Case No. 2548 Judgment No. (B) 19/76

of the 3rd December, 1976

JOINT COURT OF THE NEW HEBRIDES

JEFFREY NAMUELE (Appellant) -v- PUBLIC PROSECUTOR (Respondent)

(Appeal against Judgment No. 82 of 1976 of the Native Court, Northern District dated 18th November 1976)

JUDGMENT

The appellant, aged 16 years, was convicted by the Native Court, Northern District, of the following offences:-

Count 1 - Manifest drunkenness, contrary to section 38(b) of J.R. 12/62, as amended by J.R. 13/63 and J.R. 4/74;

Count 2 - Threatening gestures, contrary to section 28 of J.R. 12/62;

Count 3 - Damage to property, contrary to section 26 (1a) of J.R.12/62, as amended by J.R.29/66, J.R.11/68 and J.R.15/70;

Count 4 - Drinking under age, contrary to section 3(a) of J.R.10/66, as amended by J.R.8/71 and J.R.7/74.

The Native Court found no extenuating circumstances present in the case and sentenced the appellant -

(1) on Count 1 to 2 weeks' imprisonment ;

(2) on Count 2 to 1 month's imprisonment ;

(3) on Count 3 to 1 month's imprisonment; and

(4) on Count 4 to pay a fine of Ten Australian Dollars.

It ordered that the sentences of imprisonment should run consecutively.

The appellant appealed against sentences only.

Article 8 paragraph 10(B) of the 1914 Protocol, as amended, which governs the right of appeal to the Joint Court from the judgments of the Native Courts in penal matters reads as follows:-

"10. There shall be a right of appeal to the Joint Court from the judgments of the Native Courts :

.....

(B) in penal matters, against conviction or sentence or both, provided that an appeal shall not lie

..../2

to the Joint Court in respect of conviction in a case where the accused pleaded guilty or in respect of a sentence of imprisonment of 30 days or less or a fine of £20 or less, or its equivalent in francs at the current rate of exchange.

....."

These provisions are in substance reproduced in rule 3(1) of the Joint Court (Criminal Appeals from Native Courts) Rules.

At the hearing of the appeal, it was submitted by learned counsel for the respondent that, in view of the sentence imposed on each count, the appellant had no right of appeal against sentence. On the other hand, learned counsel for the appellant argued that, for the purpose of deciding the appellant's right of appeal against sentence, the three sentences of imprisonment should be added together and that, as the total thereof exceeded 30 days, he had a right of appeal.

The Court accepted the respondent's submission and rejected that of the appellant. It was of the opinion that, on a charge containing more than one count, the sentence imposed on each count must be considered separately for the purpose of deciding upon the right of appeal against sentence and that was abundantly clear from the words "in respect of a sentence...." occurring in the relevant provisions of the Protocol and the Appeal Rules referred to above. Accordingly, the Court held that, since the sentence of imprisonment on each of the first three counts did not exceed 30 days and the sentence on Count 4 was a fine not exceeding in Australian dollars the equivalent of £20, the appellant had no right of appeal against sentence on any of the four counts on which he was convicted.

The appeal against sentence on each of the four counts was struck off as being incompetent.

GIVEN at Vila the third day of December, one thousand nine hundred and seventy-six.

L. CAZENDRES
French Judge

L. G. SOUYAVE
British Judge

P. de GAILLANDE
Acting Registrar