

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

**Criminal**  
**Case No. 25/194 SC/CRML**

**PUBLIC PROSECUTOR**

**V**

**JOHN FRED  
KAMI RUBEN**

**Date of Plea:** 18 February 2025  
**Coram:** Hon. Chief Justice Vincent Lunabek  
**Counsel:** Marie T. Silei for the Public Prosecutor  
Kylie B. Karu for the Defendants  
**Date of Sentence:** 24 April 2025

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**SENTENCE**

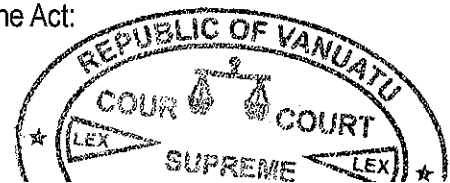
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**I. Introduction**

1. This is the sentence of Defendants John Fred and Kami Ruben. Mr John Fred, you are also known as John 6 and John Namaka. I call each of you "*Mr Fred*" and "*Mr Ruben*" for the purpose of this sentence.

**II. Charges – offences**

2. Mr Fred, on 4 March 2025, you were charged, you pleaded guilty and accepted the summary of facts relating to the following offences under the Penal Code Act ("*the Act*"):
- Unlawful entry into a dwelling house, contrary to section 143(1) of the Act (Charge 1);
  - Theft, contrary to Section 125(a) of the Act (Charge 2); and
  - Theft, contrary to Section 125(a) of the Act (Charge 3).
3. Mr Fred and Mr Ruben, on 4 March 2025, you were both jointly charged and you both pleaded guilty and accepted the summary of facts relating to the following offences under the Act:



- Unlawful entry into a non-dwelling house, contrary to Section 143(1) of the Act (Charge 6);
- Theft, contrary to Section 125(a) of the Act (Charge 7).

4. On the same date, you both pleaded not guilty to the offences of unlawful entry into a non-dwelling house and theft in Charges 4 and 5 contrary to Sections 143(1) and 125(a) respectively. You were discharged of these two charges on 4 March 2025.
5. Mr Fred, you are now sentenced alone on the Charges 1, 2 and 3. Mr Fred and Mr Ruben, you are both jointly sentenced on the charges 6 and 7 as contained in the Information dated 13 February 2025.

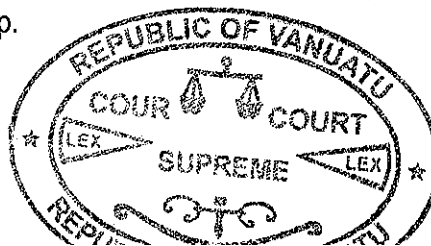
### III. **Facts**

#### A. **Facts in support of Charges 1, 2 and 3**

6. On 13 November 2024 going toward midday, Ms Relvie Poilapa (complainant) saw Mr Fred (defendant) in her house. She shouted at him immediately saying why he was in her house. Mr Fred was shocked. She saw him holding on to the key of her truck. In panic, Mr Fred ran out of the house with Ms Relvie's key of her truck. Mr Fred was shirtless but had a t-shirt covering his head.
7. On 19 November 2024, Mr Fred took and drove away the complainant's truck from her residence at Ohlen. It is a white L200 Mitsubishi double cabin truck.
8. On 20 November 2024, the complainant's truck was sighted at Prima Bridge on the early hours of the morning. The next day, that truck was again sighted at the same location. They attended the scene and the complainant recognized that that truck was hers. The truck's plate numbers were both ripped off, all items in it were taken out and tossed aside into the bushes. The spare wheel has also been taken out.
9. On 2 January 2025, Mr Fred whilst acknowledging his rights, admitted under caution that he had entered the complainant's house and stole the key of her truck. He had returned to Ms Relvie's house on another occasion to drive away her truck. Mr Fred is 18 years old.

#### B. **Facts in support of Charges 6 and 7**

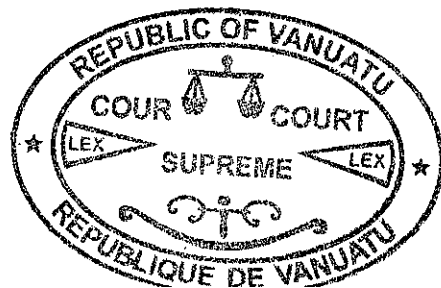
10. On 21 November 2024 at around 2am at Mele, Mr Fred and Mr Ruben, you have both entered into the shop that belongs to Samson Samsen. You have both gained entry into that shop by removing the lock of the iron gate and unscrew the door of the shop.



11. You both took and carried away the following items from the shop:
- (i) VT60,000 cash;
  - (ii) Soft drinks;
  - (iii) Cross cigarette;
  - (iv) A music box;
  - (v) Canned foods such as oxford and tuna flakes; and
  - (vi) A saucepan size 28.
12. On 2 January 2025, you were both cautioned. Whilst acknowledging your rights, Mr Fred, you admitted that you removed the shop lock by cutting it, enabling you both to enter the same. Mr Fred, you admitted you both took and carried away the said above items. Similarly, Mr Ruben, you said you accompanied Mr Fred. You are 17 years old.

**IV. Sentence Start Point**

13. I assess the sentence start point by considering the maximum sentences available, and the aggravating and mitigating factors of the offending.
14. The maximum sentences prescribed in the Penal Code Act [CAP. 135] are:
- (a) Unlawful entry into a dwelling house (s. 143(1) – 20 years imprisonment; and
  - (b) Theft (ss. 122 and 125) – 12 years imprisonment;
  - (c) Unlawful entry into a non-dwelling house (s. 143(1)) – 10 years imprisonment.
15. The following aggravating factors exist in this case:
- The offending occurred at night time;
  - There was some degree of planning and premeditation involved;
  - The offending involved 2 culprits; and
  - The offending is repeated;
  - There was a breach of trust between Ms Relvie and Mr Fred – Mr Fred knew Mr Relvie. He had access to Ms Relvie's home through his father who works there as a gardener. Mr Fred had access to Ms Relvie's home until the offending;
  - The locks of the gate of the property-shop was cut;



- The loss suffered including the damage of the truck and its repair costs of VT500,000 have no prospect of reparation or return of the remaining stolen property in the shop;
- The condition of the truck – damages plate number ripped; spare wheel removed.

16. I assess a global sentence start point of 3 years imprisonment for the above factors for Mr Fred and 1 year and 6 months imprisonment for Mr Ruben. Hermanley v Public Prosecutor [2010] VUCA 25 is the case authority on the point. Public Prosecutor v James [2022] is relevant for comparison purpose with the present case.

17. There were no mitigating factors of the offending (personal factors of the offending) for the Defendant Mr Ruben.

18. I consider that the following constitute the mitigating factors to the offending for the Defendant Mr Fred:

- The Defendant Mr John Fred (Mr Fred) also known as John 6, is further known as John Namaka. There are records of previous convictions in the name of John Namaka in the case of Namaka v Public Prosecutor [2024] VUSC 137; Criminal Appeal Case 3276 of 2023 for unlawful entry and theft. On appeal, Mr Fred or John Namaka was re-sentenced to 9 months and 2 weeks imprisonment, and ordered to be immediately released as he had been in custody for the equivalent of 14 months and 2 weeks. That decision was made on 30 May 2024.
- Mr Fred (John Namaka) committed similar offences within a short period of time after he was released from custody which showed he had little prospect of rehabilitation.

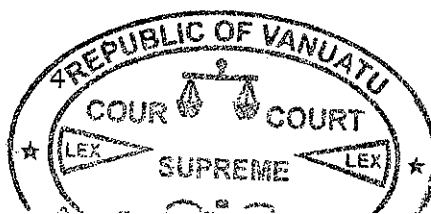
19. I assess and lifted up the sentence start point for Mr Fred by 3 months which increases his sentence start point to 3 years and 3 months imprisonment.

#### **V. Mr Fred – Personal Factors and End Sentence**

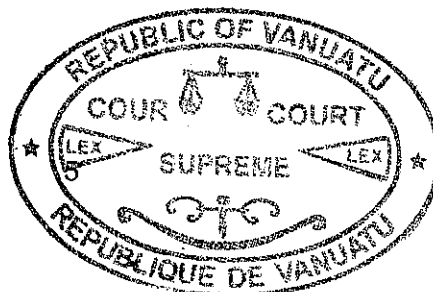
20. The report confirmed that Mr Fred, you were 17 years old at the time of offending and you are 18 years old on March 2025. You are from Ikakahak Village, Southern side of Tanna Island. You are now residing at Salili area on Efate. Your parents were married but divorced in 2019. You live with your mother at Salili area.

21. You are unemployed. You depend on your mother for all household expenses including your personal needs.

22. I consider your guilty pleas given at the first opportunity and I reduce your sentence start point by 25%.



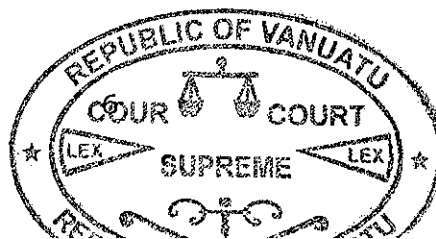
23. You are not a first-time offender but you recognised your mistakes and showed remorse. You expressed regrets for your actions, however, those do not fit well with your previous convictions. The shop owner and the owner of the White L200 Mitsubishi Double Cabin Truck refused to take part in any custom reconciliation ceremony. They both asked for compensation. Although no compensation report is provided, I consider your situation in the report and I sense you do not have the financial capacity to pay compensation.
24. I reduce 4 months from Mr Fred's start point for your personal factors.
25. I reduce your sentence start point further by 3 months considering your young age.
26. I take all matters into account, Mr Fred's end sentences are:
- (a) Unlawful entry into dwelling house (Charge 1) – 1 year and 10 months imprisonment;
  - (b) Theft (Charge 2) – 1 year and 10 months imprisonment;
  - (c) Theft (Charge 3) – 1 year and 10 months imprisonment;
  - (d) Unlawful entry into non-dwelling house (Charge 6) – 1 year and 10 months imprisonment;  
and
  - (e) Theft (Charge 7) – 1 year and 10 months imprisonment.
27. The above sentences are concurrent on each and all the counts. Your end sentence is 1 year and 10 months imprisonment.
28. I consider whether or not to suspend your imprisonment term of 1 year and 10 months. I consider the nature and circumstances of the offending, your character as an offender. I particularly bear in mind of your young age and also of the records of your previous convictions on unlawfully entering non-dwelling houses and theft in May 2024. I bear in mind that you were immediately released from custody as you had been in custody for the equivalent of more than an effective 14 months. I note that in November 2024 of the same year, you committed similar offences few months (7 months) after you were released which showed that you have little prospect of rehabilitation. But it was an escalation on the level of the seriousness of the offences you committed in this type of offending. Here, you unlawfully entered into a dwelling house with the risk of direct confrontation with the occupants at night time. Here, I decline to suspend your sentence of 1 year and 10 months imprisonment. This custodial sentence is necessary to punish you for your offending and to serve as a deterrent effect on you and others.



29. Your sentence of 1 year and 10 months imprisonment is to commence as from 2 January 2025 to take into account the time Mr Fred had already spent in pre-custodial period since the 2 January 2025.
30. You are ordered to serve that sentence of 1 year and 10 months deemed effective from 2 January 2025 accordingly. The case of *Namaka v Public Prosecutor* [2024] 137; Criminal Appeal Case 3276 of 2023 (30 May 2024) is in support of this sentence.

**VI. Mr Ruben – Personal Factors and End Sentence**

31. Mr Ruben was 17 years old at the time of offending. You are now 18 years old. You come from a mixed parentage origin from Tanna and Tongoa Islands. Your parents were separated since your childhood. You are brought up with your father and you reside with him at Ohlen area. You are the youngest son in the family and you have good relationship with your family.
32. You completed Year 7 as part of your education. Your father is working at the Municipal Port Vila cemetery and you depend on your father for your financial means.
33. You were working for the Port Vila Municipality as a mechanic until you were involved in these offences in this case.
34. I note your early guilty pleas. I consider and reduce your sentence start point by 25%.
35. I consider you are a first-time offender. You regretted your actions and you stated that you were not thinking right of the consequences you would face. You said you are remorseful. You said you were influenced by your friend Mr Fred. You knew nothing about the laws of Vanuatu and its consequences. But now you realise your wrong doing and regretted it. You said it was a great lesson for you. The shop owner and the owner of the White L200 Mitsubishi Double Cabin truck refused to take part in any custom reconciliation ceremony. They both asked for compensation. There is no compensation report made but based on the report, you do not have the financial capacity to pay compensation.
36. I reduce 4 months from your sentence start point for your personal factors.
37. I finally reduced your sentence start point for your young age by 3 months.
38. I take all above matters into account, you end sentences are:
- (a) Unlawful entry into a non-dwelling house (Charge 6) – 7 months imprisonment; and
  - (b) Theft (Charge 7) – 7 months imprisonment.



39. The above sentences are concurrent on each and both offences. Your end sentence is 7 months imprisonment. You have already spent time in pre-custodial period since 2 January 2025.
40. I consider whether or not to suspend your imprisonment sentence of 7 months. I take into account of the nature and circumstances of your offending and your character as an offender. I take into account that you have already spent more than 3 months in custody which is the equivalent of an effective 6 months. I decide to suspend your imprisonment term of 7 months for a period of 2 years.
41. During the period of suspension, you shall not re-offend. If you re-offend in that period, the sentence of 7 months imprisonment will be re-activated in addition to the new charge laid against you.
42. In addition, I sentence Mr Ruben to 6 months supervision under the Special Condition that he undertakes the "*Jois Blo Gud Life, Statem Wan Niu Wokabout*" program which is specifically designed to address and improve behavioural issues.
43. Mr Fred and Mr Ruben, you have each 14 days to appeal your respective sentence if you are unsatisfied with it.

DATED at Port Vila, this 24<sup>th</sup> April, 2025.

BY THE COURT

Hon. Chief Justice Vincent Lunabek

