

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

THOMAS WASSON

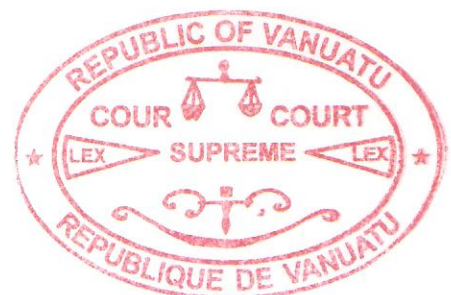
Mr Justice Oliver A. Saksak

Mr. Parkinson Wirrick for the Public Prosecutor/State
Mr Ronald Warsal for the Defendant

Date of Pleas: 3rd August 2012
Date of Sentence: 21st December 2012

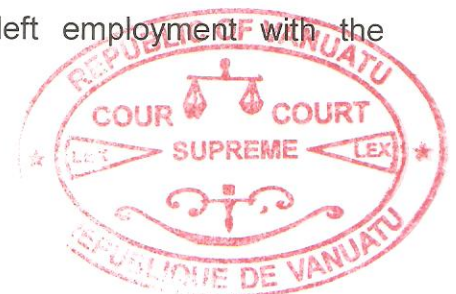
SENTENCE

1. The defendant, an Australian national aged 58 years old, a retiree was charged initially with 5 counts as follows –
 - (a) Count 1 – Causing or Permitting a Ship to Call at a Place Other than a Port, Contrary to Section 13(1)(a) of the Customs Act [CAP 257] (the Act).
 - (b) Count 2 – Landing of Imports at a Place Not Approved, Contrary to Section 30(1)(a) of the Act.
 - (c) Count 3 – Landing of Imports at a Place Not Approved, Contrary to Section 30(1)(a) of the Act.
 - (d) Count 4 – Failure to Declare Goods Imported, Contrary to Section 31(a) and (b) of the Act; and
 - (e) Count 5 – Failure to Declare Goods Imported, Contrary to Section 52(1)(a) of the Act.



2. On arraignment on 3rd August 2012 the Prosecutions sought leave to withdraw Count 5 and leave was granted. The charge in Count 5 was therefore withdrawn against the defendant.
3. The defendant entered guilty pleas through his legal counsel Mr Warsal in relation to the charges in Counts 1, 2, 3 and 4.
4. The maximum penalties for the offences in Count 1 is a fine of not exceeding VT1.000.000 or imprisonment for not exceeding 1 year imprisonment or to both such fine and imprisonment.
The maximum penalty for offences charged under Counts 2 and 3 are fines not exceeding VT500.000 or imprisonment of not exceeding 6 months or to both.
And finally the maximum penalty for an offence charged under Count 4 is a fine of 3 times the value of the goods not declared or imprisonment for not exceeding 6 months or both.
5. The facts were presented by the Prosecutor dated 28th September 2012 and are as follows:-

1. The Defendant, THOMAS WASSON, is an Australian national and retiree born on the 14th of August, 1954. He is 58 years of age, married and when not in Australia resides on a property he owns on Aore Island.
2. At all material times the Defendant was the owner of 13 metre wooden motor-vessel (ship), the Midnight Fox, which is usually anchored at the front of the Defendant's waterfront home on Aore. The Midnight Fox was, at all material times used for non-commercial purposes, (personal and private use only).
3. Prior to the offendings the Defendant employed one ANTHONY LIKO (Liko) of Santo who performed gardening and other odd jobs for the Defendant at his property on Aore. Liko left employment with the



Defendant at his own accord but reported the offendings to relevant authorities in Luganville.

4. Immediately prior the offendings the Midnight Fox was being repaired and made sea-worthy in Queensland, Australia. After repairs were complete the Defendant, his wife and two Ni-Vanuatu seamen, one OBED MARANGO and one OBED FREDERICK sailed the Midnight Fox to Vanuatu.
5. Upon departing Australia waters on 23rd September, 2011, the Midnight Fox was loaded by the Defendant with the following items:

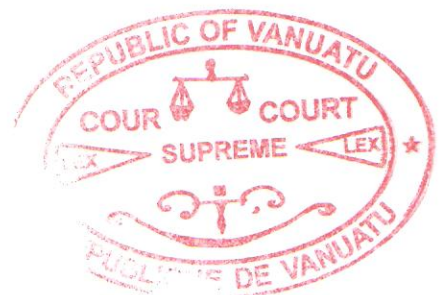
2	dog food x 8kgs	2 x 15\$	=	\$30.00
12	S/S hand rail	12 x 80\$	=	\$960.00
8	generators	8 x 600\$	=	\$4,800.00
14	chainsaws	14 x 150\$	=	\$2,100.00
4	solar panels	4 x 750\$	=	\$3,000.00
10	cartons wine 6 per carton	10 x 12\$	=	\$120.00
5	carton beer 24 per carton	5 x 45\$	=	\$225.00
6	electric drills	6 x 50\$	=	\$300.00
25	tins olive oil x 4 litres	25 x 20\$	=	\$500.00
	100kg caustic soda	100 x 5\$	=	\$500.00
1	electric sander	1 x 300\$	=	\$300.00
1	soap dye powder	1 x 100\$	=	\$100.00
30	flexible soap moulds		=	\$231.00
1	glyceryne soap base & oils		=	\$118.00
1	tissue paper & cell bags		=	\$100.00
4	4 x 1 kg essential oil		=	<u>\$243.00</u>
			Total	<u>\$12,637.00</u>

6. The Midnight Fox was, at all material times, under the command of the Defendant and after entering Vanuatu waters directly from Australia under



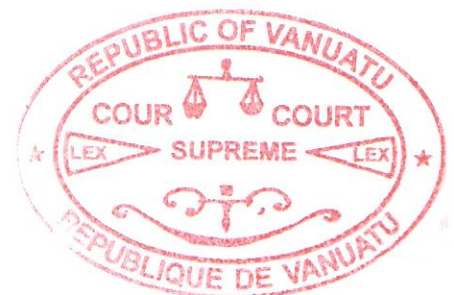
the cover of darkness, the Defendant sailed the Midnight Fox to Aore and anchored the vessel outside his home on Aore. The vessel arrived at Aore during the early hours of the night on 5th October, 2011.

7. Upon an uneventful arrival at Aore and the Second Canal, the Defendant did not moor the Midnight Fox at the Quarantine Buoy or communicate with Customs or any other relevant authorities as required by law. Immediately after arriving, the Defendant, his crew and Liko offloaded the above-named items from the Midnight Fox and moved them onto the Defendant's property on Aore. The off-loading of items took place during the night and ended at around 6.00am on the following morning, 6th October 2011.
 8. At around that time (morning of 6th October, 2011) the Defendant and his crew sailed directly to Port Vila where they cleared Customs and other formalities before the Defendant and his wife returned to Aore minus the other two crew members. After Customs clearance in Port Vila the Defendant went immediately for medical attention at a private hospital and had three (3) days treatment for medical complications at which time he attempted to have the Midnight Fox surveyed prior to returning to Santo. Santo Customs were notified of the departure from Vila to Santo and appropriate paper work was done later in Santo. However, the Defendant and his crew did not state whatsoever that they had anchored at Aore the previous night without clearing Customs and that they had offloaded a number of items which were not cleared by Customs. On 24th May, 2012, the Defendant was arrested.
6. Those facts are agreed facts.
 7. It is apparent from the facts presented that the defendant deliberately and blatantly chose not to comply with the provisions of the Customs Act. It is obvious from his Record of Interview done by a Customs Officer that the



defendant had done the same previously and because of that, he could do it again and it would not matter. But he was seriously mistaken.

8. The circumstances surrounding and involved in the defendant's offendings are serious enough to warrant penalties of imprisonment terms. However the defendant is currently out of the jurisdiction under the guise of ill health for which he has not produced any documentary proof. For this reason the only other appropriate penalty open for the Court is to be imposition of fines.
9. The Court takes account of a number of aggravating features that add seriousness to the defendant's offendings which are -
 - (a) The entry into Vanuatu and to Aore was made under cover of darkness.
 - (b) The off-loading of items from the defendant's ship was done in the same night of arrival.
 - (c) The ship set sail for Port Vila the next day being 6th October 2011 for custom clearance and other formalities but during that process the defendant made no disclosure about anchorage on Aore and off-loading of a number of items the night before.
10. For these aggravating features it is the view of the Court that half or more than half of the maximum amount of fines prescribed for each of the offences committed should be imposed. This is to ensure that a deterrent effect is made on the defendant and others who would be mindful to do the same. Further it is to mark the seriousness of these offences, the public disapproval of the defendant's actions, and to appropriately and adequately punish the defendant for his blatant disregard for the laws of this country.
11. In mitigation it is submitted by Counsel that consideration be given for remorse and for being sick. These are declined. The defendant has no medical certificate or report to confirm that he is ill or sick. And the Court is not satisfied that the defendant is remorseful.



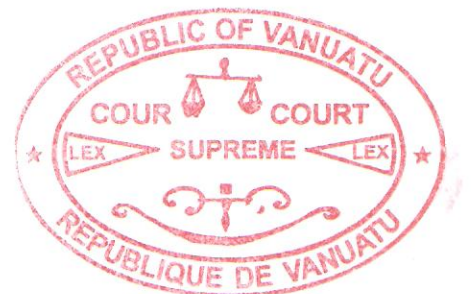
12. Counsel further submitted that reductions should be given for factors such as early guilty pleas and being a first time offender. These are also declined. As indicated earlier the defendant committed these offences in the past on his other yacht and got away with it. As for his guilty pleas, these offences were committed in October 2011. The charges were laid in May 2012 after a record of interview was conducted on 25th May 2012. Shortly thereafter the defendant left the jurisdiction of the Court and has never returned since. The case was called for mention on 3rd July 2012 and adjourned to 3rd August 2012 for plea. Notice of Plea was issued dated 11th July 2012. On 3rd August 2012 the defendant was not in Court and on his Counsel's advice his pleas were received through Counsel. Under those circumstances, this was not an early plea. An early plea should have been in May or June 2012 and not three months later after the charges were laid. These factors are therefore rejected.

13. The only remaining factors are old age and the fact that the defendant is out of the jurisdiction. It is due to these that the Court is of the view that only fines are appropriate penalties to be imposed rather than custodial sentences.

14. Accordingly the Court convicts the defendant Thomas Wasson in respect to all four charges in Counts 1, 2, 3 and 4 and sentences him as follows :-

(a) Count 1	-	A fine of VT500.000
(b) Counts 2 and 3 (Concurrent)	-	A fine of VT300.000
(c) Count 4	-	A fine of <u>VT300.000</u>
Total	-	<u>VT1.100.000</u>

15. I Order the defendant to pay the total of VT1.100.000 in fines to the Court within 28 days from the date of this sentence, that is to say on or before Friday 18th January 2013.



16. In the event that the fines of VT1.100.000 are not paid by the defendant within the period provided, the Court hereby authorizes the State through its appropriate authorities to confiscate the defendant's vessel the Midnight Fox pursuant to Section 58ZC of the Act.
17. For the purposes of confiscation of the vessel, the Defendant is hereby restrained and prohibited from removing the said vessel from Aore Island or from Vanuatu waters pursuant to the order at paragraph 2 of the Consent Orders dated 3rd August 2012, pending further orders of the Court and subject to the defendant paying the whole of his fines as ordered.
18. That is the sentence of the Court. The defendant has a right of appeal within 14 days if he so chooses.

DATED at Luganville this 21st day of December 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge.

