

PUBLIC PROSECUTOR

-v-

**DESIRE URINMAL
GRATIEN MALTAPE
THEOPHILE KILITER
FERNAND LAPINMAL
KEN LESNAWON
BAE LUKE MAL TOK
LUKE SARISETS
JEAN MARK YORLEY
ATOL KILITER
KAMMY BUKTAN
JOSES SARISETS
JEAN NAWINMAL
GIDEON JOSIAH LESNAWON**

Coram: *Chief Justice, Vincent Lunabek*

Counsel: *Mr. Simcha Blessing for the Public Prosecutor
Mr. Collin Leo for the Defendants*

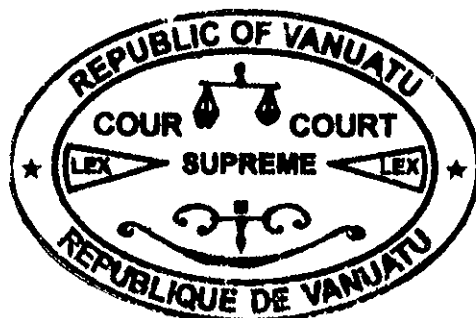
Date of Sentence: *2nd July 2013*

SENTENCE

INTRODUCTION:

This is a decision on the sentence for the following thirteen (13) above named Defendants who were convicted of offences of Unlawful Assembly, Intentional Assault, Kidnapping, Threats to Kill, False Imprisonment, and Extortion:

Desire Urinmal, Gratien Maltape, Theophile Kiliter, Fernand Lapinmal, Ken Lesnawon, Bae Luke Maltok, Luke Sarisets, Jean Mark Yorley, Atol Kiliter, Kammy Buktan, Joses Sarisets, Jean Nawinmal and Gideon Josiah Lesnawon.



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Background:

The offences upon which the defendants are now sentenced arose out of incidents which were alleged to occur at the village of Rano-Warlep, Malekula after Parliamentary elections held throughout Vanuatu on 30 October 2012.

Ni-Vanuatu citizens living in the village of Rano-Worlep, Malekula, also took part in these elections as everywhere in the villages and islands of Vanuatu.

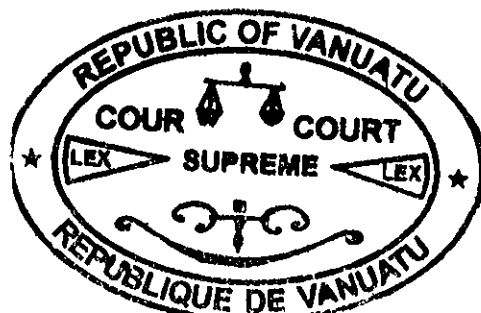
After the elections, people waited for the official publication of the results of such elections. People talked about the elections and their wishes and expectations. Others talked about their experiences and what they observed and heard. At Rano-Worlep, while waiting for the results of the elections, there were allegations of corrupt practices happening just before and during the elections.

One such allegations was that on 29 October 2012, supporters of one Don Steven Ken distributed photographs of Don Steven Ken to the people with information that they casted their vote for the person on the photograph. If a person casted vote for that person on the photo, that person wrote his/her name at the back of the photo and brought the photo with names to collect what he/she is entitled at the camp site or if that person came to Vila he/she must go to Don Steven Ken's House at Agathis, Port Vila to take what he/she is entitled after he or she voted for Don Ken. The photographs were said to be distributed to people including one Mrs. Imak Maltok. Timothy Maltok is the husband of Imark Maltok. Mr Timothy Maltok heard about the allegations of corrupt practices. He heard about the photographs distributed to people including his wife Imark Maltok who is an executive member of People Services Party (P.S.P). Mr. Don Steven Ken was the candidate of P.S.P and he has set up his political camp in his village at Rano-Worlep. Timothy Maltok is not a member of PSP but he belonged to another political grouping.

On 1st November 2012, Timothy went to his house and searched for the photographs of Don Steven Ken in his house. He searched for them in his wife's bags. He then found the photographs of Don Steven Ken in his wife's bag in the house. He took out these photos with him without his wife's knowledge.

Mr Timothy Maltok showed the said photos to Gaston Muluane, the victim of the defendant's offendings. Mr Timothy Maltok phoned one Kisito Teilemb and told him words to the effect that he had in his possession information about the corrupt practices of Mr. Don Steven Ken. Timothy Maltok asked Kisito Teilemb to come and get the photos before others would destroy them.

In the afternoon Kisito Teilemb drove his white Land Cruiser to Rano Village. Kisito took Timothy Maltok and Gaston Muluane on his truck Timothy has in his possession the photographs he got from his wife's bag. Kisito drove them to Vao. Kisito Teilemb is from Vao village but he resides at Norsup Hospital. At Vao, Timothy showed the photographs of Don Steven Ken with the hand writing of names and dates at the back of each photograph.



They realized they have just photos. They needed statements of persons who received the photographs. Kisito drove them back to Rano village. On their way to Rano village, Timothy got off to Lavalsal, Atchin with the photographs. Timothy spent the night there. Kisito dropped off Gaston at Rano and got back to Norsup.

On 2 November 2012, Timothy Maltok got on a Mitsubishi truck driven by one Crowley Malverus from Atchin to Rano. They picked up Gaston Muluane at Rano and went to Lakatoro. Timothy and Gaston got the same truck to return.

However, Timothy got off the truck at Tautu and gave Gaston photographs. Timothy Maltok is the custom chief of Gaston Muluane. Gaston is under his chief leadership. Before Gaston got off the truck (Mitsubishi), Timothy gave the photos to Gaston and instructed Gaston to return to Rano and once at Rano, Gaston must go to Timothy's house and obtained written statements from his wife Mrs. Imak Maltok. On 2 November 2012, about mid-day Gaston Muluane obtained a statement signed by Mrs. Imak Maltok in the presence of her daughter, Jessica Maltok.

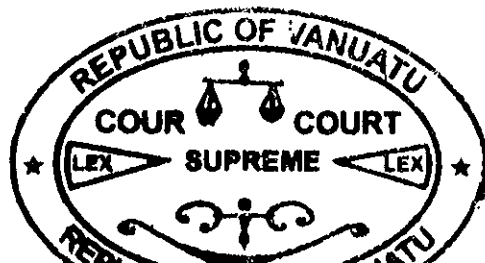
Gaston Muluane with two others decided to go to Jerusalem village in the afternoon as they got information that one Helen Combe had also received the same kind of photographs of Steven Ken on 29 October before the elections. Jerusalem village is inside Rano Village. It is about 500 meters from Gaston's house. On his way to Jerusalem village, Gaston realized that some people searched for him. He saw a group of people assembled together at Jerusalem underneath a mango tree.

On 2 November 2012, after that she had signed the statement, Mrs. Imak Maltok realized that she had signed a document that would be a fatal challenge to the election of Don Steven Ken; she felt bad about her actions; she went to see Jean Tony, the President of the Executive Committee of PSP Party. She told him about what she did and the circumstances under which she signed the statement and the missing photographs from her bag in her house.

This led up to the assembly of the members of PSP and the executive committee at Jerusalem on 2 November 2012, at about 4.00PM-5.00PM to find ways as to how to retrieve the photographs and the document signed by Mrs. Imak Maltok which threatened the election of Don Steven Ken.

At the assembly, they agree together to make what they need to do to hold on Mr Gaston Muluane on 2 November 2012. The Defendants searched for Mr Gaston Muluane. They found him in the truck of Kisito Teilemb on the road to Alfred Nakamal at Tautu.

They pursued at high speed Kisito's truck at Lakatoro. At Lakatoro at the house of police officer Justino Teilemb the Defendants assaulted Mr Gaston Muluane. They compelled him to the truck driven by Defendant Kammy Buktan and took him away to Rano-Worlep political campsite. It was about midnight, they threatened to kill him. They assaulted him at Worlep Camp. They detained him there and they extorted him to sign a document. They agree to release Mr Gaston Muluane for Mr Muluane to write the letter at 8.00am o'clock in the morning. That is the basic facts.



The Defendants were charged either individually or all together jointly or some of them only with the offences of:

- (1) Riot, contrary to ss. 68(3) and 70 of Penal Code Act. (Count 1);
- (2) Intentional Assault, contrary to s.107(b) of Penal Code Act. (Counts 2,4 and 6)
- (3) Kidnapping, contrary to s.105(b) of Penal Code Act;
- (4) Threats to kill, contrary to s. 115 of Penal Code Act;
- (5) False Imprisonment contrary to s.118 of Penal Code Act;
- (6) Extortion contrary to s.138(f) of Penal Code Act;

Each and all of the defendants entered not guilty pleas as charged in the information dated 20 May 2013 at Lakatoro, Malekula.

On 1st June 2013, the Court convicted each and all Defendants as follows:

1. Riot [count 1]

All following defendants:- Desire Urinmal, Gratien Maltape, Theophile Kiliter, Fernand Lapinmal, Ken Lesnawon, Bae Luce Maltok, Luke Sarisets, Jean Mark Yorley, Atol Kiliter, Kammy Buktan, Joses Sarisets, Jean Nawenmal and Gideon Josiah Lesnawon are found not guilty of Riot, contrary to ss.68(3) and 70 Penal Code Act (as charged in count 1) and are discharged of the offence of riot accordingly.

Unlawful Assembly as a complete lesser offence – (s.109 CPC (Cap 136).

But each and all of them (Desire Urinmal, Gratien Maltape, Theophile Kiliter, Fernand Lapinmal, Ken Lesnawon, Bae Luke Maltok, Luke Sarisets, Jean Mark Yorley, Atol Kiliter, Kammy Buktan, Joses Sarisets, Jean Nawenmal, and Gideon Josiah Lesnawon) are found guilty of unlawful assembly, contrary to ss. 68(1) and 69 of Penal Code and are convicted of that offence as a complete lesser offence (than riot) pursuant to s109 of the Criminal Procedure Code Act [Cap 136].

2. Intentional Assault [count 2]

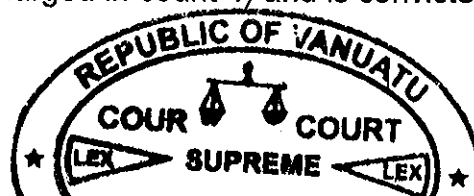
Defendants:- Luke Sarisets, Joses Sarisets, Bae Luke Maltok, Desire Urinmal, Kammy Buktan, Jean Nawinmal and Gideon Josiah Lesnawon, are found guilty of the offence of assault, contrary to s107(b) of Penal Code(as charged in count 2) and are convicted of that offence accordingly.

3. Kidnapping [count 3]

Defendants:- Luke Sarisets, Joses Sarisets, Bae Luke Maltok, Kammy Buktan, Gideon Josiah Lesnawon, Jean Nawinmal and Desire Urinmal are found guilty of the offence of kidnapping, contrary to s105(b) of Penal Code (as charged in count 3) and are convicted of that offence accordingly.

4. Intentional Assault [count 4]

Defendant Kammy Buktan is found guilty of the offence of intentional assault, contrary to s107 (b) of Penal Code (as charged in count 4) and is convicted of that offence accordingly.



5. Threats to kill [count 5]

Defendant Kammy Buktan is found guilty of the offence of threats to kill, contrary to s115 of Penal Code (as charged in count 5) and is convicted of that offence accordingly.

6. Intentional Assault [count 6]

Defendants Kammy Buktan, Bae Luke Maltok and Fernand Lapinmal are found guilty of the offence of intentional assault, contrary to s 107(b) of Penal Code (as charged in count 6) and are convicted of that offence accordingly.

7. False Imprisonment [count 7]

Defendants: - Desire Urinmal, Fernand Lapinmal, Ken Lesnawon, Bae Luke Maltok, Luke Sarisets, Jean Mark Yorley, Atol Kiliter, Kammy Buktan, Joses Sarisets, Jean Nawinmal and Gideon Josiah Lesnawon are found guilty of the offence of false imprisonment, contrary to s118 of Penal Code (as charged in count 7) and are convicted of that offence accordingly.

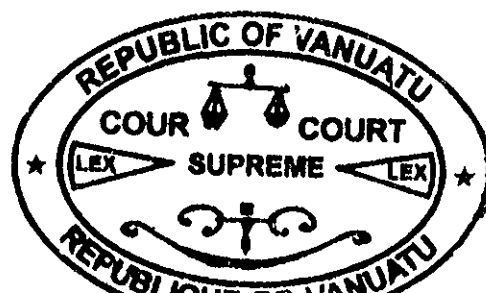
8. Extortion [count 8]

Defendants: - Desire Urinmal, Fernand Lapinmal, Ken Lesnawon, Bae Luke Maltok, Luke Sarisets, Jean Mark Yorley, Atol Kiliter, Kammy Buktan, Joses Sarisets, Jean Nawinmal and Gideon Josiah Lesnawon are found guilty of the offence of extortion, contrary to s138 of Penal Code (as charged in count 8) and are convicted of that offence accordingly.

On 1 June 2013, after the court convicted each and all Defendants, the court directed for pre-sentenced reports to be filed in respect to each Defendant by the Probation office and submissions on sentence to be prepared by the Prosecution on behalf of the Republic and the Defence Counsel on behalf of the Defendants by 1 July 2013. The court hears submissions by the prosecutions and defence counsel on 1 July 2013. The court adjourned for sentencing on the next day 2 July 2013.

The court also gives each and all Defendants a chance to tell the Court anything relevant to the penalty to be imposed. I decide to do that in the case although I am conscious of the fact that the process of allocutus is administered mostly in a guilty type situation. I do this to give a last chance to each defendant to tell the Court of what the Court can take into account in the penalties to impose on him apart from the group pressure each one is under. Some defendants say they have nothing to say. Others repeat what was in the pre-sentence report in respect to them.

When the court considers the sentencing of the Defendants the courts takes into account the submissions of the Prosecution and submissions of the Defence. The court also takes into account of the pre-sentence reports filed in respect to individual defendants.



Relevant Law:

Sections 68, 69; 107(b); 115; 118 and 138 are the relevant provisions of the law. They are set out below:

1. *Unlawful assembly and riot defined*

68. (1) When three or more persons assembled with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause nearby persons reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembling was lawful if, being assembled; they conduct themselves with common purpose in such a manner as aforesaid.

(3) When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of peace and to the terror of the public, the assembly is called a riot.

69. No person shall take part in an unlawful assembly.

Penalty: Imprisonment for 3 years.

2. *Intentional assault*

107. No person shall commit intentional assault on the body of another person.

Penalty: (a) ...;

(b) if damage of a temporary nature is caused, imprisonment for 1 year;

3. *Kidnapping*

105. No person shall –

(a) ...;

(b) by force compel, or by any fraudulent means induce, any person to go from any place to another place.

Penalty: Imprisonment for 10 years.

4. *Threats to kill person*

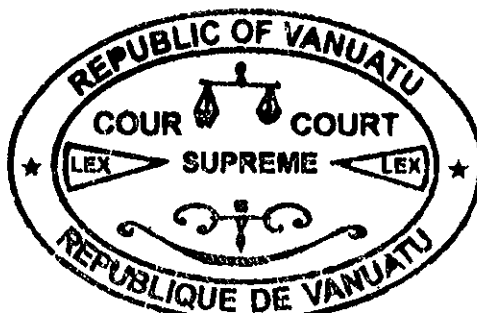
115. No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.

Penalty: Imprisonment for 15 years.

False imprisonment

118. No person shall without lawful authority arrest, detain or confine any other person against his will.

Penalty: Imprisonment for 10 years.



5. Extortion

No person shall, with intent to extort or gain anything from any person –

- (a) threaten expressly or impliedly to make about any person, living or dead, any accusation or disclosure of any offence, or moral misconduct, whether the accusation or disclosure is true or not;
- (b) threaten expressly or impliedly that any person shall make any such accusation or disclosure about any person living or dead;
- (c) threaten to publish, or offer to abstain from publishing, any defamatory words within the meaning of section 120;
- (d) send or cause to be sent to any person any document containing any such threat;
- (e) by any such means compel or attempt to compel any person to sign, execute, make, accept, endorse, alter, or destroy the whole or part of any valuable security, or to write, impress, or affix any name or seal upon any document in order that it may afterwards be used as a valuable security;
- (f) **by any such means induce or compel or attempt to induce or compel any person to do any act against his will, other than an act which it is his legal duty to do, or not to do any lawful act.**

Penalty: Imprisonment for 14 years.

Each defendant is liable to the following penalties based on his respective convictions:

- 1 year imprisonment for Assault (s.107(b)); and
- 3 years imprisonment for Unlawful Assembly (s.69); and
- 10 years imprisonment for Kidnapping (s.105(b)); and
- 10 years imprisonment for False Imprisonment
- 14 years imprisonment for Extortion (s.138); and
- 15 years imprisonment for Threats to Kill (s.118)

These penalties are maximum penalties for specific offences committed by the Defendants. They are very serious offences as reflected by the heavy penalties imposed by law.

In considering the sentencing of the defendants, the court, on behalf of the society and communities, villages and islands of Vanuatu, condemns in the strongest terms the offences committed by the Defendants on 2-3 November 2012.

The actions, behaviours, and conducts of the Defendants on 2-3 November 2012, were intolerable and unacceptable in any society, community, island, town or village of Vanuatu and the village of Rano-Worlep is not an exception.

Most of the Defendants are chiefs, local business men, pastors or community leaders whose responsibility it is to keep the peace in the community and to ensure that people who live in the communities are safe.

Each and all Defendants must now understand that they are subject to the laws of the land. They cannot take the law into their own hands and do justice to themselves as they wish to avoid the detection of corrupt practices occurring during Parliamentary elections (as in the present case) or any other democratic process or they cannot take law into their own hands to do justice as they please



out of frustration or retaliation. The defendants must now understand that all persons living in Vanuatu including Rano-Worlep, are protected by the laws of Vanuatu.

ANTECEDENTS:

The pre-sentence reports indicate that Defendant Desire Urinmal has two (2) prior convictions. In 1984, he was convicted for assault and sentenced to three (3) months imprisonment. In 1987, he was convicted for offence of arson and sentenced to three (3) months imprisonment. I need to say that I note that Defendant Desire Urinmal has previous convictions but I will not take them into account when I will sentence Desire Urinmal.

The reports indicate that all other defendants are first time offenders. They do not have previous convictions.

ALLOCUTUS:

Each Defendant was given opportunity to say what matters the court should take into account when deciding on punishment. Defendants who are willing to say something, confirmed what was in the pre-sentence report in respect to them. Some told the court that they do not understand why they are in court. Some told the Court that they are not guilty yet but then asked the Court to withdraw what they say before. None of the defendants show remorse, insight, apology or regret for his offending despite the fact that most are chiefs, pastors and leaders of the communities. Fernand Lapinmal confirmed what was in his pre-sentence report and added that he is a church pastor.

Defendant Atol Kiliter specifically says he has a disabled child with heart decease. The child is now in Port Vila. Arrangements are made for him to accompany his child overseas in Australia or New Zealand for medical treatment sometimes in July or August 2013.

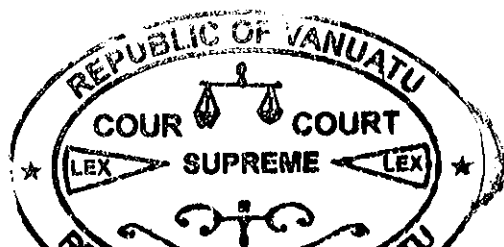
SUBMISSIONS BY DEFENCE COUNSEL:

Mitigating Factors and Personal Particulars

In mitigation, Mr Collin Leo provides the following information in respect to each defendant personal particulars:

Desire Urinmal

Mr Urinmal is 52 years of age. He has seven children. He is not a first time offender. He has previous convictions for assault and arson. As contained in the antecedent he was imprisoned on two separate occasion. He is the only bread winner of the family. He manages a family shop of his at Rano. Mr Urinmal is not a hardened criminal and is not a danger to the community. He has a limited education no higher than grade 6. He accepts that there was a Swap reconciliation ceremony which consolidated the differences between the two groupings which eventually healed the wounds between parties concerned.



Gratien Maltape

Mr. Maltape is 35 years of age. He is a businessman and he owns and manages his Ship which renders services from Malekula to Santo and from Santo to Malekula. He has two children attending primary education at Lakatoro. He wants to continue in pursuing his business in maritime development so far as his ship is concerned. He is the first time offender. He supports his father and mother who are unemployed. He is not a danger to the community. Mr Maltape has business skills and ability to advance in business development. He accepts that there was a swap reconciliation ceremony which consolidated the differences between the two groupings which eventually healed the wounds between parties.

Theophile Kiliter

Mr Kiliter is around 70 years of age. He currently serves as the President of the Council of Chiefs of Walarano. He manages a small family shop at his home. He has 6 children and they are all married. He has more than five beautiful grand children. He wants to spend time with them as the grandfather should. He looks after his wife as his wife is a bit older than him. He accepts that there was a reconciliation ceremony which ironed the differences between respective parties. He enjoyed his work as the President of the Council of Chief of Walarano and he intends to continue on into the future. He has young members under his tutelage regarding the custom and traditions of Walarano. He is the first time offender and is not a danger to the community. He says that he has a limited education no higher than grade 6.

Fernand Lapinmal

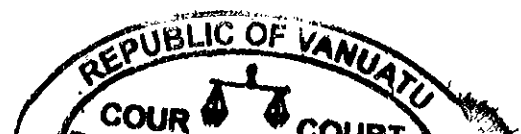
Mr. Lapinmal is around 41 years of age. He is the Secretary of the Wala Rano Council of Chiefs. He has five kids all of which are attending school. He is the only bread winner in the family. His wife is now pregnant. He is the first time offender. He is now facilitating the building of the Pentecostal Church in his village and he wants continue with that until all is completed. He has a chicken farming project and he intends to continue with same. His first born daughter is attending year 10 secondary education and he is the sole source of finance for his children's education. He is not a danger to the community and accepted that there was a custom ceremony which ironed the differences between the parties and that he enjoyed his normal life. He says he has a limited education.

Ken Lesnawon

Mr. Lesnawon is 51 years of age. He has 5 children. He is the only bread winner in his family. He says that he is not a danger to the community. He enjoys gardening. He is a devoted member of the SDA church. He says that there was a custom ceremony which ironed the differences between him and the party's concerned. He says that he has a limited education. He says that he wants to live his normal life and continue on with his gardening needs. He is the first time offender.

Bae Luke Maltok

Mr. Maltok is the first time offender. He has 5 children all of which are attending primary school. He is the only bread winner in the family. He owns a shop and a Kava Nakamal which he is the manager. He is 38 years of age. He says that he is not a danger to the community. He intends to expand his shop and his kava nakamal in the future. He says that he has a limited education. He understands



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that there was custom ceremony which ironed the differences between parties concerned.

Luke Sarrisets

Mr. Sarrisets is 42 years of age. He has five children all of which are attending school. He is the only bread winner of the family. He is the first time offender. He enjoys doing his gardening and farming. He says that he is not a danger to the community. He accepts that he as a minimum level of education. He is planning to set up a shop in the future to cater for the community's interests. He accepts that there was a custom ceremony which healed the differences between parties.

Jean Mark Yorley

Mr. Yorley is the first time offender. He says that he has limited education. He has 6 children all of which are attending school. He now occupies the position of the Chairman to Walarano School and intends to remain in the position into the future. He enjoys his local bakery business in which he is the manager and intends to continue to manage his business into the future. He says that he is not a danger to the community. He accepts that he has a limited education. He wants to continue to look after his children. He accepts that a Swap custom ceremony has healed differences between parties concerned.

Atoll Kiliter

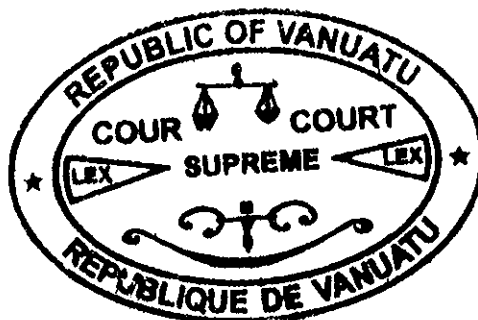
Mr. Kiliter is 52 years of age. He is the first time offender. He has four children. He is the only bread winner in the family. He has a fishing project and intends to continue to pursue it and develop same into a profitable fishing business. One of his children is handicapped and he is the only caretaker of his handicapped child. He says that he is not a danger to the community. He has a very limited education. And he intends to develop his fishing project. He accepts that a swap custom ceremony has healed differences between parties.

Kammy Buktan

Mr Buktan is 32 years of age. He is the driver of the Wala Rano community vehicle which is subject to mortgage. He has 3 young children. Two are attending primary school and one an infant. Mr Buktan has a chicken farming and he intends to develop that into a solid business. He accepts that there was a custom ceremony which healed the parties' differences. He is a first time offender.

Joses Sarisets

Mr. Sarisets is 27 years of age and has a big future ahead of him. He has 4 children two of which are yet to attend primary level education. He is the only bread winner in the family. He is the first time offender. His young family depends on him for daily sustenance. He is not a danger to the community. He intends to continue to protect his young family. He understands that there was a swap ceremony which healed differences between respective parties. He accepts that he has a limited education.



Gideon Josiah Lesnawon

Mr. Lesnawon is 27 years of age. He has no children. He has started his chicken farming. He intends to pursue and develop same into the future. He says that he is not a danger to the community. He understands that there was a swap custom ceremony between parties concerned which peacefully put to rest all matters between parties. He says that he has big future ahead of him and does not want to jeopardise his future prospects. He wants to engage in other businesses in the future.

Jean Nawinmal

Mr. Nawinmal is the first time offender. He is 28 years of age. He has three young children who are attending primary education. He says that he is the only bread winner. He has a shop and he intends to develop same into a substantial profitable business that can cater for the needs of the Walla Rano community. He says that he is not a danger to the community. He says that he is aware of the custom ceremony which ironed the differences between the parties concerned. He says that he together with the Defendants want to move on in a peaceably and rewarded life as expected of them by the community. He says he is educated at the secondary level and he still believes in himself and says he wants to face the future with much confidence that with his little education, he intends to cultivate the seeds of respect and success for him and those around him who may be inspired by his standing.

Precedents

Mr Collin Leo submits that the Court must maintain consistency in sentencing. The court must have regard to the objective circumstances of each case with the need for reasonable proportionality between the sentence imposed and the circumstance of a particular offender. The court must also deter the public from yielding the commission of crimes. He provides a table of cases decided by the Courts of Vanuatu on similar type offences. The table of cases are reproduced below:

Item Number	Year of Decision	Case Name	Nature of offence	Nature of Plea	Sentence
1	25 February 1997	PP -v-Manlawia	Unlawful assembly	Guilty but nine of them did not plea	12 months imprisonment suspended for 3 years
2	26 February 2001	OseihNevu-v-PP	Unlawful assembly and intentional assault	Guilty	Fines which ranges from 3000 to 7000



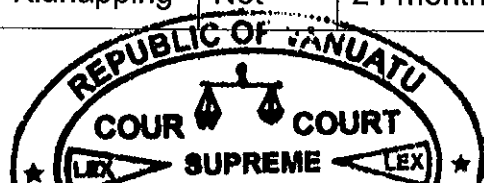
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3	2003	PP-v-Tupun&Ors	Unlawful Assembly, Intentional homicide	Not Guilty	8 months imprisonment for 11 convicted Defendants
4	24 February 2011	PP -v- Neprei	Unlawful Assembly	Guilty	2 years imprisonment suspended for 3 years plus 100hrs community work
5	26 August 2011	PP -v- NarwieNetai&Ors	Unlawful Assembly	Guilty	2 years imprisonment suspended for 2 years
6	16 December 2011	PP -v- Moses Kerefu&Ors	Unlawful Assembly	Not Guilty	2 years imprisonment suspended for 3 years plus imposition of 12 months supervision with special conditions
7	16 April 2011	PP -v- Joe Bila	Unlawful assembly, threats to kill and indecent assault	Guilty	3 years and 3 months imprisonment which are concurrent terms
8	14 September	PP -v- Moses &Ors	Unlawful assembly,	Guilty	22 months imprisonment



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	2011		intentional assault (section 107 (b) and Kidnapping		suspended for 2 years
9	26 August 2011	PP –v- Tess &Ors	Unlawful assembly, Riots and Intentional assault (section 107 (b)	Guilty	2 years imprisonment suspended for 2 years
10	1 September 2011	PP –v- Dick Pakoa and Ors	Unlawful Assembly and Intentional Assault (section 107 (B)	Guilty	12 months imprisonment suspended for 3 years plus 50 hours community work
11	4 May 2011	PP –v- Tom Alick and Sam Kouh	Unlawful Assembly	Guilty	6 months imprisonment suspended for 1 year
12	17 July 2006	PP –v- Ron Tabi & Ors	Unlawful Assembly	Guilty	Fines of vt 8,000
13	5 July 2012	PP-v- Kalfau Moli& Ors	Unlawful Assembly	Guilty	Fines of 25,000 and 12 months imprisonment suspended for 16 months
14	1 March 2013	PP-v- Sassen Philip &Ors	Unlawful assembly	Guilty	2 years imprisonment
15	1997	PP-v-Kilman	Kidnapping	Not	24 months



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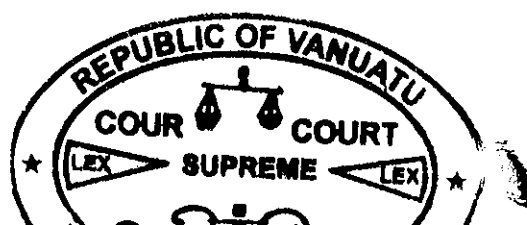
		&Ors (Court of Appeal)	and unlawful assembly Complicity to kidnapping	Guilty Not Guilty	suspended for 24 months and 6 months imprisonment suspended for 6 months 24 months imprisonment suspended for 24 months
16	19 May 2003	PP-v- Simon & Ors VUSC 78 (Court of Appeal)	Kidnapping, Unlawful assembly, Inciting Mutiny	Not Guilty	2 years imprisonment

Mr Collin Leo submits that based on sentences imposed in the cases displayed in the table, the Court should sentence the defendants to suspended imprisonment sentences or fines or community work and such sentences shall run concurrently.

SUBMISSIONS BY STATE:

Mr Simcha Blessing for the State, make a lengthy submissions. He submitted that the Court must consider the principles of proportionality and general deterrence when considering the sentence of the Defendants in this case. The principle of proportionality operates to guard against the imposition of unduly lenient or unduly harsh sentences. The principle requires that a sentence should neither exceed nor be less than the gravity of the crime having regard to the objective circumstances. He relies on a number of Australian and New Zealand cases which are applied in this jurisdiction: (see PP v. Jack Nalau [2010] VUSC 183; Criminal case 143 of 2009 (8 December 2010); Morris Ben v. Public Prosecutor, [1993] VUCA, 3 and others).

As to deterrence, the purpose of punishment is to protect the society from the offender but also to punish the offender and to deter others not to commit the same offences in the future. In essence, Mr Simcha Blessing, submitted to the effect that the Defendants were convicted of serious offences. The trend should be towards severe penalties for this type of offences.



The Court must consider the prevalence of such crimes and impose penalties that provide a deterrent effect against this sort of thing becoming widespread. He relies on the case of Public Prosecutor –v- Simon [2003] VUCA 1; Criminal Appeal Case 12 of 2002 (9 May 2003). He submits that the circumstances and gravity of the offending in this case warrant immediate imprisonment sentence. A suspension would not be justify taking the circumstance of this case.

DECISION MAKING PROCESS

I consider the decision of the Court of Appeal in Public Prosecutor –v- Andy [2011] as a guide. I adapt it in the following decision making process for purposes of determining appropriate penalties in the present case.

- In step 1: What is the appropriate head sentence for each offence and for individual offender, in terms of years?
- In step 2: Should all or part of the sentence be suspended?
- In step 3: If all part of the sentence is suspended, what conditions should be imposed?

STEP 1: WHAT IS THE APPROPRIATE HEAD SENTENCE

Approach

In setting an appropriate head sentence I will take this approach:

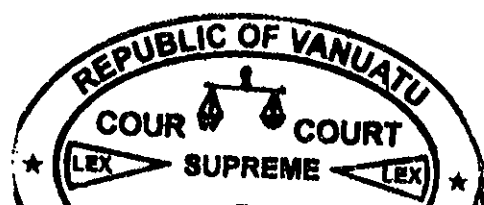
- First, I will identify an appropriate starting point;
- Secondly, I will set out the considerations that should be taken into account in deciding whether to impose a sentence equal to, lesser or greater than the starting point;
- Thirdly, I will apply those considerations to the facts of the present case.

Starting Point and relevant considerations

I consider and peruse cases of similar type nature contained in the submissions of the Prosecution or Defence Counsel referred to me in the present case and other cases, I identify the following starting point:

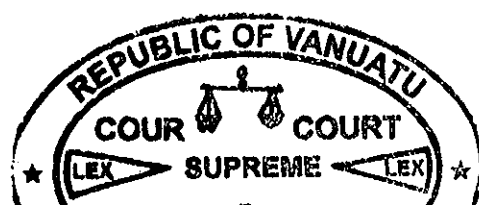
- Unlawful Assembly – 2 years for each and all defendants convicted of this offence;
- Intentional Assault – 8 months for defendants convicted in counts 2,4 and 6;
- Kidnapping – 3 year for each defendant convicted of this offence;
- Threats to kill a person – 3 years for defendant Kammy Buktan;
- False Imprisonment – 3 years for each defendant convicted of this offence;
- Extortion – 3 years for each defendant convicted of this offence.

In the present case, the seriousness of the nature of offending and gravity of the circumstances of the offending are aggravated by the following factors:



1. There is a high degree of planning and premeditation in the commission of offences or to carry out a common purpose.
2. The defendants commit actual violence during the course of the offending
3. The defendants threatened the victim complainant with violence
4. The defendants put the complainant in real danger of being injured or killed
5. The defendants acted together in concert or as group in the commission of crimes. It was a joint criminal enterprise.
6. They acted to avoid the detection of corrupt practices and to prevent the complainant victim accessing the courts of law to seek justice according to law.
7. The defendants offended from 4.00PM-5.00PM on the 2 November 2012 to 3.00AM o'clock on 3 November 2012. So most offences are committed at the night time. There are physical and psychological effects of the offending on the victim as shown in the Pre-sentence reports.
8. Each of the Defendant played a relatively active or major role in the offending.
9. The defendants did not cooperate with the police in their investigation.
10. None of the defendants entered guilty pleas to save the state the trouble and expense of the mounting a trial and relieving the victim of the inconvenience and trauma associated with coming to court to give evidence.
11. There is no evidence that the defendants have done anything tangible towards repairing their wrongs: no compensation, no payment, no apology or regret. There is evidence of custom reconciliation ceremony from the Defendants to one Timothy Maltok, a Defence witness. The purpose of the reconciliation is to avoid detention of corrupt practices or him not filing a criminal complainant or statements against the Defendants.

Mr Timothy Maltok accepted the reconciliation because of the pressure he had in his home by his wife. Although, Mr Timothy Maltok is the chief of the victim in this case, any custom reconciliation accepted by him cannot amount to a custom compensation or reparation done by the Defendants to the victim within the meaning of section 39 of Penal Code Act. The victim (Mr Gaston Muluane) refused to reconcile because he wanted to pursue with the prosecution of the Defendants for the offences they have committed in respect to him. It is noted that the sort of swap reconciliation referred to by the defendants took place before the pleas are taken by them and after a two weeks trial as each defendant entered not guilty pleas as charged in the information.



12. None of the Defendants has shown a moderate degree of remorse, through the pre-sentence reports or through his allocutus.

Based on the above aggravating features the head sentences are increased as follows:

- Unlawful assembly - 2 years and 3 months for each and all defendants;
- Intentional Assault - 11 months for Defendants: Kammy Buktan (persistent and continuing assault on the victim from Lakatoro to Rano-Worlep Camp, Desire Urinmal (use of a torch light) and Bae Luke Maltok (use of a pair of Safety boots to kick the victim);
-9 months for other Defendants in counts 2 and 6.
- Kidnapping - 3 years and 3 months for each defendant convicted of this offence;
- False imprisonment - 3 years and 3 months for each defendant convicted of this offence;
- Threats to kill a person - 3 years and 8 months for Defendant Kammy Buktan;
- False Imprisonment - 2 years and 3 months for each defendant convicted of this offence
- Extortion - 3 years and 3 months for each defendants convicted of this offence

I consider and I accept the following mitigating factors:

- Each defendant's personal particulars.
- Each defendant is a first time offender. I also consider that Defendant Desire Urinmal is a first time offender despite his previous convictions.
- Any other mitigating factors.

In balancing between the aggravating and the mitigating factors, the following are the Head sentences imposed on each defendant and in respect to each defendant's convictions and involvement in this case:

1. For Unlawful Assembly (Count 1)

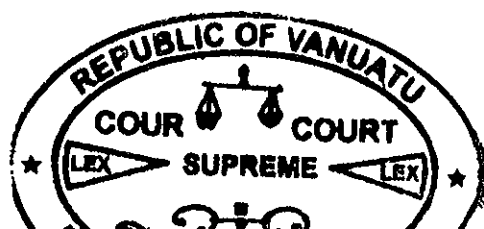
Following Defendants:

Desire Urinmal, Gratien Maltape, Theophile Kiliter, Fernand Lapinmal, Ken Lesnawon, Bae Luke Maltok, Luke Sarisets, Jean Mark Yorley, Atol Kiliter, Kammy Buktan, Joses Sarisets, Jean Nawinmal and Gideon Josiah Lesnawon are each sentence to 2 years imprisonment.

2. For Intentional Assault (Count 2)

Following Defendants are sentenced as follows:

Luke Sarisets, Joses Sarisets, Bae Luke Maltok, Desire Urinmal, Kammy Buktan, Jean Nawinmal and Gideon Lesnawon are sentenced to 8 months imprisonment each.



3. For Kidnapping (Count 3)

Following Defendants are sentenced as follows:

Luke Sarisets, Joses Sarisets, Bae Luke Maltok, Desire Urinmal, Kammy Buktan, Jean Nawinmal and Gideon Josiah Lesnawon are sentenced each to 3 years imprisonment.

4. For Intentional Assault (Count 4)

Defendant Kammy Buktan is sentenced to 10 months imprisonment.

5. For Threats to Kill (Count 5)

Defendant Kammy Buktan is sentenced to 3 years and 6 months imprisonment.

6. For Intentional Assault (Count 6)

Defendant Kammy Buktan, Bae Luke Maltok, Fernand Lapinmal are sentenced each to 8 months imprisonment.

7. For False Imprisonment (Count 7)

Following Defendants:

Ken Lesnawon, Jean Mark Yorley, Atol Kiliter, Fernand Lapinmal, Desire Urinmal, Luke Sarisets, Joses Sarisets, Jean Nawinmal, Gideon Josiah Lesnawon, Bae Luke Maltok and Kammy Buktan are sentenced each to 2 years imprisonment.

8. For Extortion (Count 8)

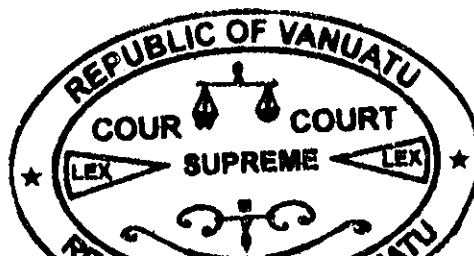
Following Defendants:

Desire Urinmal, Fernand Lapinmal, Ken Lesnawon, Bae Luke Maltok, Luke Sarisets, Jean Mark Yorley, Atol Kiliter, Kammy Buktan, Joses Sarisets, Jean Nawinmal and Gideon Josiah Lesnawon are sentenced each to 3 years imprisonment.

STEP 2: SHOULD ALL OR PART OF THE HEAD OF SENTENCE BE SUSPENDED?

I consider whether or not I should suspend all or part of the sentence of each defendant. Save Atol Kiliter, I decline to make an order suspending the imprisonment sentence for each defendant for the following reasons:

On comparison between the circumstance of the present case and the circumstances of the cases referred to and contained in the table submitted by Mr Collin Leo, Defence Counsel in his sentence submissions, the following differences can be noted:



- In most of cases contained in the table submitted by Mr Collin Leo, the offenders:

- entered guilty pleas at the first opportunity given to them by the court;
- were first time offender;
- were genuinely remorseful and accepted that they are responsible and accountable for their wrongdoings
- made elaborate custom reconciliation ceremonies involving both sides to the dispute and witnessed by chiefs representatives, community leaders and the victims and victim's families.
- The victims accepted the gifts and the custom reconciliation ceremony.

- In the present case, most of the defendants are chiefs, business leaders, religious leaders and community leaders. They are defiant to the law. They show no genuine remorse. They show no apology or regrets of their wrongdoings. The pre-sentence reports and allocutus of the Defendants illustrate this. The defendants in their mitigation refer to a reconciliation they said they performed to the victim complainant (Mr Gaston Muluane) and his custom chief (Mr Timothy Maltok).

The victim of the defendant's wrongdoing did not take part in any reconciliation. He refused any reconciliation as an exchange for him to withdraw his complaints against each defendant. The victim of the defendant's wrongdoing refused the reconciliation because he wanted the defendants to face the force of the law because of their offending on 2-3 November 2012.

The said reconciliation was referred to by the defendants as a "swap" reconciliation. The defendants used Mr Timothy Maltok to accept the reconciliation on behalf of the victim. This is not a genuine reconciliation. It is rejected as such. However, Mr Timothy Maltok has a basis to reconcile with the Defendants otherwise his wife will cut him with a bush knife.

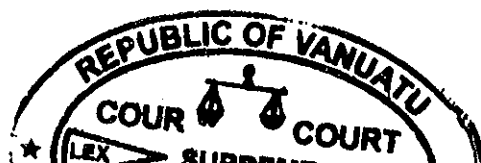
In such circumstances, the defendants must dwell on what they have done and understand the gravity of their crimes. The best place to do that, is in custody.

Step 3 of the sentencing process, referred to above, will not be considered at this stage.

SENTENCE ORDER:

The court makes the following orders:

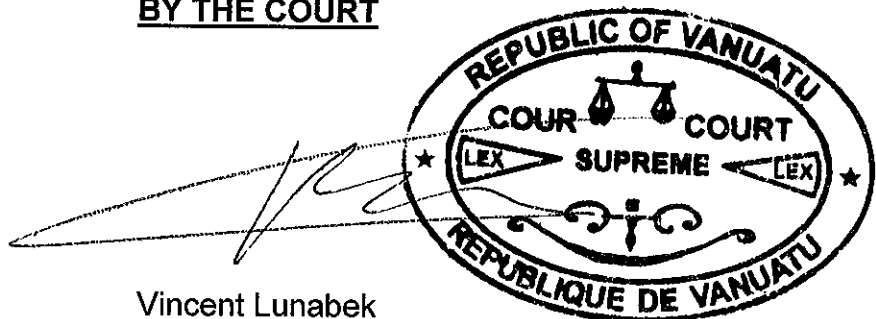
1. Gratién Maltape and Theophile Kiliter shall serve a term of 2 years imprisonment each with immediate effect.
2. Following defendants:
Desire Urinmal, Fernand Lapinmal, Ken Lesnawon, Bae Luke Maltok, Luke Sarisets, Jean Mark Yorley, Josés Sarisets, Jean Nawinmal and Gideon Josiah Lesnawon shall serve an imprisonment term of 3 years each with immediate effect which shall run concurrently with their respective other sentences.



3. Defendant Kammy Buktan shall serve an imprisonment term of 3 years and 6 months with immediate effect which shall run concurrently with his other sentences.
4. Atol Kiliter is sentenced to a concurrent terms of 3 years imprisonment. The terms of 3 years imprisonment is suspended for a period of 2 years to allow Atol Kiliter to accompany his disabled child overseas for medical treatment.
5. Each and all Defendants have 14 days to appeal against the sentences each receives today if each is unsatisfied with them. The 14 days starts at the date of the sentencing.

Dated at Lakatoro, Malekula, this 2nd day of July 2013.

BY THE COURT



Vincent Lunabek
Chief Justice