

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

Criminal Case No. 126 / 2009

PUBLIC PROSECUTOR

V

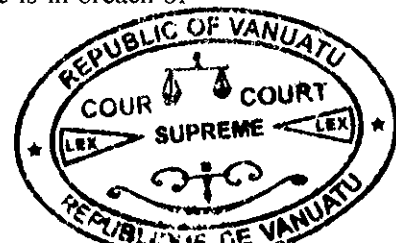
RAYMOND CLAY

Hearing: 9 September 2011
Before: Justice Robert Spear
Appearances: Simcha Blessing for the Public Prosecutor
Andrew Bal for the Prisoner, Raymond Clay

SENTENCE (Raymond Clay)

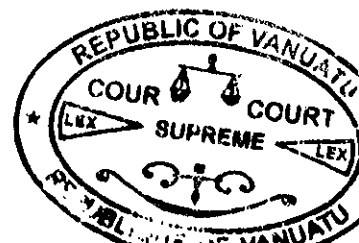
WARRANT TO ARREST (George Michael)

1. Raymond Clay you are for sentence having been found guilty at trial in September 2010 of threatening to kill another person. You pleaded not guilty to this charge. The case came on for trial before Macdonald J in September 2010. Following a 3 day trial, Macdonald J delivered a verdict that you were guilty as charged.
2. I have read with the care the detailed decision of Macdonald J that relates both to yourself and the other person who stood trial at the same time; one George Michael. Macdonald J is no longer in Vanuatu and so this case falls to me to attend to the sentencing required by Macdonald J's verdicts. I am assisted considerably by the detail given by Macdonald J in his decision. Neither counsel considered that there was any factual issue not covered by the decision that needed to be addressed.
3. I pause now to mention that George Michael was also to be sentenced today on his conviction for 3 counts of arson. His father is in Court but he is not. I am informed that George Michael is indeed on Santo. He is in breach of

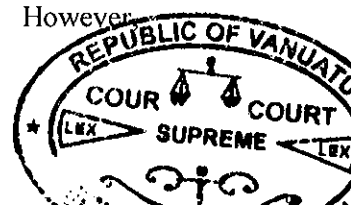


his bail by not being here today for sentence. I issue a warrant for his arrest.

4. In the background to this case is a dispute that has raged on Emae since about 1979. It relates to the issue as to who is the rightful holder of a certain chiefly title. I mention all this in passing because it simply identifies that there are issues in that community which has caused feelings and tempers to become somewhat frayed.
5. By all other accounts, you are a leading member of the Emae community. You are 61 years' old, a pastor in the Seventh Day Adventist Church, a Chief in your own right and someone who should be providing leadership in the community of Emae and not creating disharmony.
6. On the day of this offending, you were in the market place here in Port Vila. You met up with a Mr James Sateimata whom you knew was a supporter of Mr Timakata; the person around whom the chiefly title dispute revolves. It was alleged at the trial, and it is repeated even now, that you believed that Mr Sateimata had organised a man or men from Tanna to come up to do mischief and as part of a show of strength in respect of this chiefly title dispute. You clearly became very angry and, in a colourful but clearly intimidating way, you threatened Mr Sateimata that you would kill him. .
7. Macdonald J found that you repeated your threat to kill Mr Sateimata on at least 3 occasions and that you were trembling with rage when you were doing so. Additionally, you threatened to burn down houses of the Timakata supporters back on Emae. It needs to be noted that shortly after you uttered the threat to burn down houses, that is exactly what happened back on Emae. A number of houses were deliberately set on fire and all those houses belonged to supporters of Mr Timakata.
8. George Michael has been found guilty of three charges of arson relating to the burning down of those houses and eventually, once he is apprehended, he will be sentenced on those charges.



9. I need to tell you now that you are not being sentenced as having any connection or responsibility at all for what happened back on Emae with those houses being set on fire. That was not part of the case against you before Macdonald J and it is not to be taken as a factor when considering the appropriate sentence for you. I treat your remarks, however, as illustrative of the depth of feeling on Emae about this chiefly title issue.
10. To threaten to kill someone, particularly during a time of conflict, must be taken seriously by the courts. It is, indeed, a serious offence just by regard to the maximum sentence it carries of 15 years' imprisonment. In the normal course, threats to kill issued in surrounding circumstances of deep seated conflict (as existed here), would require an immediate term of imprisonment. This would be necessary to reflect the seriousness of the offending, to provide some form of accountability for the harm done, to hold the offender fully accountable, to promote a sense of responsibility in the offender and to deter those who might otherwise feel that they can utter threats to kill others with impunity.
11. In this case, however, I am prepared to accept that your utterances, your threats to kill, were made impulsively, in the heat of the moment and with wrong information on your part about what Mr Sateimata was supposed to have done.
12. I need to return to what is required of those who have the distinction and the privilege of being leaders in the community - or being chiefs, or being pastors, or even being the older members of a community. You have a responsibility to set the tone and the standards of behaviour in your community. On this occasion, you failed significantly and dramatically in that respect. However, I accept that you are remorseful; I accept that you had no intention of carrying out your threats; and I accept that you would welcome the opportunity to undertake the reconciliation ceremony if the victim was prepared to participate.
13. Mr Bal informs me that Mr Sateimata and you are now talking quite freely to each other, that you have *buried the hatchet* (as it were) and that there is now no unpleasantness in your relationship. I hope that is so. However



particularly for the sake of your community, a leader such as you should still be looking at conducting a reconciliation ceremony with Mr Sateimate so that there can be public recognition and acknowledgment of the remorse that you have today expressed once again through your counsel.

14. In the normal course, as I have mentioned, an immediate prison term would be appropriate. However, there are your personal factors to be taken into account and they encourage me to adopt a term of 1 year's imprisonment suspended for a term of 2 years as the appropriate sentence. That sentence is designed to ensure that you do not involve yourself again with intemperate acts of this nature that might inflame the strong feelings that are apparently still lingering on Emae. In short, you need to conduct yourself maturely and responsibly as one of the prominent members of your community. Leaders are supposed to do what the name suggests – lead – and that is what is required of you by your community.
15. So, the sentence of this Court is that you are sentenced to 1 year's imprisonment which is suspended for a period of 2 years. I am required to tell you this - if you commit another offence within the next 2 years, this sentence of 1 year's imprisonment will be activated and you will serve the 1 year term plus any further sentence that is imposed upon you for the other acts.
16. You have 14 days to appeal this sentence if you are not happy with it.

BY THE COURT

