

PUBLIC PROSECUTOR

V

MARMAR KALWATMAN

KALOMUT KALSA

PASCAL KALTABANG

ROY WILSON TARI

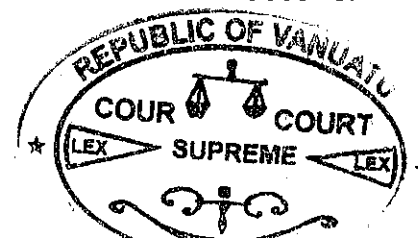
IRY PATAS

MAIKOR KALTABANG

Date of Sentence: 3 March 2022 at 8:30 am
Before: Goldsbrough J
In Attendance: Young L, for the Public Prosecutor
Bakokoto L, for the Accused

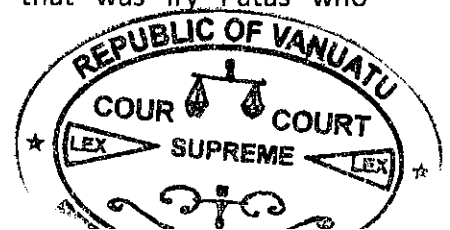
SENTENCE

1. Through an amended information filed on 31st January 2022, guilty pleas were recorded from the six accused in this criminal case involving the breaking into shipping containers belonging to Wang Hong Liang and stealing from them. The total value of goods stolen remains in some doubt, but, save for one carton of beer, the police confirm that they recovered and returned all of the property stolen by these particular men.
2. **Maikor Kaltabang** pleaded guilty to malicious damage to property, contrary to section 133 of the Penal Code. His offence was to damage the lock securing the 40-foot container from which items were then stolen. He did not steal anything but told his friends about the containers and the broken lock. Were it not for his breaking of the lock and telling his friends, the property may well not have been stolen. He broke the lock sometime in August 2022.
3. The maximum penalty for malicious damage to property under section 133 is not prescribed by that section and is therefore a fine of VT5000 or



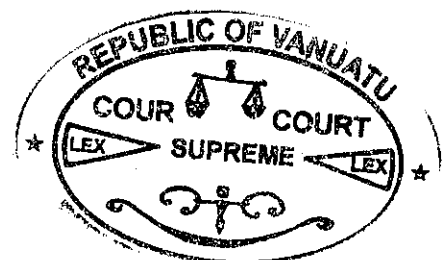
imprisonment for one year under section 36 (3) of the Interpretation Act [Cap 132].

4. It is not known who broke the lock of the second container from which items were also stolen, and there is nothing to suggest that others not charged here did not themselves steal other items. There seems to be a substantial discrepancy between the estimate of the stolen property value coming from the complainant and the value of goods stolen and recovered from these five individuals. These individuals, however, are before the court for the property specified in their respective charges and may only be sentenced accordingly.
5. Marmar Kalwatman, Iry Patas, Kalomut Kalsa, Roy Wilson Tari and Pascal Kaltabang pleaded guilty to entering into a place with intent to commit an offence. The place was not a dwelling house, but the place where two shipping containers were stored. One of those two containers had a broken lock and one of them had been told about this by Maikor Kaltabang.
6. This offence carries a maximum penalty of imprisonment of ten years.
7. **Pascal Kaltabang** also pleaded guilty to stealing 1 iron food tray, two iron steel dishes, 1 hammer, 1 yellow and black handsaw, 1 blue raincoat and 1 meter long tape measure. **Kalomut Kalsa** pleaded guilty to stealing an electric drill, a torchlight and charger, 2 trowels, 1 level, 2 dishes, one electric jug, 1 15" solar panel, 20 clamps, one raincoat, one pinch bar, 2 sport lights, a quantity of black insulation tape and a finishing trowel. **Marmar Kalwatman** pleaded guilty to stealing 10 yellow clam straps, 10 clamps, a circular saw, a vibrator machine and 2 cartons of beer. **Iry Patas** pleaded guilty to helping Marmar Kalwatman to remove the stolen items and hiding them in the nearby bushes. **Roy Wilson Tari** pleaded guilty to stealing 2 sports lights, an electric drill and a welding machine. All of the property belonged to Wang Hong Liang.
8. Not all of the defendants entered these premises together at the same time. The thefts took place at various times in September 2021. It seems the one followed another, sometimes in pairs.
9. Each offence of theft carries a maximum penalty of imprisonment for twelve years, similarly for the helping.
10. Entering the place with intent to commit an offence and the offence of stealing or helping to steal all relate to the same activity and therefore the sentences for each of the offences will be concurrent.
11. Only one person benefitted from the theft in the sense of having the opportunity to consume stolen property and that was Iry Patas who



consumed the content of one carton of beer. Others benefitted from the proceeds they obtained from selling stolen goods but it is acknowledged that even those sold stolen goods have now been recovered from the purchasers.

12. Noting the maximum prescribed penalties for these offences and considering the factors which may be said to aggravate these offences, this court can arrive at a starting point from which an end sentence may be arrived at. The aggravation is not significant, there was some planning involved and some people made a profit from selling the stolen property but full recovery was made and the only outstanding item was the consumed carton of beer.
13. **Maikor Kaltabang** is convicted on his plea of malicious damage to the lock of one shipping container. He did not return with the others to steal but did tell his friend Marmar Kalwatman about the broken lock. He has since spent 39 days in pre-sentence custody. That itself amounts to an effective sentence of imprisonment of almost three months. He is of previous good character.
14. Whilst a custodial sentence may have been indicated for the malicious damage, taking into account the time already spent in custody, for which credit may not be given through a suspended sentence of imprisonment, a period of community service appears to be indicated in his case. For his single offence of malicious damage to property, he is sentenced to perform 120 hours of community service within the next twelve months.
15. **Iry Patas** was less involved than his four other co-accused in that he did not steal goods himself, but he helped another. To that extent, his involvement in the enterprise could be said to be less than others and therefore his sentence will be less, although not a great deal less. He is of previous good character. He is, though, solely responsible for the missing carton of beer. The starting point in his case will be less than that of the four others. He may also benefit from a discount for his guilty plea of one third. The starting point in his case is imprisonment for thirty-six months (as opposed to forty-eight months – see below) reduced to twenty-four months on his early guilty plea and a further two months for his previous good character leaving a final sentence of imprisonment of twenty-two months suspended for two years. In addition, he is ordered to perform community service for 120 hours within the next twelve months.
16. For the remaining four defendants a starting point of 48 months for each offence of unlawful entry and theft, concurrent, with a guilty plea discount of one third and a further two months reflecting previous good character brings the sentence for each of the two offences for which each of the four are convicted following their guilty pleas of thirty months imprisonment which sentence is suspended for a period of two years. Like the others, a period of community service of 120 hours each to be completed within the next twelve months is ordered.



- 17. In each case of imprisonment, suspension appears to be indicated given the nature of the offences, the recovery of the property and the lack of any previous convictions together with the pre-sentence periods of custody.
- 18. The effect of the suspended sentence of imprisonment was explained to each of the accused to whom it applied together with the consequences of failing to comply with the directions of the probation officer assigned to supervise the community service. In addition, the right of appeal against sentence to be exercised within fourteen days of the sentence imposed today was explained.

DATED at Port Vila this 3rd day of March, 2022

BY THE COURT

EP Goldsbrough
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EP Goldsbrough

Judge

