

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

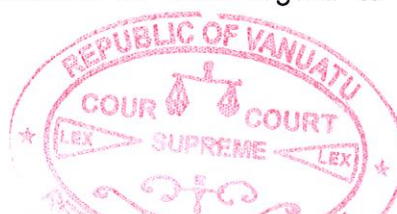
Criminal Case No. 93 of 2015

PUBLIC PROSECUTOR
V.
JAPHET TUI

Coram: Justice D. V. Fatiaki
Counsel: Mr. D. Boe for the State
Mr. F. Tasso for the Defendant
Date of Sentence: 11 March 2016.

SENTENCE

1. Japhet Tui, you pleaded guilty and have been convicted for two (2) offences: Unlawful Entry contrary to Section 143 of the Penal Code and Theft contrary to Section 125(a) of the Penal Code.
2. The brief facts of the case are that you and Mikie Shemi unlawfully entered the house of Ian Russel Rhodes at night on 12 October 2014 and stole two (2) cartons of spirit alcohol ("*hot drink*") worth a total of VT144,000.
3. Japhet Tui according to your pre-sentence report you are 19 years of age and would have been 17 years when you committed the offences. You have completed grade 6 at school and you have a small garden that you plant crops and sell in the market. You are still living with your parents at Sara village.
4. You are a first offender and you told the probation officer that you were pressured by your elder "*tawian*" to commit the offences. Your counsel correctly describes it as "*peer pressure*".
5. Prosecuting counsel states that the only aggravating factor in the case is the value of the items stolen and not recovered. That is not surprising as the stolen items was consumable liquor.
6. Japhet Tui although stealing is a serious offence carrying a maximum penalty of 12 years imprisonment, unlawfully entering a person's home at night is viewed much more seriously by the law which imposes a maximum sentence of 20 years imprisonment.
7. That same law namely the Penal code also states that a person under 16 years of age should not be sentenced to imprisonment unless there is no other appropriate method of punishment (**see: Section 54**). The court is also required when sentencing an offender to have regard to the possibility of



keeping the offender in the community so far as practicable and consistent with the safety of the community (see: Section 37).

8. I have carefully considered those provisions as well as your counsel's plea in mitigation and the prosecutor's submissions that a community-based sentence would be appropriate. I have also borne in mind the kastom reconciliation ceremony you performed to the victim.
9. Japhet Tui I am satisfied that you committed the offences as a result of peer pressure from your elder relative and not with any desire for financial gain or reward. There is no suggestion that you attempted to sell any of the stolen liquor.
10. I am also satisfied given your relative youth and impressionability, that you should not be sent to prison. Sending you to prison would remove you from your island, all community support, and your family would expose you to the detrimental influences of hardened criminals in prison. In my view nothing would be gained by your imprisonment in either Santo or Efate.
11. Japhet Tui, let this case be a lesson to you not to give in to "*peer pressure*" that can often lead you astray and to respect the homes and possessions of other people. Do not waste this opportunity that the Court has given you to rehabilitate yourself and become a useful and law-abiding member of the community.
12. The sentence of the Court is as follows:


On Count 1: Unlawful Entry – 100 hours of community work;

On Count 2: Theft - 50 hours of community work;

making a combined total of 150 hours of community work to be performed within 12 months under the supervision of Chief Seule Simeon and as directed by the probation officer.
13. You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Rovo Bay, Epi, this 11th day of March, 2016.

BY THE COURT


D. V. FATIAKI
JUDGE.

