

CF.

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Criminal Jurisdiction)*  
**Held at Isangel, Tanna**

**CRIMINAL CASE No.07 OF 2010**

**PUBLIC PROSECUTOR**

-v-

**KAL NIRAS NELSON**

**Coram:** Chief Justice Vincent Lunabek

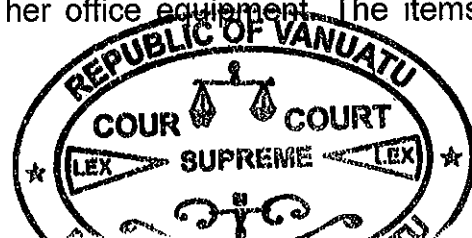
**Counsel:** Mr Tristan Karae for the Public Prosecutor  
Mr Andrew Bal for the Defendant

**SENTENCE**

This is the sentence of the Defendant, Kal Niras Nelson. Kal Niras Nelson, you appear today for your sentence. On Monday 23 August 2010, you entered guilty pleas on one count of unlawful entry, contrary to section 143(1) of the Penal Code Act [CAP.135] and one count of malicious damage to property, contrary to section 133 of the Penal Code Act. You were also convicted of the offences charged against you on the 2 above counts accordingly.

The summary of facts are reproduced from the prosecution brief of facts. They are this. On or about the 1<sup>st</sup> of January 2010 sometime during the early hours of the morning the complainant and her family were at home when you came up to the house and stones at her house which smashed the windows of the house and that one of the stones hit the complainant's husband on the nose. The complainant then stated that after throwing stones you threatened to assault the children of the complainant if you ever saw them going to school.

After the incident, in the morning the complainant went to work and noticed that the door to her office, the Tafea Counseling Centre, was damaged and that someone had gone into her office. When she went inside the office she saw that someone had caused a lot of damage to her office equipment. The items that



were damaged at that time were the door to the office, 1 computer screen and computer hard drive which were both smashed on the floor.

The complainant knew at that time that it was you because earlier on you were at their home throwing stones at her house. The complainant then reported the matter to the police.

On or about the 1<sup>st</sup> of January 2010 around 10.00am in the morning the police went to where you were living and brought you in for questioning. You were cautioned and interviewed. During the interview you made admissions to the allegations put against you and cooperated well with the police.

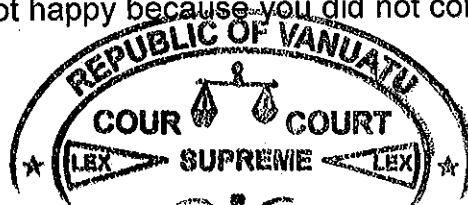
Section 143(1) of the Penal Code Act prohibits unlawfully entering into any house, building or other place with intent to commit an offence herein. It sets a maximum penalty of 10 years imprisonment if the place is not used for human habitation.

Section 133 of the Penal Cod Act provides that *"no person shall willfully and unlawfully destroy or damage any property which to his knowledge belongs to another."* The penalty imposed for this offence is 12 months imprisonment or 5,000 Vatu fine or both imprisonment and fine. (Section 36 of the Interpretation Act).

The maximum penalties set by law indicate that the offences committed by you on 1 January 2010 are serious offences.

In your sentencing, I heard, read and considered submissions from the prosecution and submissions made by your lawyer on your behalf. I have also read and considered a same day report provided by the Probation Officer to assist the Court in your sentencing.

The report shows that the reason for your offending was that you had a problem with your wife. Your wife sought assistance from the Woman Counseling Centre office where the complainant works and the office of the complainant provided assistance to your wife and daughter by transporting them back to your wife's home Island Maewo. It appears you were not happy because you did not consent



to this. But there was nothing that required your consent because as the report also reveals the Woman Counseling Centre office acted to move your wife away from you because you used to beat her repeatedly and that her life was unsafe.

In your sentencing, there is need for the Court to condemn your offending behaviour in the strongest terms. It is not the way a responsible citizen behaves in the society. It is unacceptable and intolerable to behave in the way you did on 1 January 2010. Consumption of alcohol while offending on 1 January 2010 is not an excuse for your offending.

I am informed that you have been dealt with and sentenced to payment of fines for throwing stones at the house of the complainant and broke the windows of her house, throwing stone on the nose of the complainant's husband (a police officer) threatening words to the children of the complainant and abusive words to her husband.

In the present case, the circumstance of your offending on 1 January 2010 is aggravated by the following factors:

- You commit the offences in the night.
- The damaged computer worth a lot for a NGO type organization such as Tafea Woman Counseling Centre.
- Important documents contained in the computer for the purpose of advancing the work of "Tafea Counseling Centre" were lost.
- Malicious damage repeated (door and office equipment – computer screen and computer hard drive).

The appropriate sentence for the offence of unlawful entry is 4 years imprisonment and 8 months imprisonment for malicious damages to property.

They are respectively increased to 2 years and 2 months imprisonment to reflect the aggravating factors I mention above. The total sentencing terms imposed on you are 6 years imprisonment for unlawful entry, contrary to section 143(1) of the Penal Code Act and 10 months imprisonment for malicious damage to property, contrary to section 133 of the Penal Code Act.



In mitigation, your counsel informs the Court that you are a 30 years of age. You live with your wife with a four year old son and a two year old daughter. You are unemployed. You do gardening to meet the daily needs of your family. You now live peacefully with your wife and children.

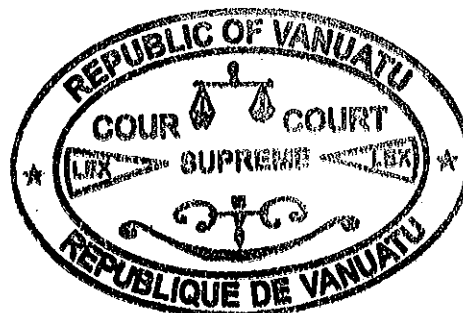
You plead guilty at the first opportunity given to you by the Courts and you cooperated well with the police.

You told your counsel to inform the Court that you had perform a custom ceremony with the complainant by giving her one pig, two heads of kava, 1 chicken and 1 mat. But this custom ceremony is not made to reconcile with the Woman Counseling Centre. It is done personally to the complainant. It cannot assist your current sentencing.

When I sentence you, I need to balance between the aggravating and mitigating factors. After the balance exercise, I reduce your sentence to 2 years imprisonment for unlawful entry and 5 months imprisonment for malicious damage to property.

The next question is whether the circumstance of your offending warrants a suspension. I decline to suspend your imprisonment sentence. The circumstances of your offending are very serious and warrant an immediate custodial sentence. It is also a deterrence to others not to behave in the way you did. Further the Courts must protect the society through their social and public organizations in their pursue for public interest missions so that the members of the community who need them and more particularly the weak and vulnerable ones (such as beaten wives) will access them any time they need the services.

You are ordered to serve 2 years imprisonment and 5 months imprisonment concurrently. This means that you shall serve a total term of 2 years imprisonment with immediate effect.



You have 14 days to appeal this sentence if you are unsatisfied with it. 14 days starts from today's date.

**DATED at Isangel, Tanna this 25<sup>th</sup> day of August 2010**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**

