

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

Criminal
Case No. 21/3232 SC/CRML

PUBLIC PROSECUTOR
V
ESMON SAIMON

Coram: Justice O. Saksak
Counsel: Mr Tristan Karae for the State
Mr Colin B. Leo for the Defendant
Date of Plea: 22 October 2021
Date of Sentence: 30 November 2021

SENTENCE

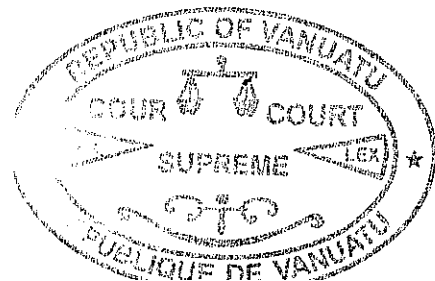
Introduction

1. The defendant is appearing for sentence for having pleaded guilty to one charge of failure to stop at the request of Police contrary to Section 19 of the Road Traffic Control Act [CAP. 29], and to one further charge of failure to comply and observe the law, contrary to Section 19 of the Leadership Code Act [CAP. 240].
2. It was charged (Count 1) that on 13 December 2020 at Socapor Area, Port Vila the defendant drove a Government vehicle Registration No. G17 on the public road and failed to stop at the request and signal of Police officers. It was further charged (Count 2) that due to that failure the defendant had breached his duties under the Leadership Code Act.

The Law

3. Section 19 of the Road Traffic (Control) Act states:

"19. Obligation to stop when requested to do so by police officer



Every driver or person in charge of a vehicle on a public road shall stop upon signal by, or request of, any police officer on duty."

4. Section 53 of the Act provides for offences and penalties as follows:

"53. Offences and penalties

(1) Except as provided in sections 12, 13, 14, 15, 20(3), 20A, 34, 35, 47, 55 and subsections (2) and (3) of this section, any person who contravenes a provision of this Act shall be guilty of an offence and shall be liable to a fine not exceeding VT 10,000 or to imprisonment not exceeding 1 month, or to both such fine and imprisonment."

5. Section 19 of the Leadership Code Act states:

"A person who does not comply with Part 2, 3 or 4 is guilty of a breach of this Code and is liable to punishment in accordance with Part 6."

6. Part 2 and Section 13 provides for Duties of Leaders and States:

"(1) A leader must:

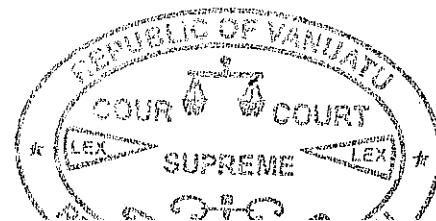
- (a) comply with and observe the law;*
- (b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution;"*

7. Section 40 of the Leadership Code Act provides for the penalty to be a fine or imprisonment and states:

- (1) A leader who is convicted of a breach of section 19, or 20, or 21, or 22, or 23, or 24 or 26 or 27 is liable to –*
 - (a) a fine not exceeding VT 5,000,000; or*
 - (b) imprisonment for a period not exceeding 10 years.*

Facts

8. In the early hours of 13 December 2020 at about 03.00hrs a Police Patrol was heading towards the Socapor area along the Lini Highway. They were following a motor vehicle Reg. No. G17. At the turn-off on the right towards the Harbour View Restaurant the Police signaled for the vehicle to stop. However the vehicle continued up the road toward the Harbour View

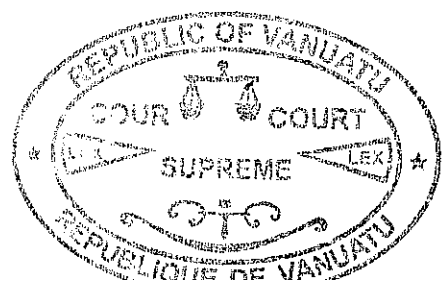


Restaurant at high speed. The Police therefore gave chase. At the white road towards Anabourou School the defendant turned and continued at high speed. The Police finally caught up with him at the VMF Camp area and arrested the Defendant. He was drunk with alcohol. They detained him for the rest of the night.

9. The defendant made a caution statement at 09:48hours on 13 December 2020 admitting the Police had arrested him at 03:00hrs for drink driving. He stated he had attended a function at the Prime Minister's nakamal at Freshwater with some colleagues. They had kava together and some wine. They decided to meet up at the Saloon Bar. He had dropped off another colleague at Freshwater and returned to town. That was when the Police followed him all the way to Socapor where the incident occurred.

Aggravating Features

10. The defendant is a State Minister. He is a very senior politician and previously held the position of Speaker of Parliament. He is currently the Member of Parliament for the Malekula Constituency since 1998. He had held senior ministerial positions as Minister of Ni-Vanuatu Business, Minister of Trade, Minister of Public Utilities and currently the Minister for Justice and Community Services.
11. In the early hours of 13 December 2021, the defendant drove his ministerial car under the influence of alcoholic liquor. He ran over the islets at the Socapor turn off. He was signaled or requested by the Police to stop but he ignored the request and put himself above the law. He then sped away so the Police had to give chase, showing his disrespect for the law and the Police and the legal system, for which he is directly involved as a legislator, being a Member of Parliament.
12. Not only that, the defendant also held the position of an elder at the Malasitapu Presbyterian Church at Freshwater, Port Vila.
13. His actions brought, disrepute to himself and his family, the Church, the Government for which he is a party, and the Legislature or the House of Parliament as a Member.
14. Moreover the defendant's actions were direct infringements of the Traffic laws and the Leadership Code Act.



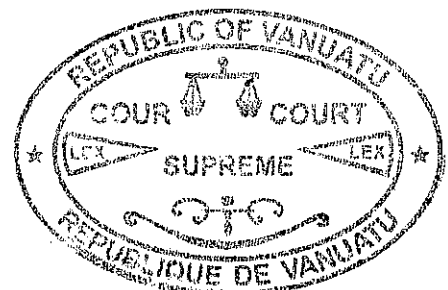
15. Such actions must be deterred and the only appropriate punishment in my view should be either a custodial sentence or a fine.

Discussion on appropriate sentence

16. I have weighed up those two options having regard to the mitigating factors of the defendant including his character and personal history and other factors.
17. I note from his pre-sentence report that he is a 67 years old man with a wife, 7 children and 23 grandchildren. He attended a mission school and has a long history of good administrative and work record.
18. Health wise the defendant has high blood pressure and diabetes and is currently on medication. He has had a throat operation. His wife is currently on a wheelchair and he has to put up with all that.
19. His chief speaks well of him. The Honourable Prime Minister has provided a character reference dated 25 November 2021. Chiefs Owen Rion and Hanhapath Vinbel have confirmed a substantial custom reconciliation performed by the defendant on 10 October 2021.
20. The defendant has accepted responsibility for his actions and resigned his position as elder of the Church.
21. He has apologized for his actions to the Judicial Services Commission, to a Commission of Inquiry and the public through the Daily Post Newspaper.

Sentence

22. Applying the totality principle, I now convict and sentence the defendant as follows:
- (a) For failure to stop at the request of the Police – a fine of VT10,000;
- (b) For breaches of Sections 13(1)(a) and 19 of the Leadership Code Act, a fine of VT700,000.



These fines, totaling VT710,000 must be paid within 21 days from the date of sentence. In the event of a failure to pay within the period ordered, the defendant will be imprisoned for a period of 6 months.

23. Further and in addition to the fine sentences, I sentence the defendant to community work for 100 hours pursuant to Section 58G and 58N of the Penal Code Act. He must perform his 100 hours of community work within 12 months from the date of sentence.
24. This additional sentence is to mark the seriousness of the defendant's offendings, to make public disapproval of his actions, to deter him and others from acting likewise and to punish him adequately for his actions.
25. That is the sentence of the defendant by the Court.
26. The defendant has a right of appeal against his sentence within 14 days.

DATED at Port Vila, this 30th day of November, 2021

BY THE COURT

