

**PUBLIC PROSECUTOR**

**-v-**

**MACATHY HAVA**

**Coram:** Moses Peter

**Court Clerk:** Florina Ephraim

**Appearances:** Betina Ngwele for the State  
Brian Livo for Defendant  
Defendant appear in Person

**SENTENCING**

1. Mr. Macathy Hava, you first appeared in court on 26<sup>th</sup> October 2015 and pleaded guilty on the charges of Intentional Assault contrary to section 107 (b) of the Penal Code Act [CAP.135].
2. Today you appear for sentencing on the charge after time was allocated for a pre-sentence report to be submitted by Probation Officer in the Correctional Service, and sentencing submissions to be filed by both counsels.
3. The brief facts of the case has it that on 13<sup>th</sup> October 2014, the Complainant Jimmy Kahi lodged a complaint in the police against you and some colleague police officers. The Complainant is a security officer at Club 21 in Port Vila. On 11<sup>th</sup> of October 2015, he was instructed by his supervisor not to permit you and your colleague police officers into the premises because you were drunk and that the club has not commenced its business operation for that day.
4. The Complainant approached you and your friends to pass on the instruction of his supervisor when you step forward and assault him on his face. Another security officer who was close by intervened and manages to stop the fight.
5. The Complainant sought medical attention and a medical report confirmed he has swell on his face and eye and a bleeding nose.
6. The maximum penalty for Intentional Assault causing temporary injury is 1 year imprisonment.




7. In the case of **Public Prosecutor v Morris [1995] VUMC 5 CR 466**, the Court imposed three (3) weeks imprisonment but suspended for one (1) on David Morris, taking into account the victim he assaulted was his legal wife and that he was employed as a mobile force officer.
8. In **Public Prosecutor v Willie Ben & Ors VUMC**, the Defendants were fined VT 3,000 each with cost of VT 2,000 for assaulting the Complainant at Au Bon Marche Manples.
9. In **Public Prosecutor v Kalpukai Ronandie VUMC**, defendant assaulted Complainant and he sustained bruise on his face, wrist and damaged left ear drum. Court fined him VT 6,000 including cost.
10. Ms. Ngwele submitted that appropriate sentence to impose is VT 7,000 fine and a prosecution cost of VT 1,000.
11. Mr. Brian Livo submitted case of **Public Prosecutor v Boe [2014] VUSC 34**, where the court upon guilty plea of the defendant on a charge of Intentional Assault causing temporary injury on his wife, ordered imprisonment for 9 months but suspended for 2 years. The court also orders for reconciliation to victim and her family as a sign of peace and forgiveness.
12. In the pre-sentence report, you expressed remorse for your action and say that because you were under the influence of alcohol at the time, you were not able to control your feelings and emotions in an appropriate manner thus committed the offence.
13. While you contacted yourself in this offensive manner, you were in fact a police officer with a duty to protect lives of people living in this country and their properties. This duty remains on you whether or not you are in your place of employment.
14. A character reference from your supervisor deposes that you are serving in the Tactical Response Unit in Vila Police Station. I am not aware of the particular work you do; however, the reference states that you dedicated yourself in doing police work around Vila town and nearby vicinities and have participated in many major operations.
15. You have realized your mistakes and fully understood the consequences it may have on your work as a police officer and your family as they rely heavily on your employment for daily sustenance.
16. For your sentence, I set a starting point of 3 months imprisonment.
17. The aggravating factors taken into account are:
  - Assault without provocation.
  - Total neglect of duty to ensure preservation of peace, maintenance of order and protection of life and property.
  - Under influence of alcoholic drink.
18. Hence, I add another 1 month for the aggravating factor. This adds up to 4 months imprisonment.
19. The mitigating factors taken into account from your presentence report and character reference from your superiors are:



- You are a first time offender
  - You are remorseful for your actions.
  - Willing to reconcile with the victim but he refused to accept it.
  - You are person with good fame and character in community and in workplace.
  - Committed yourself to make amendments in your life and to serve the people with dignity and respect.
20. You are entitled to one third reduction of the sentence because of your guilty plea and that is 5 weeks reduction which now leaves you with 11 weeks imprisonment. I deduct another 2 weeks for showing remorse from your action and that you are willing to participate in any custom ceremony with the victim as a sign of forgiveness.
21. You are left with a balance of 9 weeks of imprisonment.
22. In considering whether or not to suspend your sentence, I considered your character and dedication to your work and the respect given to you by your supervisors and family members, I have accepted to suspend your sentence for 12 months and in event that you are further convicted for any other offences, this sentence will automatically be activated and you will serve the full sentence together with any other sentences imposed on you for your reoffending.
23. For completeness, you are ordered to pay fine and Prosecution cost of VT 4,000 in 31 days from today.
24. You have 14 days to appeal to the Supreme Court if you are not satisfied with this sentence.

**DATED at Port Vila this 4<sup>th</sup> day of May 2016**

**BY THE COURT**

  
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**MOSES PETER,**  
**Senior Magistrate**

