

PUBLIC PROSECUTOR

V

DAVID MANEHEVI

Coram: Justice C. N. Tuohy

Mr. Tevi for Public Prosecutor

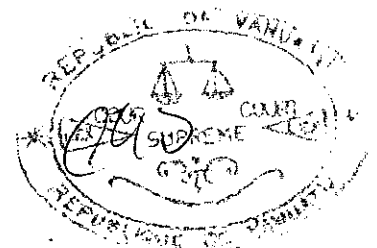
Mr. Saling for Defendant

Dates of Hearing: 04 September 2006

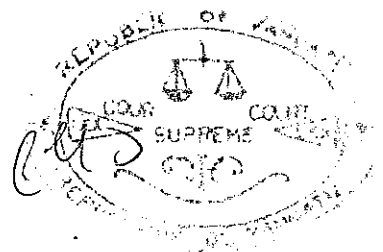
Date of Decision: 08 September 2006

SENTENCE

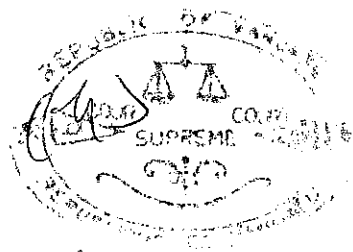
1. David Manehevi you have been found guilty after a trial of six charges all committed on 17 November 2005. The charges are: aiding Michel Kemu to unlawfully enter your employers' property with intent to steal, aiding him to damage the property unlawfully, unlawfully entering the house yourself with intent to steal, jointly with Kemu stealing from the house various items including VT1.5 million in cash, aiding Kemu to unlawfully enter the property again later in the evening with intent to steal and aiding him to steal whisky and cigarettes on that second occasion.



2. The facts of the case were fully set out by me in the judgment that I gave on 8 September 2006 convicting you. There are a number of aggravating factors, factors which make the offences worse.
3. It was a serious burglary or rather two burglaries. It was burglary of a home not a business but a property that people lived in although the property was not occupied at the time and you were aware of that. A large sum of money was taken and a number of other valuable items. None of them were recovered or perhaps a very small number of items, it is not clear. None of the money was recovered.
4. You were in a position of trust, your employers trusted you to look after their house but instead you burgled it. Another factor is that you went back a second time. The burglary was planned and you were the one who initiated it.
5. There is little by way of mitigating factors except your age 64 and the fact that you have had no previous convictions during your long life.
6. You did not plead guilty but maintained a not guilty plea right through till the end of the trial although after the voir dire decision was given, you instructed your counsel to ask no more questions, to make no more submissions and you did not give evidence. However, you are not entitled to any credit for pleading guilty.



7. I have been given no information about the effect on Mr. and Mrs. Wagner but they are old people and I imagine that they were very upset by this burglary and the taking of their property and breaking into their home. Obviously a burglary of this seriousness requires a sentence of imprisonment. The question for the Court is how long that sentence should be.
8. The maximum penalty under the law for unlawfully entering a property if the property is used for people to live in is 20 years imprisonment, for theft the maximum penalty is 12 years, for malicious damage the maximum penalty is a fine or 1 year imprisonment.
9. Counsel have referred me to other cases where the Supreme Court has imposed sentences for unlawful entry of houses and properties in particular the case of Public Prosecutor v Jack & Yahipe Criminal Case 47 of 2004 and Public Prosecutor v Killion & others Criminal Case 44 of 2004. I have read those cases and I intend to follow the general guidelines set out by the Chief Justice in Public Prosecutor v Jack & Yahipe. Also relevant is the sentence imposed on your co-offender Michel Kemu.
10. In the case of Jack & Yahipe the amount stolen was much greater, it was more than VT6 million and other items but nearly everything was recovered and all the money was recovered, at least the Chief Justice has said that. On the one hand Jack & Yahipe had a history of previous burglaries and you do not. On



the other hand they pleaded guilty and you did not. They were sentenced to effective terms of imprisonment of 5 years.

11. As far as Kemu is concerned, the judge adopted a starting point of 7 ½ years and reduced it to 5 ½ years to take account of his plea of guilty and his remorse, neither of which are applicable to you. However, my own view is that weighing up the factors relating to the offence and applying the Chief Justice's case of Jack & Yahipe a starting point in your case of 6 years in total is sufficient for this offending.
12. I realize that that is different to the starting point adopted by Judge Treston with Michel Kemu because if anything your offending is worse than Kemu's in that you had the position of trust and you were the one who instigated the offence and encouraged Kemu to commit it. However, that is the way I see it.
13. As I have said there are little mitigating circumstances in your favour but I think that your age is very important. You are 64 and the average life expectancy in Vanuatu is 69. Any sentence imposed on you is likely to extend over a large part of what is left of your life and I think that has to be kept in mind by the Court. I also think it must be hard to serve a sentence at the age of 64 and so I am going to take those things into account and reduce the sentence from the starting point by one-quarter to 4 ½ years in total.
14. The actual term that I reach is on charges of unlawful entry there will be sentence of 4 ½ years, on the charges of theft there will be




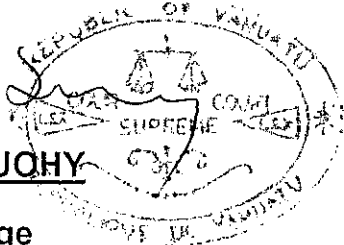
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sentence of 2 years, on the charge of damage there will be sentence of 6 months. All those sentences will run at the same time so that the effective sentence is the highest one, 4 ½ years.

15. The law says that the time you spent in custody shall be deducted from the sentence. In this case that will be 26 days so that the sentence will be on the charges of unlawful entry 4 years, 5 months and 4 days.

16. I realise that the sentence I have imposed is less than what Kemu received, even though in some ways your case is worse and you did not plead guilty like him. However, I do not think it is right to increase the sentence on you just to fit it with Kemu's sentence. Kemu still has the right to appeal if he considers that the result of this sentencing means that his sentence should be appealed. That is a matter for him. If you are not happy with the sentence you have 14 days to appeal.

Dated AT PORT VILA on 19 September 2006

BY THE COURT



C. N. TUOHY
Judge