

**PUBLIC PROSECUTOR**

-v-

**JOEL TAO ELAME**

**Coram:** V. Lunabek CJ

**Counsel:** Mr Tristan Karae for the Public Prosecutor  
Mr Henzler Vira for the Defendant

**Date of pleas :** 24 August 2011

**Date of sentence:** 26 August 2011

**SENTENCE**

Mr Joel Tao Elame, you appear before the Court today for sentence. You are initially charged with one count of careless driving, contrary to section 14 of the Road Traffic (Control) Act [CAP.29] and one count of unintentional harm causing death by recklessness, contrary to section 108(c) of the Penal Code Act [CAP.135].

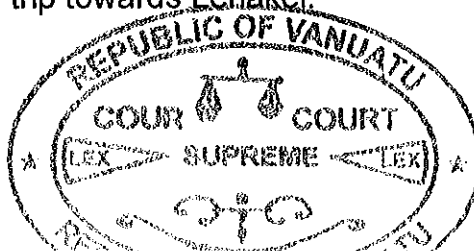
On 24 August 2011, you pleaded not guilty to one count of careless driving and you entered a guilty plea on one count of unintentional harm causing death, contrary to section 108(c) of the Penal Code.

The prosecution applies and the Court grants nulli prosequi in your favour in relation to one count of careless driving (in count 1). You are discharged of that offence accordingly; and on count 2 of unintentional harm causing death by recklessness, the Court convicted you on that offence now.

The brief facts provided by the prosecution are accepted by you and your lawyer. They are as follows:

On or about 24<sup>th</sup> November 2010, the complainant Chief Tom Taia lodged a complaint against you that on the 22<sup>nd</sup> of December 2010 you had caused the death of late Marie Pierre by accidentally running over the deceased with a Mitsubishi vehicle registration number 670 at Lapang-Nuing village. The deceased, a 3 year old girl is the first born daughter of Pierre Kausiel.

On the 22<sup>nd</sup> of November 2010, around midday you had picked up some passengers at the International White Grass airport. The passengers were to be taken to the village of Lapang-Nuing and dropped off the passengers and after the passengers got off, you and a Mr Luc who was seated at the passenger seat next to the driver were about to make their return trip towards Lenakel.



You then released the brakes and rolled the car for a short distance to give it a push start. When the vehicle started you were still having conversation with Mr Luc that you did not see the deceased crossing the road from your right to the other side of the road.

Miss Reynold and Miss Rexline were also standing on the left side of the road and saw the deceased crossing towards them and also saw that the deceased was in clear view of the driver. Without due care and attention in keeping an eye on the road and without warning the vehicle you drove struck the deceased who was almost half way across the road. As the deceased fell lying on the road the vehicle then run over the deceased.

Mr Luc and you felt that as if the vehicle had run over something, when you both run out of the vehicle you both saw the late Marie Pierre lying on the road grasping for breath. You lifted up the deceased and Mr Luc called for assistance but it was too late for help.

In your sentencing, I am grateful for the prosecuting counsel to refer the Court to the Court of Appeal Case in Newell v. Public Prosecutor [1998] VUCA 2, Criminal Case No.05 of 1997, which summarizes the difficulties faced by the Courts in sentencing defendants committing such offences.

In Newel Case, the Court of Appeal held:

*"Dealing with cases of this sort creates some of the most difficult sentencing tasks in any Court. This is a matter which in general conversation would be described as an accident. In the laws term it is a situation where death result from an unlawful act. That in law is not an accident but is unintentional harm causing death. A criminal court in determining sentences on this sort of charge cannot possibly put a value or an appreciation of the life which has been lost. It is unfortunate (particularly when people are grieving and hurt) that sometimes there is a suggestion that the Court minimize the value of the life which was taken what the court is concerned to do is to assess the criminal culpability of the wrong doer."*

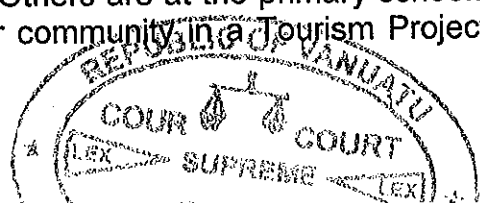
In a case such as this a Court cannot ignore the reality that Mr Joel Tao Elame will face the rest of his life time with the knowledge that as a consequence of his reckless act a life was taken.

In the present case, the offending and the circumstances of your offending are very serious and are further aggravated by the following factors:

- The deceased late Marie Pierre is of 3 years of age;
- You were reckless in not taking reasonable care and attention on the road
- You neglected to seek immediate medical attention (as you left the scene and went straight to the police station at Isangel for your own safety).

I sentence you to 4 years imprisonment as a starting point.

In mitigation, you are 37 years of age. You are from Lounamilo village, Middlebush, Tanna. You are married and you have 8 children with your wife. One of your children attends the secondary school. Others are at the primary schools. You are a subsistence farmer. You assist your community in a Tourism Project.



You are a first time offender. At the time of the incident, you did not see the deceased child crossing the road. You drove your truck at gear No.2. You felt that the truck was running on something. You stopped your truck and you found out that your truck was running on a child.

You admitted you left the victim child at the site of the incident and you surrendered yourself at the police station at Isangel, Tanna and admitted your offending.

You have performed a custom ceremony to the family of the deceased child and the Chief of the village.

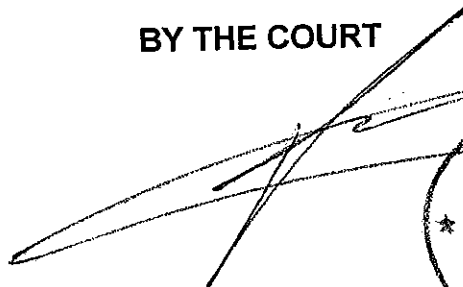
On balancing exercise in your sentencing, I reduce your imprisonment sentence of 4 years by  $\frac{1}{3}$  to reflect your guilty plea and give further reduction to reflect the custom ceremony, your remorsefulness, and the fact that you are a first time offender.

I give you an end sentence of 2 years and I suspend it for a period of 2 years. In addition, I order you to perform 80 hours of community work and 6 months supervision.

You have 14 days to appeal your sentence if you are not happy with it.

**DATED at Isangel, Tanna this 26<sup>th</sup> day of August 2011**

**BY THE COURT**



**Vincent LUNABEK**  
Chief Justice

