

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

Criminal
Case No. 22/1462 SC/CRML

PUBLIC PROSECUTOR

v

**YAN NAMATAK
MARCEL TOM**

Date: 29 May 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms L. Lunabek
Defendants – Ms A Sarisets

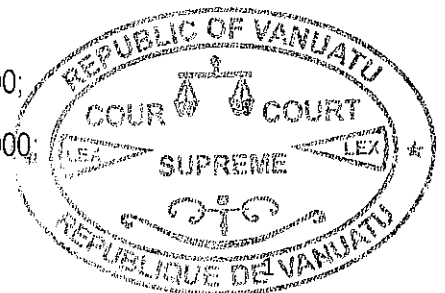
SENTENCE

A. Introduction

1. The Defendants Yan Namatak and Marcel Tom pleaded guilty to one charge each of unlawful entry and theft. The Defendants are convicted on their own pleas and the admitted facts.

B. Facts

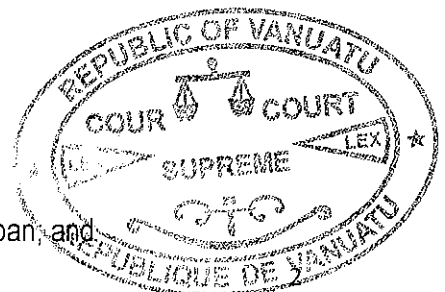
2. On various occasions between 5-12 February 2022, Mr Namatak and Mr Tom and two others namely Alick Cheval and Billy Kara entered Christopher Bartlett's house at Malapoa Estate with intent to commit an offence (Charge 1). Mr Bartlett was away on Santo for work. He returned to Vila on 13 February 2022.
3. The Defendants were joined by Joshua Kilitier and Mathias Maki and between the 6 of them, they took and carried away items worth over VT460,000 including the following (Charge 2):
 - a. HP laptop Spectre 360 – VT170,000;
 - b. Bose Bluetooth Sound Link and black speaker – VT38,000;
 - c. Bose Bluetooth Sound Touch 10 Speaker white – VT45,000;
 - d. Spy Glass Binoculars Swiss Army – VT12,900;



- e. 5 diving masks – VT17,000;
 - f. Husqvana grass cutter – VT78,000;
 - g. Stihl chainsaw (small) – VT40,000;
 - h. Brown towel (large) – VT6,000;
 - i. Canon Pixma M62560 printer – VT7,500;
 - j. 3 bush knives – VT6,000;
 - k. 5 boat flares – VT5,000;
 - l. Crowbar – VT5,000;
 - m. Underwater camera – VT10,000;
 - n. Hair clippers black (Twelveling hard plastic box case) – VT7,500;
 - o. 2 white double plugs – VT1,000;
 - p. 1 20metre yellow extension cable – VT3,000;
 - q. 1 5meter white extension cable – VT1,000;
 - r. Small black torch with alarm panic button – VT4,000;
 - s. 5 t-shirts and 5 short trousers – VT10,000; and
 - t. Tinned food, pens, mushrooms, vegetables, tomatoes – VT2,000.
4. Subsequently, items including the Bose speakers, 3 diving masks, Stihl chainsaw, the Canon printer, double plugs, black torch, towel and 2 boat flares (worth VT150,000) were recovered and returned to Mr Bartlett.

C. Sentence Start Point

- 5. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
- 6. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
 - a. Unlawful entry of residential dwelling – 20 years imprisonment (subs. 143(1)); and
 - b. Theft – 12 years imprisonment (s. 125(a)).
- 7. The mitigating factor is that some of the stolen goods were returned to Mr Bartlett.
- 8. The offending is aggravated by:
 - The offending occurred at night time;
 - There was some planning involved;
 - The repeat nature of the offending over a short time span, and



- The loss suffered with no prospect of reparation or return of the bulk of the stolen property.
9. The factors set out above require a global sentence start point of 4 years 6 months imprisonment.

D. Mitigation

10. The Defendants pleaded guilty at the first opportunity. Accordingly, one third is deducted from the sentence start points.
11. Mr Namatak is 21 years old. He lives with his mother. He has no previous convictions. He expressed his remorse for the offending to the pre-sentence report writer. He is currently working as a mechanic at Ah Pow Bakery. He has good community support from his chief and family. A further 6 months is deducted for Mr Namatak's personal factors.
12. Mr Tom is 23 years old. He lives with his widowed mother. He has no previous convictions. He is willing to perform custom reconciliation ceremony with the complainant. He is currently working as a construction worker with CCECC and uses his earnings to help his mother pay for his two younger siblings' school fees. He has good community support from his chief and family. A further 6 months is deducted for Mr Tom's personal factors.

E. End Sentence

13. Taking all matters into account, the end sentences imposed concurrently are as follows:

a. Yan Namatak:

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|------------------------------|------------------------------------|
| i. Unlawful entry (Charge 1) | 2 years 6 months imprisonment; and |
| ii. Theft (Charge 2) | 2 years imprisonment. |

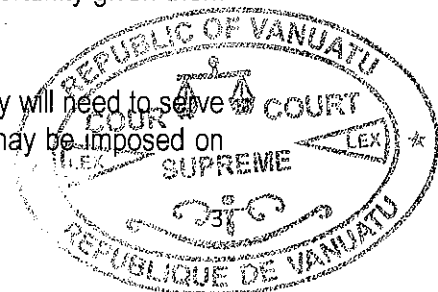
b. Marcel Tom:

- | | |
|------------------------------|------------------------------------|
| i. Unlawful entry (Charge 1) | 2 years 6 months imprisonment; and |
| ii. Theft (Charge 2) | 2 years imprisonment. |

F. Suspension of Sentence

14. The offending was serious. On the other hand, Mr Namatak and Mr Tom's prompt guilty pleas, lack of previous convictions, family and community support, and youth and immaturity, count in favour of suspension of sentence. I consider their chances of rehabilitation are better served by keeping them out of custody therefore suspend their sentences for 2 years. I trust that they will make the most of the opportunity given them and ensure that they do not ever offend again.

15. They are warned that if they offend again within the next 2 years, they will need to serve the sentences imposed today in addition to any other penalty that may be imposed on them for the further offending.



16. In addition, Mr Namatak and Mr Tom are ordered to each complete 40 hours of community work.

17. The Defendants have 14 days to appeal.

DATED at Port Vila this 29th day of May 2023

BY THE COURT

