sup>th</sup> June 2020, the complainant and three other police officers had conducted a police patrol on the area of Blacksands when they saw you (Dani Kalpukai). They suspected that you must carry marijuana so they stopped and searched your person.
4. During the search, they found a packaged substance to be marijuana in the pocket of the jacket that you were wearing. They arrested you and the package weighing 25.5 grams was sent to testing. A Tetrahydrocannabinol (THC) test was carried out. It confirmed that the substance contained in the package was of marijuana substance.



**C. Your personal circumstances**

5. You are from Ifira Island. You are 28 years of age and you reside at Blacksands area. You have 3 brothers and 2 sisters. You have 3 children who attended school: one in class 6, one in class 2 and the last of your children attended morning kindergarten. You paid for school fees for your children.
6. You maintain good relationship with your family. You live under the community care of Chief Ben Kalpukai. You maintain good relationship with your chief and community members. Your chief Ben Kalpukai stated he admired your ambition and drive to own your small business at Blacksands area, which shows how strong you believed in yourself, and an example to your community and mostly to the youths in Blacksands area.
7. Chief Ben Kalpukai stated that you own a car wash, a small shop and a kava bar. You help your community with finances, when the community requested assistance from you.
8. You attended Kawenu Primary School and you obtained a primary certificate. You continued with further education at Epi High School and you obtained a certificate of secondary leaving certificate. You started working at a Presbyterian Mission at Nankire Presbyterian Church for more than 2 years. You own a small business and you wish to extend and expand your business into a bigger business as you have skills in small business management.
9. You are self-employed and own a car wash, a small shop and a kava bar. You earn your living from your small business and you take care of your parents and other siblings. You pay for water, light and house supplies for your family. You are the sole income of the family, given that you are first in birth, you took the responsibility to look after your parents and siblings.
10. Your father, Kalpokai Kalsaruru stated that you are a hard working boy. You earn your living from the small business you own and you make sure there is food on the table for your family. Your father stated that you have got a lot of friends and that might have been the problem to your offending but your father believed you are a changed boy.
11. You seem to be in good health. You have no physical or mental illness. You consume kava and cigarettes on a daily basis and no alcohol.



**D. Sentencing goals and principles**

12. In sentencing, the court must have regard to the sentencing goals and principles. Here, the objectives are to denounce your conduct, hold you accountable for your actions and deterring others from offending in the way you did.
13. My sentencing approach is to take a starting point that reflects the culpability of your offending in light of the maximum sentence available for the offending. The court will do so based on *Phillip v PP [2020] VUCA 40* where their Lordships said:

*"... after a starting point sentence has been assessed and set down (a figure x is set) by considering the aggravating factors relating to the nature of the offending, the seriousness and culpability of the offending, the maximum penalty and the comparable case authorities for consistency purposes. The aggravating factors personal to the offender are then assessed or used in a sentencing exercise to increase or add to the starting sentence already set to reflect the personal factors relating to the offender. They are not used to arrive at the initial starting point of the sentence".*

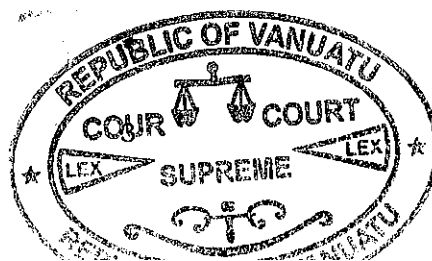
**E. Sentence**

14. I record that the maximum sentence for possession of cannabis substance is a fine not exceeding 100 million Vatu or a term of imprisonment not exceeding 20 years or to both such fine and imprisonment.
15. I will start on the following three basic steps involved in setting a starting point:
- (a) I will identify and evaluate the aggravating and mitigating factors of the offending;
  - (b) I will then place the offending within the appropriate range if there is a range (tariff) judgment for the relevant offence; and
  - (c) I will fix an appropriate starting point by reference to other cases which are comparable by reasons of involving similar aggravating and mitigating factors.

**F. Submissions of the parties**

**1. Submissions of the prosecution**

16. The prosecution refers to the following four (4) cases:



- (a) In *Nai v Public Prosecutor* [2020] VUCA 1, where their Lordships agreed with the trial judge on the serious view which the law takes of drug offences. The court reiterated that:

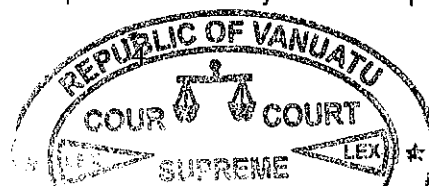
*"... drug offences are serious matters and the law must provide stern measures to discourage such offence ... (and) ... the courts must reflect the seriousness which the law places on drug offences through [the] sentence they imposed on people who commit such offences".*

- (b) In *Public Prosecutor v Mahit* [2019] VUSC 157, the defendant was charged with possession of cannabis weighing 24.82grams. The sentencing judge imposed a starting point of 16 months imprisonment and an end sentence of 8 months imprisonment that was suspended for a period of 2 years and the defendant was ordered to do 40 hours of community service within 22 months;
- (c) In *Public Prosecutor v Nabong* VUSC 10, the defendant was also charged with possession of cannabis weighing 22.81 grams. The Court emphasis the seriousness which the law takes to drug offences when the Court imposed an end sentence of 6 months supervision on the general standard conditions. The Court decline to order community work type sentence because of the defendant's weak physical condition (heart problem);
- (d) In *Public Prosecutor v Calo* (2020) VUSC 178, the defendant was charged with one count of possession of cannabis weighing 22.28 grams. The sentencing judge imposed a starting point of 10 months imprisonment and an end sentence of 100 hours of community work. The defendant was of 21 years of age.

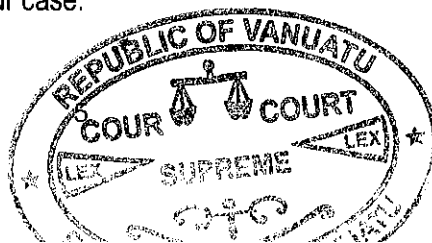
17. The prosecution submitted that in light of the authorities and circumstances of this case, a starting point of 16-18 months imprisonment should be imposed and an end sentence that should take into account the seriousness of the offence and the personal circumstances of the defendant. If the Court decides to exercise its discretion to suspend the imprisonment sentence, then a good behavior order for 2 years and 200 hours of community work as well as undertaking the "*Niu Rod Program*" facilitated by the Probation Services. The prosecution submitted that this community service and attending the program will make him accountable for his actions and the good behavior order with supervision will address his rehabilitation and reduce the risk of reoffending.

## 2. Submissions of the defendant

18. Your lawyer said that you accepted the summary of facts as provided by the prosecution.



19. In this case, there were a number of mitigating factors:
- (a) You immediately admitted your offending and you cooperated with the police;
  - (b) You pleaded guilty at the first opportunity which has saved the court's time;
  - (c) You are a bread winner and your family depended on you for their daily living;
  - (d) Your three children attended school and you paid for their school fees;
  - (e) You are self-employed. You have a small business of nakamal (kava juice) to help sustained your living and that of your family;
  - (f) You are also an active youth in your community. You help and assist the chiefs to clean up the community of Blacksands area;
  - (g) You spent a night in police custody at Cell number 6;
  - (h) You show remorse;
  - (i) You are a humble man; and
  - (j) You are a first time offender.
20. Your lawyer referred to the following cases:
- (a) *Naio v. Public Prosecutor* (1998) VUCA 1. The records showed that *Andrew Tom Naio* had been charged with the offence of cultivation of cannabis plants, contrary to section 4 as read with section 17 of the DD Act and *Noel Nathaniel* had been charged with unlawful possession of dangerous drugs, contrary to section 2 as read with section 17 of the same Act;
  - (b) *Public Prosecutor v. Kalo* [2017] VUSC 116. The defendant was charged and he pleaded guilty for one count of ... sale of cannabis substance and possession of cannabis substance weighing 349.54 grams. He was sentenced to 3 years imprisonment as a starting point sentence and an end sentence of 8 months imprisonment.
21. Your lawyer recognized that these two above cases are more serious in type and quantity. Thus, they cannot apply in your case.



22. He submitted that your case is less serious than these two cases and an appropriate starting point of 10 months imprisonment will be appropriate. He further said that proper discounts should be made for 1/3 for you entering guilty pleas at the first opportunity, cooperating with police and other mitigating factors. He agreed with the alternative submissions of the prosecution that an end sentence should be suspended.

**G. Aggravating and Mitigating Factors of the Offending**

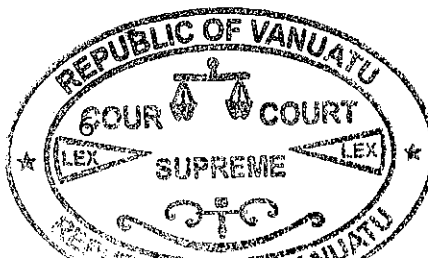
23. In your case, there are no aggravating factors that need to be taken into account in setting the sentence start point. The mitigating aspects of the offending are that the charge relates to the simple possession, and the quantity is relatively small.

**H. Starting Point**

24. I set a sentence start point that I consider appropriate at 17 months imprisonment based on comparable cases referred to me in particular *Public Prosecutor v. Mahit* [2019] VUSC 157 and *Public Prosecutor v. Kalo* [2020] VUSC 178.
25. You were 28 years of age; you are a mature person with responsibilities as reflected in your personal factors and you should know better than defendants in other two relevant cases cited above, though the quantity of cannabis substance you possessed was similar or slightly bigger (25.5 grams). This starting point reflected the seriousness of the offending.

**I. Mitigating Factors**

26. Mr Kalpukai, you pleaded guilty at the first available opportunity. Your sentence is accordingly reduced by 25%.
27. You have good relations with your family, chief, community and you cooperated with the police when they arrested you in this matter.
28. You are remorseful. You say sorry to your family, chief and community for your wrong doing.
29. You have no previous convictions.
30. For those mitigating for personal factors I reduce the sentence start point by a further 5 months.



**J. End Sentence**

31. Mr Kalpukai, you are convicted and sentenced to an end sentence of 8 months imprisonment and I consider the circumstances and I am satisfied that it is appropriate to suspend it for a period of 2 years. That you shall be of good behavior. This means that you are not going to prison today. You go back to your community and remain there under the condition that you do not re-offend (either in committing this offence or any other offence). If you do re-offend, you will be charged and if you are convicted, you will be sentenced for the new offence and your sentence of 8 months imprisonment will also be re-activated. Do you understand the terms of this order?
32. In addition to your suspended terms of imprisonment, you are sentenced to 40 hours community work. This order requires you, under the supervision of the Probation Service, who may delegate that responsibility to a sponsor, to perform unpaid work for the community for 40 hours. That work must be completed within 12 months from today and you must report to the Probation Service within 72 hours of this order being made, to receive details of the work you are to perform. Failure to follow instructions and to carry out the work prescribed for you will see you brought back before the court. Do you understand the terms of this order?

**K. Others**

33. You have 14 days to appeal this sentence if you are unsatisfied with it.

**Dated at Port Vila, this 8<sup>th</sup> day of July 2022**

**BY THE COURT**

.....  
Vincent LUNABEK  
Chief Justice

