

PUBLIC PROSECUTOR

V

CLAUS KALO

Coram: *Moses Peter*

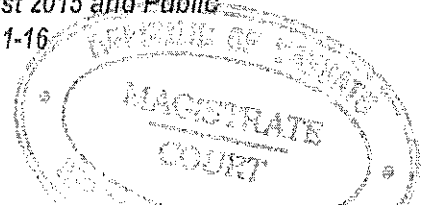
Appearances: *Laura Lunabek for the State*
Ronaldson Willie for the defendant

SENTENCING

UPON HEARING defendant Claus Kalo plead guilty on the charge of intentional Assault contrary to section 107 (b) of the Penal Code Act [CAP 135].

AND UPON CONSIDERING Ms. Ngwele's submission and brief facts of the case as follows:

- You had an altercation with a friend of the complainant inside Electro Night Club on the early hours of 3rd July 2016 and to which the owner of the night club send both of you outside.
- Right at where you parked your car somewhere near Paris Shopping, the complainant's friend followed you and the altercation continued and escalated to fisticuff. The complainant intervened to aid you and his friend stop the fight. While the complainant was trying to calm the fight, he was facing his friend and you were right behind him. You had a mole (hammer) and hit him with that hammer right on his head.
- The complainant sustained very serious injury and was medevacked to New Caledonia for immediate attention as his skull is likely to be fractured by the hit.
- You were arrested by the Police and on being cautioned you elect to remain silent.
- The case of ***Public Prosecutor –v- Morris [1995] VUMC 5 CR 466-*** the Court imposes 3 weeks' imprisonment on the defendant but suspended the sentence for 12 months after having found the defendant guilty for assaulting his wife. The court reached the decision taking into account the defendant's history of assaults and that he was a member of the Vanuatu Mobile Force.
- The court also orders fine ranging from VT 3,000 to VT 5,000 in other assault charges in the case of ***Public Prosecutor v Willie Ben & Ors (Magistrates Court) 11 August 2015 and Public Prosecutor –v- Kalpukai Ronandie (Magistrates Court) 9 July 2015-11-16***

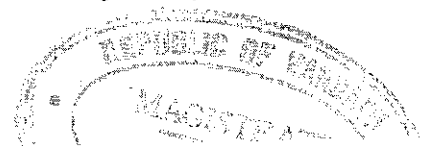


AND UPON FURTHER CONSIDERING your sentencing submission filed by your counsel, which deposed that:

- o You have a slightly different version of accounts of the incident that happened.
- o You were approaching your car with your girlfriend when the group of boys followed you and Jordy Pandosy confronted you with other boys who were trying to initiate a fight.
- o You run to your car and took a mole hammer and used it to defend yourself and your girlfriend.
- o The complainant came between you and the boys and you mistakenly hit him with the hammer.
- o The injury on the complainant became obvious after the fight as the complainant's head was seen bleeding in front of Digicel Store.
- o You also suffered serious injuries and was unconscious from being beaten badly by the boys that early morning after the mole hammer was removed from you.

THE COURT IS SATISFIED THAT:

- o The offence is serious as reflected in the relevant legislation. A maximum penalty of 1-year imprisonment for Intentional Assault causing temporary damage.
- o The hammer mole is quite heavy and I cannot believe that it was used mistakenly on the complainant.
- o The injury sustained by the complainant cannot be justified well for a mistaken use of the mole hammer. You run to the car to get the hammer in the early hours of the morning clearly indicated the intention to use it as a weapon the scare the boys away or to use it to inflict harm on the boys.
- o I understand from your report that you were trying to protect your girlfriend and aunt from the boys however there are other options to consider instead of using a mole hammer.
- o The Police Station is not far away from the place of the incident and help could have been sought with them or the security of the club and other office buildings nearby.
- o You took the risk to provide that security and it appeared that the harm you inflicted on the complainant became too serious that he had to be medivacked to New Caledonia and his family had to incur substantial loss for the cost of his medivac.
- o The circumstances of this case differs from the cases above and the sentence I impose will have a clear reflection of that.
- o I set a starting point of 3 months' imprisonment.
- o The aggravating factors taken into account are the use of mole hammer as weapon, the injuries suffered as a result of the use of the hammer is serious resulting in the complainant being medevacked to New Caledonia for treatment.
- o The mitigating factors taken into account are that you are a first time offender, you displayed great remorse for your action and that you pleaded guilty at first instance.
- o I deduct 1 month 2 weeks for your early guilty plea and other mitigating factors.
- o Your end sentence is 1 month and 2 weeks' imprisonment.
- o By deciding whether or not the sentence should be suspended, I have observed from your sentencing submission by your counsel that you also suffered injuries from the fight and you had



sought medical assistance also in the Vila Central Hospital. You are a young person and you just complete your study and was given prestigious position by your father in the accounting of the proceeds of the business. Hence, I accept to suspend your sentence for 12 months.

- o I am also sure, the sentence I impose you will be not only serve as a punishment but also an act of deterrence to you and other people of similar position as you.

IT IS THEREFORE ORDERED THAT:

1. 6 weeks' imprisonment suspended for 12 months and in event that you are further convicted for any other offences within the 12 months, this sentence will automatically be activated and you will serve the full sentence together with any other sentences imposed on you for your reoffending.
2. The defendant must pay compensation for loss suffered by the complainant Mr. Dylan Harris with regard to his medivac to New Caledonia and the services rendered by Medical Practitioners at an amount of VT 600,000 to be paid in instalment of VT 100,000 each month commencing end of July 2018.
3. Should you fail to comply with the compensation order you will be summoned to court for enforcement conference.
4. The Complainant has liberty to claim further damages in respect of the assault before a different constituted court.
5. You have 14 days to appeal if not satisfied with this sentence.

DATED at Port Vila this 6th day of July 2018

BY THE COURT


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MOSES PETER
Senior Magistrate

