

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

Criminal Case No. 146 of 2011

PUBLIC PROSECUTOR

-V-

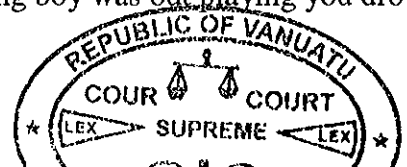
ABET POILAPA

Hearing: 3 April 2012
Before: Justice Robert Spear
Counsel: Simcha Blessing for the Public Prosecutor
Jerry Boe for the Accused

SENTENCE

3 April 2012

1. Abet Poilapa you are for sentence today having pleaded guilty to one charge of unintentional harm causing death pursuant to s. 108 (c) of the Penal Code which provides that no person shall unintentional cause damage to the body of another person through negligence -- often known as a charge of carelessly using a motor vehicle causing death. The Public Prosecutor elected not to proceed with the lead charge alleging death through the reckless use of a motor vehicle.
2. The circumstances here are tragic. At the time of this offending you were operating as bus driver out of your own base in Mele village. One day, while driving along one of the back roads in Mele village, you ran over a 6 year old boy who was playing out on the road. I have in Court today, and have had in Court on the previous occasions that this case has been called, both members of your family and members of the young boy's family. They are entitled to attend and pay close attention to this case and to understand how the Court has to deal with it. I mention that because, first and foremost, it must be acknowledge that this was an accident, a tragic accident of course, but still an accident. No one suggests that you deliberately drove the vehicle into this young boy or that being aware that this young boy was out playing you drove



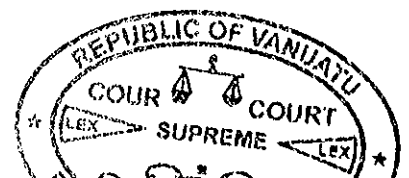
recklessly - that is, too fast in all the circumstances so that you ran the risk of hitting him. This is just one of those horrible accidents that every person who gets behind the wheel of a car or a truck fears will happen to them.

3. What is tragic, of course, first and foremost, is that this young boy died. Fortunately, his end was swift and so he did not suffer. But, of course, his family continues to suffer and who can blame them. No one can understand the grief of losing a young child of your family unless you have been through that experience yourself.
4. Equally, Abet Poilapa, you are a young man who will have this young boy's death on your conscience and I know that it has weighted heavily on you as indeed it had to with any right thinking person.
- 5.
6. You have been supported throughout this case by your family and you are very fortunate indeed to have the family support. I can appreciate that there are differences between your family and the young girl's family and I make no further comment on that.
7. Within 2 days of this tragedy, your family committed the reconciliation ceremony of *Klinim Fes* and it was prepared to make a far more significant presentation during a formal reconciliation ceremony. That opportunity was declined by the victim's family. What I want to emphasize is that that was their choice. No one can be or should be forced to participate in a reconciliation ceremony no matter how sincere and how genuine and how generous it was intended that it would be.
8. An attempt was subsequently made to give the victim's family the opportunity to reconsider their approach but it remains firm today that they do not wish to participate in a custom reconciliation ceremony. Instead, I am informed that it is their intention to issue civil proceedings against you for the loss that they have sustained by the death of their young family member. I make no comment about that intention because it is entirely a matter for them.
9. Your family has, however, continued to place its reconciliation offer on the table. They offer the sum of Vt 300,000 which they can afford to pay at the rate of Vt 60,000 per month. The victim's family (according to the compensation report that



has recently been filed) seeks an amount of Vt 10 million and, furthermore, they seek to have you pay this at the rate of Vt 16,000 per month from your work as a bus driver. However, you are not working as a bus driver at the moment although both the victim's family, the prosecutor, and your counsel (Mr Boe) all urge me not to cancel your license or disqualify you for a period of time from holding a driver's license so that you could resume your work as a bus driver and thus contribute to the amount that your family intends to pay to the victim's family.

10. So, we are left in the position where your carelessness is the measure of the seriousness of this offending and it is clear that this was simply an accident that you did not want to happen and, if you had your chance again, you would do anything to make sure it did not happen.
11. The outcome of this case has been long in the making and I make no apologies for that. The Court is required to ensure that every effort is made to enable a reconciliation ceremony to take place or for compensation to be assessed. I am satisfied we have reached the point now that we have gone as far as we can in those two respects.
12. What has been discussed as the appropriate sentence or outcome is a mixture of community work, supervision and compensation. I reiterate that the compensation order that is made today will be without prejudice to any civil suit that the victim's family may bring against you. Your family's offer to pay compensation has been made knowing that to be so.
13. You are accordingly sentenced as follows;
 - a) You will carry out 250 hours community work;
 - b) You are placed under supervision for a term of 12 months on these special conditions:-
 - 1) You will attend the *Niufala Rod* program as directed by your Probation Officer;
 - 2) You will live and work where directed and approved by your Probation Officer;



- 3) You undertake any spiritual counseling as may be directed by your Probation Officer as in conjunction with your pastor.
- c) You will also pay compensation in the sum of Vt 300,000 which will be paid at the rate of Vt 60,000 per month with the first payment on 1 May 2012 and thereafter on the first day of each succeeding month.
14. I acknowledge that you personally are unable to meet that compensation payment from your own resources. It represents what I understand is all that you and your family can realistically afford. This compensation order should not be taken as an assessment by the Court of the loss that the victim's family had suffered. It is simply as much as your family can offer at this time. What the outcome of any civil suit might be will be a matter for the Judge who deals with that case.
15. This has been a horrible case for everyone involved. It serves to remind us all again exactly how dangerous the roads are and how lethal trucks can be. Furthermore, it reminds us how careful all drivers need to be to ensure that pedestrians and other road users remain safe from harm.
16. You will attend the Supreme Court office at 3:00 pm this afternoon for service of the orders of supervision, compensation and community work. You have 14 days to appeal this sentence if you do not accept it.

BY THE COURT

