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

Criminal Appeal
Case No. 22/586 COA/CRMA

BETWEEN: **Waltersai Ahelmhalahlah**
Appellant

AND: **Public Prosecutor**
Respondent

Date of Hearing:	***6 May 2022***
Before:	***Hon. Justice O. Saksak*** ***Hon. Justice J. Mansfield*** ***Hon. Justice R. Asher*** ***Hon. Justice D. Aru*** ***Hon. Justice V. M. Trief*** ***Hon. Justice E. Goldsbrough***
Counsel:	***Mr D. Yawha for the Appellant*** ***Mr T. Karae for the Respondent***
Date of Decision:	***13 May 2022***

Judgment

INTRODUCTION

1. By an Amended Information dated 25 February 2021 Waltersai Ahelmhalahlah (the Appellant) was charged in the Supreme Court with 4 offences:

> Count 1 – Threats to Kill, contrary to section 115 of the Penal Code (CAP 135). The particulars given were that the Appellant on 4 May 2020 in Port Vila, knowing the contents and import of the letter, directly or indirectly caused the Honourable Chief Justice Vincent Lunabek to receive written threats to kill contained in a letter dated 4 May 2020.
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> Count 2 – Domestic Violence, contrary to sections 3(e), 4(b), (d) and 10 of the Family Protection Act. The particulars given were that the Appellant on 2 January 2020 and 24 January 2021 stalked the Honourable Chief Justice by making a phone call to his daughter Laura Lunabek to ask if he was travelling to Malekula on 3 January 2020. The particulars said that this conduct made the Chief Justice fear for his life.
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> Count 3 – Domestic Violence, contrary to the same provisions of the Family Protection Act. The particulars given were that the Appellant on 24 January 2020

indirectly intimidated the Chief Justice who is said to be the uncle of the Appellant by texting his daughter Laura Lunabek the following:

> *"Ipas laura, talem long uncle se no oli wokbaet crossem me 2 teams long haos blo bloclem me be work? Ta lalo jif Waltersai @ beverly hills. No reply lo number ya."*

The particulars say that this made the Chief Justice fear for his life.

Count 4 – Domestic Violence, contrary to the same provisions of the Family Protection Act. The particulars given were that the Appellant on 17 March 2018 in his capacity as the Chief through a letter written to the Chief Justice who is said to be the uncle of the Appellant intimidated him and caused him to fear for his safety and that of his family when the Appellant through that letter ordered the Chief Justice and his family to remove themselves from Brenwei village.

2. The Appellant pleaded not guilty to all the 4 charges.

3. The charges were heard by a Justice of the Supreme Court on 3 and 4 November 2021. The verdicts were given on 13 December 2021.

4. The Appellant was found guilty of all 4 charges.

5. The sentencing hearing took place on 25 January 2022.

6. The Justice of the Supreme Court on that date imposed a sentence of imprisonment of 2 years and 10 months on Count 1 (the threat to kill charge) and imposed a sentence of imprisonment of 6 months on each of Counts 2, 3 and 4 (the domestic violence charges). It was ordered that all sentences of imprisonment would be served concurrently. As the Appellant had been in custody from the date of the verdict, it was also ordered that the sentences would commence from 13 December 2021.

7. The Justice refused to exercise the discretion to suspend any part of the sentences of imprisonment.

8. The Appellant did not appeal from the verdict or from the sentences imposed within the time permitted.

9. On 11 March 2022, the Appellant lodged a document called Notice and Grounds of Appeal seeking to appeal from the convictions on each of the 4 counts and the sentences imposed.

10. As it was clear that the purported appeal was not within the specified time, on 25 March 2022 the Appellant applied for Leave to Appeal Out of Time. It has been accepted that, if leave is given to appeal out of time, the Notice and Grounds of Appeal of 11 March 2022 would stand as the appeal and the grounds of the appeal, although strictly speaking the Criminal Procedure Code

requires the Notice and Grounds of the Appeal to have been filed with the Application for an Extension of Time to appeal: see section 201(7).

11. On 19 April 2022, the Appellant made an Application for Leave to Adduce Fresh Evidence on the hearing of the appeal. The proposed fresh evidence is an undated letter which the Appellant said in a sworn statement he received on 19 January 2022. It is addressed to the Appellant and apparently signed by Apu Aitip Hapi. It was brought to the attention of the Justice of the Supreme Court shortly before the sentencing hearing, with an application to re-open the verdict and the hearing on the charges, but the Justice refused to do that.

12. So this matter involves first an application for an extension of time to appeal, and if granted an application for leave to call fresh evidence in the Court of Appeal to support the appeal against the verdicts. Either with or without the fresh evidence, the Appellant in any event seeks to set aside the verdicts on each of the 4 counts, and to either have verdicts of not guilty substituted on each count or to have the charges referred back to the Supreme Court for retrial. And the Appellant also seeks to have the sentences on each count reduced, and in any event to have the period of imprisonment suspended.

THE LEAVE TO APPEAL/EXTENSION OF TIME TO APPEAL

13. It is common ground that the justice of the particular case is the guiding principle in deciding whether to extend the time within which to appeal: *Gamma v Public Prosecutor* [2007] VUCA 19. In turn, that depends upon a number of factors including the prospects of the proposed appeal succeeding, the length of the delay, the reasons for the delay, the existence of any prejudice to the other party or parties and how, if at all, such prejudice might be reduced or avoided, the extent of the impact of such an extension on the administration of justice generally, and the utility of granting such an extension. As the discretion is a general one, that is not necessarily a comprehensive list of relevant factors. Each matter must be considered in its particular circumstances.

14. In this matter, the length of the delay is relatively short, and there is no prejudice to the Public Prosecutor. The Appellant by his sworn statement has sought to explain the reasons for the delay. The letter of 19 January 2022, depending on its status, is relevant to the prospects of the appeal succeeding and in any event in part explains the delay in appealing. It is also noteworthy that the Appellant, upon its receipt, promptly brought it to the attention of the sentencing judge and applied to re-open the verdicts.

15. In our view this is sufficient in the circumstances to make an order extending the time to appeal from both the verdicts and the sentences to 11 March 2022, and to direct that the Notice and Grounds of Appeal filed on that date stand as the Notice of Appeal and the Grounds of the Appeal.

THE APPLICATION TO RECEIVE FRESH EVIDENCE ON THE APPEAL

16. The application is based on the undated letter apparently from Apu Aitip Hapi (Dr Hapi) which the Appellant said he received on 19 January 2022. In short, it says that the letter of 4 May 2020 which the Justice of the Supreme Court found to have been sent by the Appellant (and which is the foundation for the verdict of conviction on Count I (the threat to kill charge) was sent by Dr Hapi and not by the Appellant or at his request. That is broadly speaking what that letter says as well as an apology to the Appellant for having sent that letter of 4 May 2020 at all.

17. The Appellant's purpose in adducing that evidence is to show that, if the application is successful, he has a sound basis for the verdict of a threat to kill on Count 1 to be set aside and the charge remitted to the Supreme Court for retrial. It was not explained in any detail why that would result in a different verdict on Counts 2,3 and 4 (the domestic violence charges). That is a question which will have to be considered if the verdict on Count 1 is set aside on this appeal.

18. There is no issue about the principles which apply when the Court is asked to admit fresh evidence on an appeal: see *Adams v Public Prosecutor* [2008] VUCA 20. The Court must be satisfied that the proposed evidence was not available at the trial and could not, by the exercise of reasonable diligence, have been available at the trial. The proposed evidence must be relevant and admissible. It must be apparently credible. It must be shown that the proposed evidence, if admitted at the trial, might reasonably have led to a different verdict, namely in the circumstances an acquittal on Count 1.

19. The reason for such requirements is to ensure that each party at a trial takes proper care to ensure that available evidence is identified and adduced, so as to prevent a later reformulation of the evidence and an attempt to then seek a retrial. The principle of finality of any form of litigation is a fundamental element of the administration of justice, in the public interest. See generally *Johnson v Gore Wood & Co* [2002] 2 AC 1; *D'Orte-Ekanaike v Victoria Legal Aid* (2005) 223 CLR 1; and in a criminal law context: *Rogers v The Queen* (2002) 213 CLR 635.

20. Accordingly, it is necessary to show that the letter contains admissible and significant evidence, and evidence which, by the exercise of reasonable diligence should have been available at the trial.

21. In the present circumstances, it does not have any of the necessary qualities to be admitted as evidence on this appeal in support of the appeal and also, if the verdict on Count 1 were to be set aside, it would not be admissible evidence in any event.

22. First, the person who is said to have sent the letter of 4 May 2020 has not provided a sworn statement that he did so. Dr Hapi has provided no sworn statement at all. What is presented is a letter to the Appellant apparently signed by Dr Hapi, but Dr Hapi has not verified by sworn statement that he was the author of that letter, or indeed of the letter of 19 January 2022 to the Applicant. In its present form, the letter of 19 January 2022 is not admissible to prove those

matters because the direct evidence of those matters would have to come from a sworn statement of Dr Hapi.

23. Second, there is no evidence from the Appellant or from anyone else that, upon the Appellant learning of the proposed use of the letter of 4 May 2020 in proof of Count 1, there was any investigation at all to identify the writer of that letter if, as he says, the Appellant was not its author.

24. The letter of 4 May 2020 was identified to the Appellant as the basis of the charge in Count 1 as soon as he was first arrested. It is said to be (as translated from Bislama) 'From the grandparents of Waltersai Ahelmhalahlah'. The Appellant or those assisting him have not made any attempt to show that they tried to identify the author or authors of that letter. It is simply not possible to be satisfied that, by the exercise of reasonable diligence, its author or authors could not be identified and secured to give evidence at the trial. That is the more forceful when it is appreciated that the Appellant is the Paramount Chief, as recognised in that letter.

25. The application to call fresh evidence on the appeal is therefore refused.

THE MERITS OF THE APPEAL: GENERAL

26. The Appellant attacked each of the convictions as not being supported by the evidence. It is argued that the trial judge could not, and should not, have been satisfied beyond reasonable doubt that the necessary elements of each of the 4 offences charged were made out.

27. There is no contention that the trial judge did not properly apply the test of whether he was satisfied of the elements of each offence being made out.

28. There is no submission that the trial judge did not properly identify the elements of each of the 4 offences.

29. There is no submission that the trial judge did not consider all of the evidence, which he recited in some detail in the course of the judgment, or that he wrongly refused to admit any evidence or wrongly admitted any evidence.

30. There is no submission that the evidence the trial judge accepted as to the effect of the conduct complained of upon the Chief Justice and his family was not admissible or was not correct.

31. In essence, the appeal was in each instance on the basis that the finding of primary fact about the relevant conduct or the relevant communication did not amount to conduct in breach of the relevant provisions. As counsel for the Appellant did, it is therefore necessary for the Court of Appeal to carefully consider those communication and that conduct.

32. Before doing so, and although it was not specified as a ground of appeal, the Appellant argued that the three offences proved in respect of Counts 2,3 and 4 (the domestic violence charges)

could not have been heard at all by the Supreme Court and had to have been heard first by the Magistrates Court. It is convenient to deal with that contention first.

THE MERITS OF THE APPEAL: A PROCEDURAL CONTENTION

33. In relation to counts 2, 3 and 4 (the domestic violence charges), the Appellant also contended that the Supreme Court in the circumstances did not have jurisdiction to hear and decide those charges, and so the domestic violence charges should all be dismissed. His contention is that the domestic violence charges were exclusively within the province of the Magistrates Court.

34. It is clear that, if they had been heard and decided in the Magistrates Court, he would have had a right of appeal to the Supreme Court, and a further right of appeal to the Court of Appeal. So, he argued, by the domestic violence charges being heard in the Supreme Court, he was deprived on one of the two rights of appeal which he was entitled to.

35. It is clear that, when first arrested on 6 June 2020, the Appellant was brought before the Magistrates Court. At that time he was charged only with the offence now comprised in Count 1, the threat to kill charge. There were no domestic violence charges laid at the time. He was granted bail on certain conditions. He was subsequently committed to the Supreme Court for trial. The Information on which the trial took place was the Amended Information laid on 25 February 2021, including the domestic violence charges.

36. There was nothing wrong with that procedure. Contrary to the contention of the Appellant, the Family Protection Act does not preclude it. It could not. Article 49 (1) of the Constitution of the Republic of Vanuatu gives the Supreme Court unlimited jurisdiction to hear any criminal proceedings. Section 28 (1) of the Judicial Services and Courts Act is in the same terms.

37. There is nothing in the Family Protection Act which can, or could be taken to, qualify that jurisdiction. The provisions in Part 6 – Powers of the Police in that Act relied on by the Appellant do not in fact support his contention. That Part of the Act includes sections 44 and 45. They are the sections the Appellant relied on. The context is enough to reject his contention. The text of the sections has nothing to do with the jurisdiction of the Supreme Court, far less even to specify exclusive jurisdiction of the Magistrates Court. It requires a police officer in certain circumstances to investigate alleged domestic violence offences, and when a certain point is reached in the investigation to charge the person being investigated with a domestic violence offence. It does not preclude the Public Prosecutor from laying such charges.

38. The other section referred to by the Appellant is section 47, which gives a right to appeal from any court to the Supreme Court against the making, or refusal to make, or to revoke, a family protection order. The definition of 'family protection order' in sections 2 and 11 is clearly different from a charge for domestic violence. The section does not support the contention.

39. Consequently, there is no merit at all in the contention.

THE MERITS OF THE APPEAL: COUNT 1 – THE THREAT TO KILL

40. The trial judge carefully recited in sequence the evidence of the prosecution and then the evidence of or on behalf of the Appellant.

41. That evidence covered the family link between the Appellant and the Chief Justice and his family, and the professional link between the Appellant and the Chief Justice relating to their contact whilst the Appellant had served as a Magistrate some years previously. The Appellant had engaged in certain criminal activity and had then resigned his office as magistrate on the advice of the Chief Justice, rather than be dismissed after a disciplinary hearing and with adverse publicity.

42. The appellant had then gone overseas for some years.

43. The judgment noted the interaction between the Appellant or on his behalf and the Chief Justice after the Appellant's return from overseas and from about 2016 or 2017. There was an unsigned letter dated 28 July 2017 found to be from the Appellant to the younger brother of the Chief Justice but intended for him and headed 'Warning'. It included the following (translated from Bislama):

> *'It appears to the chief that you are looking for ways to blame the chief (the Appellant) in your own personal interest....*
>
> *'And the chief is warning Vincent Lunabek and preventing him from letting problems in the island (Village) interfere with cases before the Court because of his own personal interest believing that he can intervene as he wants out of his own personal interest and that of his family'*

44. The next correspondence noted was a signed handwritten letter in Bislama written by the Appellant and addressed to Vincent Lunabek dated 17 March 2018. It was handed to a relative of the Chief Justice to pass to him. It is not necessary to set the letter out in full. It requires the Chief Justice and his family to move out of the Brenwei Village for certain reasons, including the assertion that he has a Court case against the Appellant as paramount Chief, that the Appellant had dreamt that the Chief Justice was 'standing in the way of the path the Appellant wanted to follow', and that he had threatened the Appellant and forced him to resign from his position as Magistrate. Clearly, the Appellant had ongoing concerns about the circumstances of his retirement.

45. That also emerged from a letter in English signed by the Appellant and dated 24 January 2020 to the Chief Justice. It was delivered to a member of the staff of the Supreme Court to hand to the Chief Justice. It was headed: '

"REINSTATE OF WALTER AHELMHALAHLAH TO MAGISTRATE AND BACK DATE HIS SALARY PAYMENT FROM OCTOBER 2013 TO DATE OF THE YEAR EFFECTIVE HIS EMPLOYMENT SERVICE OR APPOINT HIM AS CHIEF MAGISTRATE, CHIEF REGISTRAR, HRM, OR A JUDGE OF THE SUPREME COURT".

46. A further signed letter of the Appellant to the Chief Justice in English dated 14 February 2020 and hand delivered to an Island Court clerk to pass to the Chief Justice was in the same terms.

47. As the trial judge found, there were other communications, including an occasion when the Appellant attended the home of the Chief Justice without any appointment, and the Chief Justice returned from his office for a meeting. The Appellant asked the Chief Justice to support his plans to become a Member of Parliament.

48. In early January 2020, following the death of his parents, the Chief Justice planned a visit to Malekula to pay his respects. The day before the trip, the Appellant had contacted the daughter of the Chief Justice by telephone to find out when the Chief Justice was to be in Malekula. That was of such significance to the Chief Justice that he altered his arrangements for the trip by securing private transport and sleeping in the bush away from his normal family residence. Subsequent contact with his daughter by the Appellant was rebuffed.

49. On 24 January 2020, the daughter of the Chief Justice received a text message from the Appellant. She took a screenshot of the text message. It read:

'Ipas Laura, talem lon uncle se no oli wokbaot mi 2 taems lon haos blockem mi be work? Ta lalo jif Waltersai@beverlyhills. No reply numba ia b Digicel numba'.

50. There was no challenge to that series of communications having taken place. The trial judge accepted the evidence of the Chief Justice and of his family members about it and the distress it caused.

51. It may be observed that the Appellant did commence proceedings in the Supreme Court for his reinstatement. Those proceedings were unsuccessful.

52. The letter the subject of Count 1 (the threat to kill charge) was delivered to the office of the Supreme Court by a person who was not able to be identified. When it was given to the Chief Justice, it caused him immediate concern.

53. The letter was in Bislama and read as follows:

'Re: Watj mo Monita lo ol hidn rabis tinkin mo acksens againstem Waltersai Ahelmhalahlah

"Mifala apus bio Waltersai Ahelmhalahlah we e Paramount Jif blo mifala mo lo tauno, mifala e makem clea lo yu se walyersai Ahelmhallahlah emi no wok lo 7 yias nao. Mifala e luk se emi limk e go lo surn disagrimens blo yu againsem em e makemse emi stap receive mol no

gud jajmens lo kot frm olgeta toti wok mo no glad blo yu againsem em. Mifala e save se yu sta againsem em lon team vinis mo sta kat olgeta rabis tink tinks againsem em olsem se emi no jif blo yu. Bifo nomo olgeta apus blomifala e save sutem man lo maskets frm em b tudei bai emi no kat? Mifala e stap klosly monitarem lo ol cases blo em lo kots frm se mifala tu e save loas moe nom team blo hide or usem nara persen (jaj) blo doem wrong tink tinks againsem em lo ol kot cases blo em blo lusem moo l wok blo em. Mifala e stap agem yu se mifala e taet vinis lo olgeta bahavors olsem mo yu mas stopem imediatele frm mifalae save yu vimiv. B who ia emi Gill Daniel????

54. The Chief Justice promptly reported the matter to the police. His evidence included that he had seen the Appellant in possession of a .22 rifle, and he had seen him using it.

55. The Appellant gave evidence. He acknowledged being the author of all of the written communications referred to above, except for the text of 22 November 2019, which he said was sent by his cousin Kalpie but at his request, and he denied being the author of the letter of 4 May 2020.

56. The Appellant also said that his letters were an attempt for reconciliation and peace in the community, and were advisory only, notwithstanding the headings of 'Warning' and 'Eviction'. There are a number of topics on which he was cross-examined, and in the light of which the trial judge made an assessment of the credibility of the Appellant. As that aspect of the findings of the trial judge is not the subject of submissions on the appeal, it is not necessary to record them in detail.

57. On the whole of the evidence, the trial judge found that the evidence of the Chief Justice was credible and reliable. It was consistent with the documentary material. He was less impressed with the credibility of the Appellant, having had the benefit of seeing him give evidence. He did not believe the appellant to be a truthful witness.

58. The trial judge then found that the charge in Count 1 was proven beyond reasonable doubt. He concluded that the Appellant had indirectly caused the letter of 4 May 2020 to be delivered to the Chief Justice, that he had authored the letter, that it contained a threat to kill, and that he intended the Chief Justice to take the threat as real. He attributed the letter to the Appellant, being delivered by a third person at the Appellant's request, whilst accepting that the Appellant was in Luganville at the time, and even though the Appellant had not signed it.

59. On the appeal, it was argued for the appellant first that the conclusion that the Appellant was the author of the letter of 4 May 2020 could not be sustained, as well as the conclusion that he had caused it to be delivered to the Chief Justice. Second, it was argued that it did not amount to a threat to kill, when seen in its full terms and context.

60. In our view, the trial judge was in a position to make the findings of fact which are now challenged, and has not fallen into error in making those findings.

61. In our view, it is readily understandable why the trial judge concluded beyond reasonable doubt that the Appellant was the source of the letter of 4 May 2020.

62. The trial judge did not misunderstand or overlook any evidence. He understood that the Appellant was in Luganville at the time. He had regard to the manner of delivery of the letter, to its contents and its stye. He had regard to the background circumstances, and to the general conduct of the Appellant towards the Chief Justice, and the Appellant's other communications with the Chief Justice. He was entitled to do so. He used that circumstantial evidence to reach his conclusion.

63. The letter clearly contained a threat to kill. The sentences :

> *'Mifala e save se yu sta againsem em lon team vinis mo stat katolgeta rabis tink tinks againsem em olsem se emi no jif blo yu. Bifo nomo olgeta apus blo mifala e save sutem man lo maskets frm em b tudei bai emi no kat?'*

clearly contain such a threat. The translated version set out in the judgment of the trial judge is not quite accurate. It does not contain the '?' at the end of the sentence ending '...is not possible', which of itself adds significantly to the threatening meaning.

64. Not only do we agree with the conclusion of the trial judge on this issue, but the conclusion is strengthened by the Bislama wording actually used.

65. Consequently, the appeal against the conviction on Count 1 – the threat to kill – is dismissed.

THE MERITS OF THE APPEAL – COUNTS 2, 3 AND 4

66. The submissions of the Appellant on these Counts were that, on the accepted evidence, the charges of stalking and intimidation were simply not made out. The communications were said to be innocent and not threatening or intimidating.

67. The starting point is the Family Protection Act 2008. It defines the meaning of domestic violence in section 4. It is necessary to intentionally do certain acts against a member of that person's family. There was no dispute that the conduct alleged and found against the Appellant was intentional. The issue is as to its character. At the trial, also, the Appellant argued that the Lunabek family were not part of the Appellants' family. That point was decided against him. It is not pursued on this appeal.

68. Section 4 provides that relevant conduct includes intimidatory conduct, stalking so as to cause apprehension or fear, or threats to do any of such conduct. Then section 4 (2) provides that, without limiting the concept, 'stalking' includes following or watching the person or making persistent phone calls to the person or to that person's residence or workplace. Section 4(4) provides that a single act may amount to an act of domestic violence.

69. The fact that the communications the subject of the charges were intimidating in fact was proved by the evidence of the Chief Justice, which was accepted by the trial judge. The trial judge also, properly, approached the characterisation of the conduct which took place in the context of the whole of the evidence, as indicating an attempt to intimidate.

70. The detail of the communications of 2 and 24 January 2020 to the daughter of the Chief Justice are set out above. In the circumstances, the trial judge could readily have concluded in respect of those communications that they were intentional acts and intimidatory. It would be difficult to reach any other view. Their text, and context, is significant. The Appellant's counsel pointed to earlier unsolicited contact, and to the fact that the Appellant would have expected the Chief Justice to visit Malekula to pay his respects to his deceased parents. Hence, he submitted, the communications were innocent and to be expected of a family member, or were a follow up to a request to borrow funds to support a projected step into politics. The first explanation involves a friendly and fairly close family relationship. That is not supported by any evidence. It also was not the Appellant's explanation for his conduct. The second explanation was specifically rejected by the trial judge, based on other evidence, the content of the communications, and the specific rejection of the Appellant's evidence.

71. In our view the characterisation of the conduct which is the subject of Counts 2 and 3 was readily found to be intimidating, having regard to its context and to the evidence of its effect on the Chief Justice. The appeal against the convictions on Counts 2 and 3 is also dismissed.

72. Count 4 involves the eviction letter. The Appellant through his counsel says that it is a simple demand. However, there is no explanation of why it was sent, other than to cause significant detriment to the Lunabek family. Its wording is not that of a straightforward eviction notice, issued for good reason. Its interpretation by the Chief Justice, in the context of other communications, was that it was intimidatory.

73. Again, we see no reason to disturb the conclusion of the trial judge. The appeal against the conviction on Count 4 is also dismissed.

THE APPEAL AGAINST SENTENCE

74. The Appellant, through his counsel, did not challenge the principles of the approach of the trial judge to the sentencing, resulting in the sentencing judgment given on 25 January 2022. His submission was simply that, upon the material before the then the sentencing judge, the terms of imprisonment imposed were too long, and the terms of imprisonment should have been suspended in whole or in part.

75. It is a difficult task in those circumstances to show that the sentencing judge erred in the sentences imposed. He had regard to the background to the conduct leading to the convictions, to the personal circumstances of the Appellant, and he addressed the aggravating circumstances

of the commission of the offences. It was proper to find that there were no mitigating circumstances in relation to the commission of the offences.

76. We see no flaw in the sentencing process. The starting point was well within the range available, if not on the low side, and the allowance for personal circumstances in mitigation was within a proper range. Consequently, the end sentence was appropriate. It was proper to impose separate sentences on each count and to treat the conduct in Count 1 as the more significant conduct. It was proper to direct that all sentences be served concurrently. It was correct to have regard to the fact that the Appellant had been in custody for some time prior to the sentencing hearing.

77. The issue of suspending the sentences in whole or in part was specifically considered. The sentencing judge identified the relevant matters, based on the submissions of counsel for the Appellant and for the Public Prosecutor. His discretion to refuse to suspend the sentences was certainly available, especially in relation to Count 1. This offending involved serious threats of violence against a person in very high public office. Respect for the integrity of the position of Chief Justice is vital in a democracy. Such threatening behaviour imperils the rule of law. No error is shown.

78. The appeals against sentence are dismissed.

79. The orders are:

1) Time for the Appellant to appeal from the convictions and sentences is extended to 11 March 2022, and the Notice and Grounds of Appeal filed on that date stand as the Notice and Grounds of Appeal.

2) Application for leave to adduce fresh evidence on the appeal is refused.

3) Appeals dismissed.

DATED at Port Vila this 13th day of May, 2022

BY THE COURT

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL

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The Hon Justice Oliver Saksak

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL