IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Appellate Jurisdiction)

Criminal Appeal Case No. 06 of 2013

BETWEEN: **DESIRE URINMAL**
GRATIEN MALTAPE
THEOPHILE KILITER
FERNAND LAPINMAL
KEN LESNAWON
BAE LUKE MALTOK
LUKE SAIRISETS
JEAN MARK YORLEY
ATOL KILITER
KAMMY BUKTAN
JOSES SARISETS
JEAN NAWINMAL
GIDEON JOSIAH LESNAWON
Appellants

AND: **PUBLIC PROSECUTOR**
Respondent

Coram: ***Honourable Justice John von Doussa***
Honourable Justice Oliver Saksak
Honourable Justice Daniel Fatiaki
Honourable Justice Raynor Asher
Honourable Justice Dudley Aru
Honourable Justice Mary Sey

Counsel: *Colin Leo for the Appellants Urinmal, Lapinmal, Lesnawon, Maltok, L Sarisets, Yorley and A Kiliter.*
Jerry Boe for the Apellants Burktan, J Sarisets, Nawinmal and Lesnawon.
Daniel Yawha and Tom Tavala for the Appellants Maltape and T Kiliter.
Simcha Blessing for the Respondent

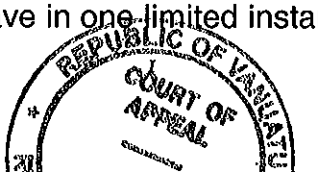
Dates of Hearing: *17th and 23rd July 2013*

Date of Judgment: *26th July 2013*

JUDGMENT

Introduction

1. Following an eight day trial at Lakatoro, Malekula, the Chief Justice convicted all thirteen of the appellants on various charges the most serious of which were assault and kidnapping, arising from an election related incident on 2 November 2012. They were all sentenced to imprisonment for terms ranging from two to three years and six months, with no suspensions save in one limited instance.



2. They all appeal against both the verdicts and the sentences. Although they were all represented by one counsel for the purposes of the Supreme Court hearing, they have divided themselves into three groups for the purposes of this appeal.

3. The challenges to the convictions are specific to the facts, and it is necessary to set these out in detail. We have the benefit of comprehensive reasons for the verdict of the Chief Justice, in which he set out in detail the evidence of the various witnesses, and his own analysis of their evidence. His account of what the witnesses said was not challenged, but there were challenges to his assessments of the credibility and reliability of all witnesses, particularly his assessment of the credibility of the complainant.

4. The appeal includes matters of law, but it also ranges in detail over the facts. It is necessary therefore to provide a brief summary of the background.

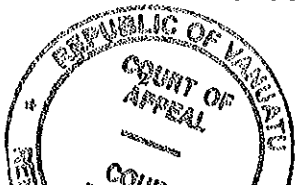
An election incident

5. The complainant is Gaston Muluane, he is a self employed man from Malekula. On 1st November at the request of his chief he became involved in issues relating to the conduct of the elections in Malekula. He was told that a group of persons had carried out improper practices and he was asked to help to obtain evidence of this. There were claims photos of a member of Parliament had been wrongly used for election purposes, and he was to obtain statements of witnesses about what had happened, in particular from a Mrs Imark Maltok.

6. Mr Muluane's evidence was that he went to see Mrs Maltok and obtained a statement from her, which she signed. He already had in his possession some of the allegedly incriminating photos. Then at about 4 pm on 2 November 2013 he went to the village of Jerusalem, which was near to where he lived, to obtain evidence about the wrongful use of photographs there. He saw a land cruiser truck and some people and became aware that they were talking about matters relating to him.

7. At some time between 4 pm and 5 pm he heard and saw a group assemble under a mango tree. He heard the group talking in an angry and threatening manner about how some people had photos they were going to use against the member of Parliament, and how they had to get the person who had them and hold him and stop him reaching Vila. There was talk of dropping him on the road with blood on his body.

8. On hearing this Mr Muluane ran away without being seen. He was determined to protect the photos. He went to Walla village and then to Vao. He was driven in the truck of Kisito Teilemb who had been helping in relation to the photos. While they were driving they were spotted by some of the appellants who had been under the mango tree, and were



driving in the land cruiser, and some of the group came to the truck and asked him to stop

9. A bottle of beer was thrown at the truck, and Mr Muluane was afraid. They drove away and went at speed towards the Lakatoro Police Station to obtain protection and hand over the photos. Mr Muluane deposed that there was then a real chase, with the group who had been under the mango tree at Jerusalem and who were now in the land cruiser, pursuing him. He said that he thought this type of race happened only in the movies.

10. It appears that when they got there, there was no one at the Lakatoro Police station, so they then drove to the house of Justino Teilemb, a Police officer. As they got out, some of the appellants got out of the land cruiser which had also drawn up. Mr Muluane alleged that they assaulted him immediately. Mr Kisito Teilemb tried to hold on to Mr Muluane who also tried to hold on to him, but the group over-powered Mr Muluane and forced him in to the land cruiser. He was pulled and hit and kicked in the process. There were some words spoken by Mr Justino Teilemb which we will refer to later.

11. The struggle and the assaults involved in getting Mr Muluane into the truck had been so severe that he was unconscious when he was finally dragged in. The truck then drove away. In the course of the trip that followed Mr Muluane claimed that he was further assaulted and threatened that he would be killed.

12. He was taken to a campsite at Worlep and forced out. He was bleeding from the mouth and nose. He was then kicked with boots and assaulted to the chest and jaw. He fell to the ground where he was further punched and kicked. One of the group threatened to spear him. One person, an Eric Lapinmal, put his hands up to stop the assaults and helped him up and onto a chair.

13. Mr Muluane was then questioned at length in a threatening way by some of the Appellants about the photos and the statement. They wanted to know where they were. He initially refused to co-operate, but eventually agreed to obtain a statement of revocation from Mrs Maltok at 6 am the next day. He agreed to sign a letter with their council of chiefs. He was then released and dropped off near his house at about 3 am.

14. He went to his home, and he was then helped by a Mathias Urinmal. Mr Muluane deposed that between 3 and 4 am Mr M Urinmal used a tea towel and warm water to wash his head wounds and clean the blood off his body and give him water. Mr Muluane slept for a short period. When the members of his family got up and saw his injuries, and learned from him what had happened they became angry. Tensions were high, but fortunately at that point the Police were contacted and became involved.

15. A practicing nurse, Paulin Bahmoral, was visiting his family for the weekend at Walla. He was asked by the Police to attend to Mr Muluane.

He did so and wrote a report of his findings. The report certified that Mr Muluane:

> *"...was assaulted, received punches from some individuals. There were signs and symptoms as per his appearance. His jaws were swollen – his minor lips also – his [l]ips were painful when pulping was applied on them and his paddock too was painful. There was blood between his teeth, in the nose and in the right eye".*

16. He expanded on the list of injuries in his evidence which were clearly considerable although they did not involve broken bones or require stitching. He prescribed panadol and Iburophen.

17. The appellants were arrested and faced eight types of charge, being riot, intentional assault (three counts), kidnapping, threatening to kill, false imprisonment and extortion. They were all thirteen charged on the riot, false imprisonment and extortion counts. Eight, (Messrs L and J Sarisets, Maltok, Urinmal, Buktan, Lesnawon, Nawinmal, and A Killiter) were charged with the initial assault at Jerusalem, Mr Buktan with the second assault and threatening to kill, and three, (Messrs Buktan, Maltok, and Lapinmal with the final group assault at Worlep.

The hearing

18. At the hearing the Prosecution called six witnesses including Mr Muluane. The Chief Justice accepted Mr Muluane's evidence, describing him as a "*powerful and trustworthy witness*". The prosecution called Kisito Teilemb who had driven him and been with him before he was taken away, and Justino Teilemb who was the Police Officer they had driven to for help. Deborah, a fourteen year old girl who witnessed the events outside Mr Teilemb's house gave evidence as to what she saw, as did Josiane Urleless who gave detailed evidence about what happened when Mr Muluane was at Warlep village. The nurse Paulin Bahmoral was also called. The Chief Justice considered their evidence at length, and found them all to be credible and reliable witnesses.

19. The defendants called a total of ten witnesses, including three of the defendants, Luke Sarisets, Kammy Buktan and Desire Urinmal. In essence the defence was that there had been no assaults and no kidnapping. It was accepted that some of the defendants had been involved in pursuing Mr Muluane, but this was because he had obtained Mrs Maltok's statement wrongly and by force. They wanted to get the document back. They admitted arriving outside Officer Justino Teilemb's house. They said that the officer told them to take Mr Muluane and sort matters out at Rano. They were following his directions. They denied any threatening behavior or assaults. They stated that at the camp Mr Muluane sat in a chair and told them about his wrong doing. Ultimately Mr Muluane ran away. He was not hurt.

20. The Chief Justice considered their evidence at length, and did not accept it as truthful. He also rejected the evidence of other defence witnesses. He held all counts proved against various of the accused, save for the charge of riot which he held was not proven as to its essential elements. He applied s 109 of the Criminal Procedure Code to the riot count, as the particulars supported the lesser offence of unlawful assembly, and he convicted all thirteen appellants on that lesser charge.

21. In addition he convicted Messrs L and J Sarisets, Mr Maltok, Mr Urinmal, Mr Buktan, Mr J Nawinmal and Mr Lesnawon of assault and kidnapping in relation to the initial round of assaults under the mango tree at Jerusalem, Mr Buktan of threatening to kill while driving Mr Muluane in the landcruiser, Mr Buktan, Mr Maltok and Mr Lapinmal of the second round of assaults at Worlep village, and all defendants except Mr T Kiliter and Mr G Maltape of false imprisonment and extortion. Some of the appellants were not convicted of the other multiple offender charges.

22. We first deal with the convictions of Mr G Maltape and Mr T Kiliter as they were each convicted of one count only of unlawful assembly unlike the other appellants, and were acquitted of false imprisonment and extortion. The Prosecution did not suggest before us that they were involved in the events in issue following the meeting at Jerusalem at about 5 pm on 2nd November.

23. There are unique features relating to the position of these two appellants which we will now traverse.

The appeal of G Maltape

24. Mr Maltape was identified by Mr Muluane as being at the assembly under the mango tree at Jerusalem, and as a person urging Mr Muluane's capture to prevent the photos reaching Villa.

25. However, he was charged in the Magistrates' Court with soliciting and inciting, an offence under s.35 of the Penal Code. Just how he came to be charged separately with this offence is not entirely clear, but it would seem that the Police launched this prosecution on its own without input from the prosecutors who were in charge of the multiple counts which went to the Supreme Court.

26. The outcome of the hearing in the Magistrates' Court was that Mr Maltape was acquitted after a hearing on 26th April 2013. There was no credibility finding against Mr Muluane, but it was held that the Prosecutor had not proven the charge beyond reasonable doubt. For reasons that are not clear to us, neither the Prosecution nor counsel representing Mr Maltape brought this to the attention of the Chief Justice in the later hearing before him.

27. The issue was initially argued before us on the basis of autrefois acquit, and the English law relating to that doctrine. However, we have not considered it necessary to rely on common law authority as we consider

the issue to be covered by Article 5 (2) (h) of the Constitution, which provides:

> *No person who has been pardoned, or tried and convicted or acquitted, shall be tried again for the same offence or any other offence of which he could have been convicted at his trial*
> Emphasis added

28. This is stated in Article 5 to be a fundamental right and freedom of an individual.

29. Mr Maltape was acquitted of soliciting and inciting an offence. The offence is a different offence from unlawful assembly with different elements. However, both offences have the common element of taking a step to pursue an offence. The offences being solicited that were the subject of the Magistrates" Court charge, and the offences being pursued in the Supreme Court were both, on the Police case, the same, being the kidnapping and assault of Mr Muluane. That was what was being solicited in the Magistrates' Court soliciting charge, and that was the unlawful purpose being pursued in the Supreme Court unlawful assembly charge.

30. As it transpired, the evidence relied on to support the charge in the Supreme Court was the same as the evidence relied upon in the Magistrate's Court. It was Mr Muluane's account of what he saw and heard the parties say and do under the mango tree at Jerusalem.

31. In the words of Article 5 (2) (h), Mr Maltape could have been convicted in the Magistrates' Court of unlawful assembly if that evidence was accepted as accurate to a point beyond reasonable doubt, and on the same evidence he could have been convicted of unlawful assembly in the Supreme Court. He was theoretically at risk on that evidence in that first hearing, and in bringing the unlawful assembly charge and adducing the same evidence in the Supreme Court the Prosecution was putting him at risk again, despite his earlier acquittal. This was unfair, and at odds with the generally recognized prohibition on defendants being placed in a situation of double jeopardy.

32. When Article 5 (2) (h) was drawn to Mr Blessing's attention he accepted that it applied, and accepted that the appeal on this point must succeed. For the reasons given, he was right to do so. We will allow Mr Maltape's appeal, which given his acquittal on other charges in the Supreme Court, will result in him being discharged on all counts.

33. We do not consider it necessary to consider the detailed submissions we have received on the common law doctrine of autrefois acquit, as the position in Vanuatu is covered by the Constitution as we have outlined. We have no doubt that the Chief Justice would have reached the same conclusion if the earlier conviction had been drawn to his attention.

34. We do not accept Mr Boe's broader submission that insofar as the Magistrate considered Mr Muluane's evidence about what he heard

under the mango tree at Jerusalem to be hearsay, the Supreme Court verdicts must be suspect. The proper step to take in relation to evidence at the earlier hearing would have been for that evidence to be put to witnesses in the Supreme Court. This was not done. That was the decision of counsel and not reviewable in this Court.

35. The fact that the Magistrate may have taken a different view of the evidence to the Chief Justice could be explained by the different ways in which the cases were presented. She thought that Mr Muluane's evidence was hearsay, a conclusion that we must say we find hard to understand. In any event the Chief Justice was not bound by an earlier conclusion on the reliability of a particular piece of testimony. It was his role to make his own assessment.

36. However, the submission highlights the unfortunate consequences of split prosecutions in different Courts dealing with the same events. It also demonstrates the desirability in such an event of drawing the earlier decision to the attention of the later judge.

The appeal of T Kiliter

37. Mr T Kiliter was identified by Mr Muluane as being at the assembly at Jerusalem. Mr Kiliter was a chief. He was under the mango tree and he spoke. Mr Muluane was recorded in the reasons for verdict as saying of Mr T Kiliter that, "*he saw his mouth talking but couldn't hear what he said*".

38. Mr Blessing urged us to accept that Mr T Kiliter would not have met with the others at all if he did not have an intention to offend. We cannot accept that submission given the circumstantial nature of the case against him.

39. Unlike the others present, except Mr Maltape, Mr T Kiliter did not get in the land cruiser and pursue Mr Muluane, and was not present after his forced return to the village at Worlep. While in respect of those who assembled and then set out after Mr Muluane or participated in the later assaults it can be inferred that when they spoke they had the purpose of kidnapping and assaulting Mr Muluane, this cannot be inferred in relation to Mr T Kiliter. It is possible of course, but there are other perfectly feasible and reasonable explanations for his actions. Mr T Kiliter may well have had no wish to see Mr Muluane pursued and captured, and indeed, may have been suggesting that he be left alone. That is equally if not more consistent with his non-participation thereafter.

40. Mr T Kiliter did not give evidence but that is irrelevant. He is entitled to the benefit of the doubt. On the slender evidence against him there was a considerable doubt.

41. We conclude therefore that Mr Kiliter's appeal must be allowed.

No preliminary hearing

42. It became apparent during the hearing of the appeal that there had been no preliminary hearing. Mr Leo argued that this was fatal to the prosecution.

43. However s. 9 (1) of the Public Prosecutor Act provides that the Public Prosecutor may institute a prosecution without a preliminary inquiry "*...if the person consents to the prosecution*". Section 9(6) provides that this only applies to offences triable in the Supreme Court, and these offences were so triable.

44. Mr Leo accepted that he had consented to the case proceeding from the Magistrates' Court to the Supreme Court without a preliminary hearing. However he argued that his consent as counsel was not the consent of "the person".

45. We cannot accept that submission. It is fundamental to the way in which Court proceedings are conducted that when parties choose to employ a lawyer to represent them, that lawyer speaks for them and for all intents and purposes is them when the lawyer speaks in Court in their presence on their behalf. This is the way in which the business of the Court is conducted, and essential to its proper operation.

46. In rare cases if there has been counsel incompetence there may be a remedy available on that ground. But it cannot be said that the rights of persons in Court proceedings can only be exercised directly by the person, and not by properly retained counsel. Counsel's word is treated as the word of the client.

47. In this case there is no suggestion that the defendants did not understand what was happening, or of counsel incompetence. This ground of appeal fails.

Police authorization

48. It was argued that Justino Teilemb authorized the taking of Mr Muluane, and that this was a complete defence to the kidnapping, false imprisonment and extortion charges, and should give rise to acquittals on all charges.

49. Officer Teilemb became involved when Mr Muluane and Mr K Teilemb in trying to escape their pursuers, arrived outside his house. He gave evidence and said that he tried to help Mr Muluane and to prevent him being taken. There were five assailants and he was unable to stop them. His evidence was that when they forcefully took Mr Muluane he said (translated into English) "*Wherever you guys take him, do not assault him again*".

50. The Chief Justice accepted his evidence as true and correct, and did not accept the evidence of the defendants to the effect that he gave them

permission to take Mr Muluane. What the officer said was corroborated by the evidence of Mr Muluane and Mr Kisito Teilemb. It would be extraordinary for an officer to act as the defendants suggested, and we have no doubt that the Chief Justice was right in concluding that he did not do so.

51. This ground of appeal therefore fails.

52. We refer also at this point to another submission that was made for the appellants, that Mr Muluane had acted unlawfully in obtaining the statement and photos, and that he had a duty to tell the truth about what had happened. This is put forward as a basis for allowing the appeal.

53. It is trite to say that any unlawful actions by Mr Muluane at an earlier point while possibly relevant background, provide in themselves no excuse at all for the kidnapping and assaults and other offending. The criminal law is designed to stop persons taking the law into their own hands.

54. We record also that in any event the evidence did not establish that there were any unlawful acts on Mr Muluane's part.

The involvement of Desire Urinmal

55. Mr Boe argued that Desire Urinmal did not participate in the offences, in particular the kidnapping.

56. There was however ample evidence, set out and relied on by the Chief Justice, identifying Mr Urinmal as a participant. He was identified by Mr Muluane as being present at the initial assembly at Jerusalem where he talked of leaving him bloody on the road, and there was evidence of him then assaulting him when he was on the chair at Worlep. He hit him on the neck with a torch. Mr Urinmal was one of those who surrounded Mr Muluane to force him to sign a written retraction.

57. If he was not acting in all the offences as a principal, he was clearly complicit in the plan to kidnap Mr Muluane and force the retraction by violence. While he was not one of those who physically captured Mr Muluane, he shared a common purpose with the perpetrators, and the kidnapping was the desired outcome. The common purpose provision in the Penal Code is s.33 which provides:

> *Any accomplice or co-offender in the commission or attempted commission of an offence shall be equally responsible for any other offence committed or attempted as a foreseeable consequence of the complicity or agreement".*

58. Mr Urinmal was a party to and complicit in the unlawful assembly, and the kidnapping and assaults were a foreseeable consequence of that.

59. He can also be seen as a direct participant in the kidnapping as he was one of Mr Muluane's captors at Worlep. He is guilty as a principal offender.

60. For these reasons this ground of appeal cannot succeed.

Lack of corroboration in relation to Kammy Buktan

61. It was argued that there was insufficient evidence upon which to convict Kammy Buktan, and in particular that there was a lack of corroboration of what Mr Muluane deposed as to Mr Buktan's assault of him with his elbow in the car, and his threat to kill.

62. The short answer to this is the Mr Muluane was quite clear in his evidence on what Mr Buktan did, and he was believed. There is no general requirement that there must be corroborative evidence of the evidence of a vital witness before a judge can be satisfied of guilt beyond reasonable doubt relying on that evidence, (Walker v Public Prosecutor [2007] VUCA 12 at [15]). This was not one of those exceptional cases where there was a need for particular caution. Mr Muluane's evidence while uncorroborated on these charges was amply corroborated on other issues where Mr Buktan was involved.

63. Mr Muluane had established himself as a credible witness, and it was entirely open to the Chief Justice to accept his evidence generally, which he did.

The evidence of Mathias Urinmal

64. Mr Mathias Urinmal gave evidence that when he met Mr Muluane on the morning of 3 November he observed no injuries on his body, and asserted that Mr Muluane put a banana in his mouth to make it look swollen. His evidence entirely contradicts that of Mr Muluane, and the nurse Mr Bahormal who saw and documented his injuries.

65. Moreover it implicitly contradicts the evidence of the other Prosecution witnesses who saw him being assaulted. The Chief Justice gave reasons for accepting the evidence of those prosecution witnesses, and for rejecting that of the defence witnesses. He considered Mr M Urinmal as neither credible or reliable and described him as "*an untruthful witness*". That assessment appears accurate.

66. We should refer at this point to the attack by the defence on the credibility of the nurse Mr Bahormal. He is a cousin of Mr Muluane. Their mothers are sisters. He gave evidence that when initially asked to examine his cousin he refused to do so for that reason, fearing a conflict. The Chief Justice considered this and did not think this affected his veracity.

67. There is no basis for us to interfere with these findings of fact. There is no doctrine of automatic disqualification of a witness because he or she is a relation of a complainant, which the submission came close to suggesting.

68. This ground of appeal fails.

No evidence of physical detainment or confinement by force.

69. It was submitted for the appellants that there was no evidence of physical detainment or confinement by force. This submission can be dealt with shortly.

70. On the evidence of the six prosecution witnesses, if accepted, there was a very strong and clear case of assault and forced detainment. We have generally summarized that evidence earlier in this judgment. That evidence was accepted by the Chief Justice, and we can see why. On that basis this ground of appeal fails.

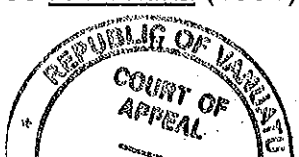
Identifying actions in the group violence

71. It was argued for the appellants that the Chief Justice had erred in fact and law in failing to clearly distinguish the roles of each appellant in the assaults, and in not identifying which appellant caused which injury.

72. It is necessary if parties are charged as primary offenders for there to be direct or indirect evidence of the events that constituted the alleged offending. In this case we are satisfied that there is direct evidence from eye witnesses that show the direct involvement of each of the offenders in relation to each charge. This is not a case that turns on inference, save in relation to the mental element of the offending, which as usual has to be inferred. By and large there is direct evidence of Mr Muluane and the other witnesses, identifying a particular offender doing a particular act. We give examples of this in our consideration of various grounds of appeal affecting various specific appellants in the course of this judgment.

73. However there are instances where the line between whether an appellant was a principal offender or a party is blurred. It cannot be said who of an identified group of attackers did what. This is not uncommon in cases where injuries are inflicted in a group assault or melee.

74. All cases are fact specific. However, in such a situation where particular acts and injuries cannot be attributed to individual participants in the assault, but it is proven that they were participants, it is not necessary for the precise part played by each to be identified. The essential question is whether the evidence has gone to the length of showing that one must have struck the blows and others encouraged or helped, or possibly that some or all struck the blows. A specific categorization as principal or party is not required, (see R v Witika (1991) 7 CRNZ 621 (CA)).



75. There was ample evidence before the Chief Justice for him to find all the appellants charged with the kidnappings and assaults guilty as either principals or parties, and the lack of specific identification of who did what injury was not required and indeed not possible, and was not a bar to conviction.

Other matters

76. We record that we are not persuaded by the appellants' submission that a number of those convicted of false imprisonment were not identified as questioning Mr Muluane. They were identified as being at Worlep and part of the group holding Mr Muluane, and that was sufficient.

77. We also reject the suggestion that the extortion conviction was questionable because the charge did not specify the sub section relied on in s 138 of the Penal Code. The nature and particulars of the charge were in the context quite clear.

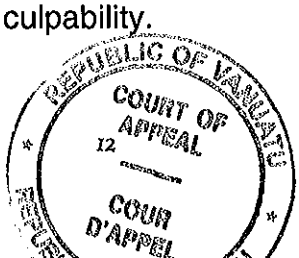
The appeal against sentence

78. The appeal against the sentences imposed received little attention in oral submissions. The written submissions covered a number of general arguments.

79. It was submitted that there was insufficient attention given to mitigating factors such as age, lack of previous convictions and good character. It was argued that weight should have been given to aggravating factors in the conduct of Mr Muluane. The case was compared to the other sentencing decisions of PP v Simon [2003] VUCA 1, and Kilman v PP [1997] VUSC 21. It was suggested that the sentences should have been suspended.

80. The PP v Simon case involved a political kidnapping false imprisonment, and in that respect had some similarity to the present case. However the facts were entirely different, the events being of a more serious nature politically, and not involving physical assaults. The Prosecutor's appeal was upheld and sentences of two years imprisonment imposed. In any event the sentences imposed there are in general terms consistent with the sentences of imprisonment imposed in this case.

81. Kilman v PP was also a case of a political kidnapping, again of a very different type from the present. The lack of violence meant that the culpability of the offenders was very different from these appellants. The sentences imposed are of no real assistance. Neither are other cases referred to by the appellants where suspended sentences were imposed, as they related to events that were shorter in time and that did not involve the same levels of culpability.



82. There were a number of singular aggravating factors about this offending. It was premeditated. It took place over a long period. It was politically motivated, and designed to achieve an unlawful end by intimidation and violence. There was the chase of the car and removal of the victim which had similarities to a home invasion. The assaults were savage and undoubtedly terrifying. They involved attacks to the head. The injuries although not permanent were significant.

83. While there were significant personal mitigating factors, the appellants singularly failed to show any remorse, a factor that is relevant in considering whether a sentence of imprisonment should be suspended.

84. The sentences of imprisonment appear to us to reflect the culpability of the individual offenders, and to be entirely within the available range. The decision not to suspend them was in our view the only outcome available.

85. The Prosecutor pointed out a minor typographical error in the sentencing judgment relating to the term of imprisonment applicable to the false imprisonment charges. He did not think it important and nor do we.

86. The appeals against sentence are dismissed.

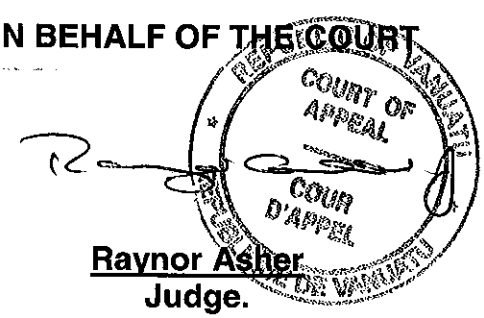
Result

87. The appeals of Gratien Maltape and Theopile Kiliter against conviction are allowed, and they are therefore acquitted on all charges.

88. The appeals of all other defendants are dismissed.

DATED at Port Vila, this 26th day of July, 2013.

ON BEHALF OF THE COURT



Raynor Asher
Judge.