

**PUBLIC PROSECUTOR**  
**-V-**  
**JOSEPH FRANK and SAMUEL INAM**

*Hearing:* 26<sup>th</sup> April 2011  
*Coram:* Justice Weir  
*Appearances:* Mrs. T. Karae for the Prosecutor  
Mr. J. Kausiama for the Accused

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**NOTES ON SENTENCING**

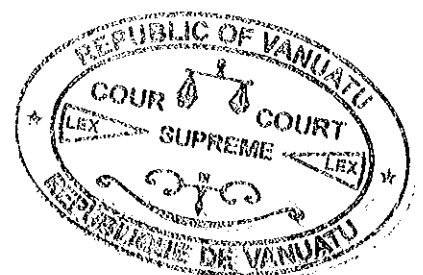
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1. Joseph Frank & Samuel Inam, you both appear for sentence today having pleaded guilty to 1 Count of Intentional Assault causing death contrary to S. 107 (d)
  - The maximum sentence for this offence is 10 years imprisonment.

The summary of facts is as follows:-

“On the 8<sup>th</sup> October 2010, the deceased Mr. Cetrick Shame went to the Tafea day celebrations at Teouma. There he met a friend of his, Mr. Johnson Johnny. After the day’s festivities closed, they decided to return home. Both were intoxicated with alcoholic liquor.

Along the way, the deceased got hold of a pair of shoes which allegedly belonged to Joseph Frank. Before they continued on their way, the deceased decided to leave the shoes behind.



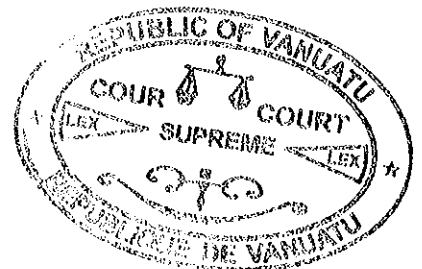
On their way, they came across Ms. Nabina Frank who was at the time working in her garden. They asked her for directions. She showed them the way to the main road and they proceeded according to the directions provided by Ms. Frank. As they were making haste, Mr Johnny lost control and coordination and fell to the ground as he was over intoxicated with alcohol liquor. While he was lying on the ground, albeit conscious, he saw from a distance what appeared to be a man (first defendant Mr. Joseph Frank) advancing towards them yell antagonistically at the deceased. He ran towards the deceased and assaulted him. The deceased took flight towards the main road. Mr. Johnny then saw another person, the second defendant advancing towards him. Realizing that Mr. Inam was running towards him Mr. Johnny took flight. Both defendants then gave chase after the deceased.

The first defendants eventually apprehended the deceased and assaulted him and at some stage, the second defendant stoned him. He lost balance as a result and fell to the ground. Whilst on the ground the defendants kicked him continuously. When the defendants discovered that the deceased was unconscious they decamped.

Passersby and bystanders who witnessed what had happened reported the matter to the police. The police arrived at the scene shortly after the report and the body of the deceased was taken to the Port Vila Central Hospital. Both defendants were subsequently arrested and brought to the Police station. When questioned by the police, the defendants admitted the allegation made against them.

Both the Public Prosecutor and your defence counsel in their submissions have referred to the guideline judgment of Public Prosecutor v. Richard Cliff Ierogen [2002] VUCA 34 where the Court of appeal adopted the following guidelines for sentencing for this type of offence.

“The sentence to be imposed by the Court, under section 107(d) of the Penal Code Act, in disputed cases depends on the particular circumstances and situations of each case.



In a situation where the defendant has a weapon (such as a gun, a knife or other dangerous objects) and uses it to cause bodily harm to the body of another person as a result of which the victim died, the sentence to be imposed in a disputed cases ranges from 8 – 10 years.

In a situation where the defendant uses his fist and legs to cause serious injuries to the body of another person and causes the victim's death as the result of the injury, the sentence to be imposed is around 4 to seven years”

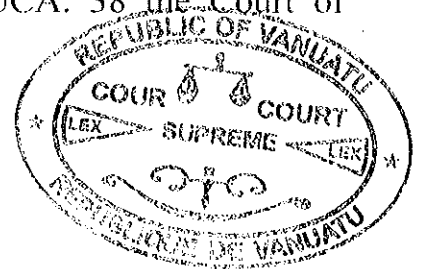
## **PROSECUTION SUBMISSIONS**

The public prosecutor emphasises the fact that a life has been taken and submits that the starting point should be at least 5 years imprisonment. The submission is also made that little (if any) reduction should be made for the mitigating factors that you both pleaded guilty, and you both have no previous convictions.

### **The Probation Reports**

Joseph Frank – The report confirms that you are 21 years of age and up until the time of your remand in custody, you lived with your mother. You have a defacto partner and a 5 month old baby. It is said that the 2 main contributing factors to your offending were your heavy consumption of alcohol on the night in question and your inability to control your feelings of anger to the deceased, because he had stolen your shoes. It is said that you are shocked and frightened about what you did, and that you did not intend to kill the deceased. While you have been in custody, your Chief, and Community members have performed a kastom ceremony to the victims family for this offending.

Samuel Inam – You are now aged 18 years, but you were 17 at the time the offence was committed. You admit to consuming alcohol that night but you deny assaulting and stoning the victim. Nevertheless, you have pleaded guilty to the charge, and I have to deal with you on the basis that you were involved in the death of the victim. Your family has also been involved in the kastom ceremony and you apparently have apologised to the victims family and asked for their forgiveness. It is also said that your family have decided to give a child to the family of the victim to replace their late son. That is not a factor which I can take into account. In *Public Prosecutor v. Mulonturala* [2009] VUCA. 38 the Court of Appeal said this:



*“Vanuatu is a signatory to The United Nations Convention on The Rights of Children. A child used to deal with the responsibilities of adults is abhorrent and unacceptable.*

*Whatever arrangements may be made for payments in vatu or in other commodities or animals according to custom is an issue which can be considered in mitigation. However, the transfer of a child can never be a relevant factor.....”*

I adopt that reasoning.

Both Probation reports say that in the ordinary course of events, because you are 1<sup>st</sup> offenders, a sentence of Community Work and Supervision could be considered by the Court. However both reports note that given the seriousness of the offence, imprisonment is a likely outcome.

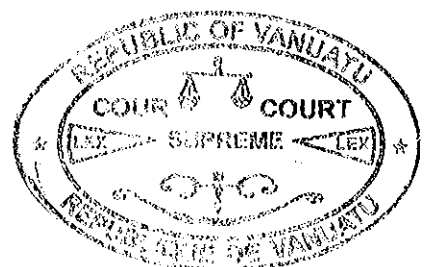
In sentencing you, the Court must hold you accountable for the harm done to the victim. In cases such as this the principles of protection of the community, denunciation and deterrence are also paramount. It follows therefore, that for cases such as this, a sentence of imprisonment is almost inevitable.

Your counsel accepts this and submits these should be a starting point of 4 years which should then be reduced to take account of the fact that you are both first time offenders, you have pleaded guilty, and a kastom ceremony has been made involving your chief, and members of your community to the victims family.

In my view you are entitled to a reduction on sentence for those matters, and in addition I take into account your comparative youth. You are 21 years and 18 years respectively.

In my view, the appropriate starting point for an offence of this type is one of 5 years imprisonment. Taking account of the factors referred to above, however that sentence is reduced to 3 years imprisonment which applies to both of you.

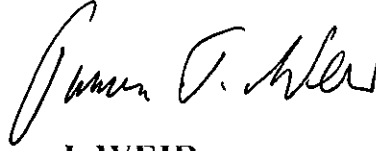
That sentence must be further reduced by the amount of time which you have already been in custody, which I understand commenced on 10<sup>th</sup> October, 2010.



You both have 14 days to appeal this sentence.

DATED at Port Vila this <sup>9<sup>th</sup></sup>.....day of May 2011.

BY THE COURT



J. WEIR

Judge

