

**PUBLIC PROSECUTOR**

**V**

**KALFAU MOLI**

**Hearing:** *24 June, 2013*

**Before:** *Justice Robert Spear*

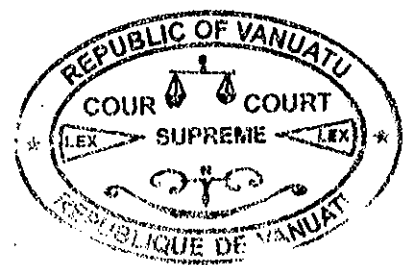
**In attendance:** *John Timakata for the Prosecution  
Saling Stephens for the Defence*

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**SENTENCE**

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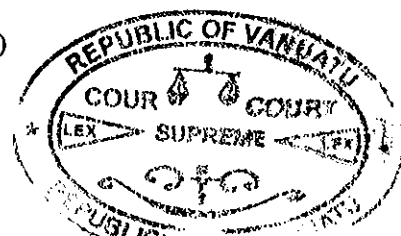
1. The defendant is now to be resented in respect of his conviction on one charge of unlawful assembly and a second charge of obstructing the police. Those 2 charges arose through a public disturbance that took place on 20 May 2011 at or outside the NISCOL offices in Luganville.
2. A Police team had arrived to execute a search warrant on the NISCOL premises. At one time there were over 100 people standing in the way of the police and obstructing the police from executing the search warrant. Regrettably, matters became heated and it is clear that there was some aggression and hostility shown to the police. Twelve men assembled there that day were subsequently arrested and each was charged with these two offences. Eventually all twelve pleaded guilty. The defendant was one of those twelve.



3. Those twelve defendants came on for sentencing in this Court on 5 July 2012<sup>1</sup>. The Judge who attended to the sentencing hearing placed the twelve defendants into four separate categories which were established to differentiate the degree of seriousness of offending for each group.
4. The defendant and two others were placed in category four which was reserved for those who committed the most serious offending. They were described as the main leaders and instigators of the offending committed against the Police on 20 May 2011.
5. On 5 July 2012, Mr Moli and the other two defendants in category four were each sentenced to a term of twelve months imprisonment suspended for sixteen months.
6. Mr Moli appealed that sentence which appeal was successful<sup>2</sup>. The Court of Appeal quashed the sentence and sent the case back to this Court for Mr Moli to be resented.
7. At the first sentencing hearing, Mr Moli disputed that he was one of the leaders of the group that had challenged the authority of the Police to carry out the execution of the search warrant. Regrettably, that dispute was never resolved at that time and it had to be so that there was a settled factual basis for the sentence.
8. This hearing today was arranged as a disputed facts hearing to settle the factual basis on which Mr Moli is to be sentenced. The prosecution continued to maintain that Mr Moli was one of the instigators and leaders of the mob (for want of better word). Mr Moli continued to take issue with that characterisation.
9. Counsel have spent this morning attempting once again to resolve this difference. Shortly before I came in to Court this afternoon, counsel attended on me in Chambers and explained that a resolution had been achieved. Counsel informed me that they had agreed that Mr Moli could appropriately be dealt with by being placed in category three of the four categories identified and applied by the earlier sentencing Judge. This category was explained to consist of those offenders, *"who hold and continue to hold leadership positions within the currently suspended Sanma Provincial Council....as leaders their presence and participation on 20 May*

<sup>1</sup> Public Prosecutor v Moli [2012] VUSC 129; Criminal Case 19 of 2011 (5 July 2012)

<sup>2</sup> Moli v Public Prosecutor [2012] VUCA 20; Criminal Appeal 04-12 (14 September 2012)



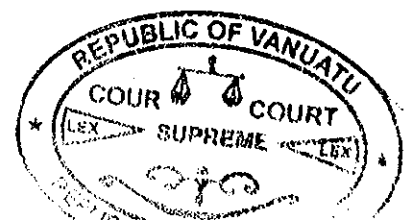
2011 are considered very serious and imprisonment sentences would have been necessary and appropriate had it not been for the following mitigating factors:-

- a) early guilty pleas;
- b) first time offenders;
- c) expressions of remorse."

10. While Mr Moli did not hold a leadership position within the "currently suspended Sanma Provincial Council", it is clear that he was considered to be a leader within the Sanma provincial community and that he could appropriately take his place alongside those who were placed there by the first sentencing judge. It can be also noted that Mr Moli pleaded guilty, that he is to be considered a first time offender and that he has expressed his remorse for his actions; which was indeed noted by the first sentencing judge.
11. The penalty imposed on the category three offenders in respect of each charge was a fine of Vt 25,000; so a total of Vt 50,000.
12. At the first sentencing hearing, when imposing the fines on the category three offenders, the first sentencing Judge went further and said, "you must pay the total of Vt 50,000 to the Court within 14 days from today's date. If you do not pay your fines within this period you will perform community service at the rate of 8 hours for every Vt 1,000 of your fines. That is a total of 320 hours. And if you fail to do community service you will go straight to prison for 7 months."
13. Having regard to the concessions now made by the prosecution as to what it can prove and the level at which Mr Moli is to be sentenced, I have no difficulty imposing a fine on him of Vt 25,000 on each charge. That is the sentence that counsel have urged on me and it is one I accept is appropriate. However, and with the greatest respect to the first sentencing Judge, I do not consider that the default sentences can be imposed.
14. Such default sentences can only arise under section 58C of the Penal Code which deals with fines:

*58C FINES*

*(1) In sentencing a person to pay a fine, a court may make one or more of the following orders:*



(a) that after enquiry as to his or her means, the fine be paid within such period as it may specify or that it be paid by instalments;

(b) that the whole or part of the fine be paid as compensation to the victim;

(c) that the fine to be paid as compensation to the victim be paid in kind or goods provided that in the case of default in making compensation in the kind or goods approved by the court within the time specified by the court, the monetary value of the fine is to become immediately payable and the enforcement provisions of this Act shall apply.

**(2) If a person sentenced to pay a fine defaults in the payment of the fine, the Court may Order that:**

(a) the offender undertake a term of community work in lieu calculated at the rate of 8 hours community work for every VT1000 of the fine; and

(b) such community work is to be in addition to any other sentence of community work to which he or she may have been sentenced; and

(c) the completion of such term of community work in default of payment of the fine shall abate the whole liability to pay such a fine.

**(3) If a person is ordered to undertake community work under subsection (2) the person shall be subject to sections 58P to 58Z, of this Act.**

**(4) If a person ordered to undertake community work under subsection (2) defaults in that community work, then the Court may direct by its sentence that in default of that community work the offender is to serve a term of imprisonment, which must not exceed 6 months.**

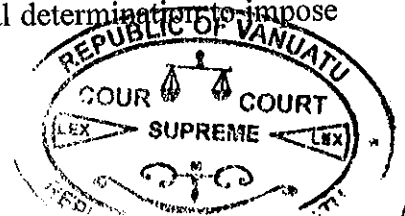
**(5) In the case where a person has been ordered to pay a fine by instalments and has made default in payment of any one or more of such instalments:**

(a) the sentence of community work in default of payment should not be executed until the date for payment of the fine or instalment has expired; or

(b) if he or she has paid any of the instalments ordered, the term of community work shall be reduced proportionately.

**(emphasis added)**

15. Section 58C(2) provides that if a person sentenced to pay a fine defaults in the payment of the fine, the Court may order that the offender undertake community work in lieu calculated at the rate of 8 hours community work for every Vt 1,000 of the fine. As it happens, a payment default here in respect of a fine of Vt 50,000 would result in community work of 400 hours not 320 hours as specified. However, the imposition of community work under s.58C(2) requires not just default in the payment of the fine but also a separate judicial determination to impose



community work after the default has been brought to the judge's attention by the Registrar pursuant to s. 58D. That is clear from the wording of s. 58C(2) – “ *If a person sentenced to pay a fine defaults in the payment of the fine, the Court may Order (community work)...* ”.

16. That interpretation of s. 58C(2) is reinforced by a consideration of s. 58D as to how a default in the payment of a fine is to be addressed. It requires a referral to the “*relevant Magistrate or Judge*” by the Registrar of that Court.

### **58D ENFORCEMENT PROVISIONS WHERE FINES OR COSTS REMAIN UNPAID**

*(1) If a person fails to pay a fine or a cost ordered by a court by the date set by the court, the Registrar of the Supreme Court or the Magistrates Court may:*

*(a) refer the matter to the relevant Magistrate or Judge of the Supreme Court with a report on the circumstances of the case; or*

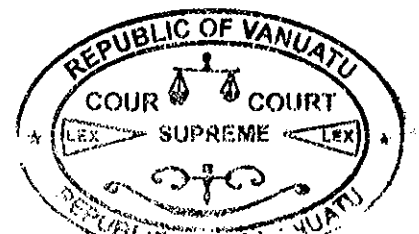
*(b) refer the matter to the relevant court, which if necessary, may issue a warrant for the person's arrest.*

*(2) The relevant Magistrate or Judge of the Supreme Court may, after considering the report of the Registrar of the Supreme Court or Magistrates Court, and the financial position of the defendant:*

*(a) direct that more time be given to the defendant to pay the fine or cost on such conditions as may be directed by the relevant Magistrate or Judge; or*

*(b) direct that the person undertake community work as per the provisions of subsection 58C(2) of this Act.*

17. So a separate judicial consideration is required after the payment default is brought to the Judge's attention and community work cannot be imposed as an automatic consequence of default in respect of the original sentence.
18. Any breach of community work imposed under s.58C(2) is to be dealt with pursuant to s. 58P to s. 58Z but it is subject to a limit of six months (s.58C(4)).
19. So, with respect, I defer from the first sentencing Judge in this particular respect.
20. ***Kalfau Moli, you are accordingly sentenced to pay a fine of Vt 25,000 in respect of the charge for unlawful assembly and further Vt 25,000 for obstructing the police making a total of Vt 50,000. You will pay that within 14 days.***



21. *You also have 14 days to appeal the sentence if you do not accept it.*

**BY THE COURT**

