

**PUBLIC PROSECUTOR - v - MATHEW TOM MASSING
LEO BULE
JOHN ARCHIE**

Coram: *V. Lunabek CJ*

Counsel: *Mr Tristan Karae for the Public Prosecutor
Ms Jessica Palo for the Defendants*

Sentencing submissions: *4 March 2013*

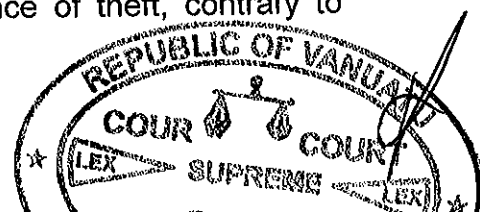
ORAL SENTENCE

This is the sentence of the above-named Defendants: Mathew Tom Massing, Leo Bule and John Archie. You were charged with one count of unlawful entry, and one count of theft, contrary to ss.143 and 125(a) of the Penal Code Act [CAP.135].

You were summoned to appear and take your pleas before the Supreme Court on 5 February 2013. On that date, only Defendant John Archie appeared and entered guilty pleas on both counts charged in the Information dated 5 February 2013.

A warrant of arrest was issued against the two other Defendants. The return date was 22 February 2013. On 22 February, John Archie failed to attend for sentencing. A warrant was issued for his arrest. Again on 22 February 2013, Defendant Mathew Tom Massing appeared in Court. Apparently he was not arrested by the police. He attended as he was informed by the Probation Office that he must appear before the Supreme Court to answer the charges laid against him.

On the said date, Mathew Tom Massing entered a not guilty plea for the offence of unlawful entry but entered a guilty plea on the offence of theft, contrary to



s.125(a) of the Penal Code Act. He was then discharged for unlawful entry under s.29 of the Criminal Procedure Code Act (cap. 136). The return date for sentencing submissions was fixed for today 4 March 2013, at 2.00pm o'clock. At 2.10pm o'clock today the three of you appear.

The Court is informed that John Archie was arrested, kept in custody and released on the weekend by the police and was told to attend the Court today. He explained he has problems with transportation to come from his village (paunangisu, North Efate) to the Court in Port-Vila. That is his reason for failing to attend the Court for his sentencing. The court notes the reason advanced by accused John Archie.

Today, Leo Bule entered guilty pleas on both counts of unlawful entry and theft as charged in the Information dated 5 February 2013.

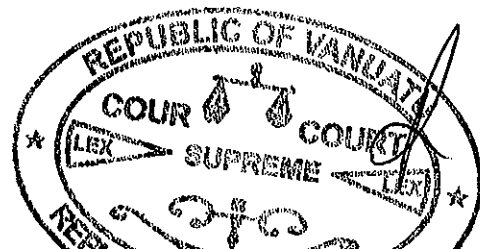
The brief facts of the case show that the incident occurred on the 10th of July 2012 at a Digicel Shop (Kiok) on Emua village, North Efate.

The complainant, Jacobeth Kalorib, who is the shop keeper, in the morning of 11 July 2012, noticed that one window of the shop was unlocked. She then found out that several items (phones) went missing. She filed her complaint against each of you.

Following are items that went missing and their costs.

- 4 Alcatel 900 at 8,100VT each
- 4 Alcatel V555 at 7,100VT each
- Coral : 670 3 at 5,300VT each
- 3 Nokia at 6,000VT each
- 1 Huawei V 2,800VT each
- 1 Alcatel 217 at 2,900VT and
- 4 replacement sim card at 250VT each

The total costs are estimated at Vatu 135,300. You were arrested and brought to police station and were interviewed.



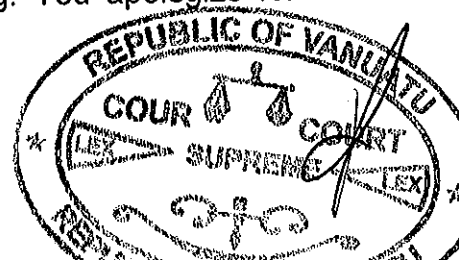
During the interview, Mathew Tom Massing and John Archie, you admitted the offending. Defendant Leo Bule decided to speak only in Court. The Court is informed that the items stolen were all recovered.

The Court condemns your offending. The society disapproves your unlawful acts. They are unacceptable. Entering into houses or places belonging to others and stealing properties of other persons are serious offences. The seriousness of your offending is reflected by the maximum penalties imposed by law (10 & 12 years imprisonment for unlawful entry and theft respectively).

When I consider your sentencing, I take into account of the prosecution submissions and submissions of your defence lawyer made on your behalf. I also take into account of the oral report of the Probation Officer.

In mitigation, each of you entered guilty at the first opportunity given to you by the Court. The following particulars are provided in respect to each of you:

- Mathew Tom Massing, you are from Paunangisu village, North Efate. You are 18 years of age. You attended primary school to class 4. You are a first time offender. You plead guilty at an early stage. You do not have previous convictions. Your ambition is to build a house for you. You show some insight for your offending. You feel remorseful for your wrongdoing. You apologize for your offending. All items stolen were recovered.
- John Archie, you are from Paunangisu village, North Efate. You are 27 years of age. You are married and you have two (2) children. You do gardening to support your family. You have a loan with a Bank (NBV) of VT108,000. You pay 11,000 Vatu monthly to build a house. You attended primary school to class 6. You are a first time offender. You plead guilty early. You do not have previous convictions. You apologise for your wrongdoing. You feel remorseful. All items stolen were recovered.
- Leo Bule, you are from Paunangisu village, North Efate. You are 17 years of age. You attended primary school to class 4. You are a first time offender. You plead guilty at an early stage. You do not have previous convictions. You feel remorseful for your wrongdoing. You apologize for your offending. Items stolen were recovered.



Custodial sentences must be the appropriate sentence to be imposed to reflect the seriousness and circumstance of your offending. You are sentenced as follows:

ORDERS FOR SENTENCE

1. **Mathew Tom Massing**
 - Discharged and acquitted for unlawful entry
 - 2 years imprisonment for theft
2. **John Archie**
 - 2 years imprisonment for unlawful entry
 - 2 years imprisonment for theft
3. **Leo Bule**
 - 2 years imprisonment for unlawful entry
 - 2 years imprisonment for theft
4. All sentences to be concurrent to each other (when relevant).
5. Sentences of 2 years to be suspended for 2 years.
6. **In addition:**
 - (a) **For Defendant John Archie:**
 - 80 hours community service is imposed.
 - (b) **For Defendants Mathew Tom Massing and Leo Bule:**
 - 12 months supervision imposed on standard conditions.
7. Each has 14 days to appeal his sentence if he is not happy with it.

.DATED at Port-Vila this 4th day of March 2013

BY THE COURT

Vincent LUNABEK
Chief Justice

