

**PUBLIC PROSECUTOR**

**V**

**ENUMA NOK**

**Hearing:** *Thursday 28 August 2014 at 9 am, Isangel, Tanna*  
**Before:** *Justice Stephen Harrop*  
**Appearances:** *Damien Boe for the Prosecution*  
*Pauline Kalwatman and Harrison Rantes (PSO) for the Defendant*

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**SENTENCE**

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1. Mr Nock you appear for sentence today having pleaded guilty to threatening to kill Janet Edwin, who is your aunt, on the 10<sup>th</sup> of February 2014 at around 2:00pm here in Isangel. The charge is a very serious one as Parliament has recognized. The maximum penalty is 15 years imprisonment, so that speaks for itself. I should say that originally you faced on an indictment or an information containing 3 counts of threatening to kill but the other two were not proceeded with by the prosecution and it goes without saying that I ignore those for sentencing purposes. You are here for sentence on one charge only.

Brief Facts

2. At around 2pm on Monday the 10<sup>th</sup> of February you came to the house owned by the victim and argued with her about a small shelter that some people were building there. You threatened her and the other two that they should have had permission before they began building the shelter but the aunt told you that it was your father who had given permission to build it. That argument developed , the matter got out of hand and you ran into your house took an axe and ran back towards her and threaten to cut her with your axe. Luckily one of the other people present, Robin John moved in close to her to protect her and you stopped about 5 meters away. You uttered the following words to her “*yu no save mi yet you stap laf long mi se mi wanem, bae mi katem you*”

*smolmol pieces long axe ya mo bae mi bonem evri house blong yufala mo bonem you wetem house blong you long naet*". Essentially therefore you made a threat, apparently in response to what you saw as her laughing at you, that you would cut her into pieces with your axe and you would burn all of her houses and do that at night.

3. These are obviously serious threats and involve a threat to kill, self-evidently by way of cutting her into small pieces. You were undoubtedly angry and aggressive at that time and it is just as well that Robin John was there to intervene or who knows what might have happened next. Certainly your aunt was very worried about what might happen next. Generally speaking the charge of threatening to kill covers quite a wide range of circumstances. There can be oral threats made to a person other than in respect of whom the threat is actually directed, and in the absence of that person. Or there might be an oral angry statement made without any immediate ability to carry it out but here you made the threats while brandishing a lethal weapon, an axe. That clearly makes this case a very serious one because you gave every indication of intending to carry out and of being able to carry out your threats.
4. In addition the case is aggravated by the fact that the person you threatened was a woman. She is by definition not as strong or able to defend herself as a man and she was understandably more worried by your threat than perhaps a strong man might have been. So mentally she was very frightened indeed by what you did and she did not know what would happen next. Fortunately Mr Robin John intervened and nothing serious occurred but it is important to take into account the mental effects on her.
5. It is very easy for us sitting here now to say, well nothing too serious happened, nobody got hurt. But she didn't know at that time that that would be the outcome. She understandably thought she would be hurt and indeed cut into small pieces.
6. There is no question that this kind of conduct is totally unacceptable in a civilized society and you must understand, as much anyone else who is inclined in this way, that the usual sentence for this kind of unacceptable violent behaviour must be a prison sentence. Indeed I am going to impose a prison sentence here but I accept the submission of both counsel that it is a case where that can properly be suspended.

7. I have considered other relevant authorities including those referred to me by counsel. First of all the *Moli* case which ended up going to the Court of Appeal [2011] VUCA 35. That involved a threat made following an accidental injury to a dog being made with a .22 rifle brandished by Mr Moli. Sentencing had proceeded in the Supreme Court as if the rifle was loaded but he had always disputed that it was loaded and in the Court of Appeal sentencing proceeded on the basis that it was unloaded. But of course the person threatened doesn't know whether it is or isn't loaded so a threat with a rifle in hand is arguably even more serious than a threat with an axe in hand. However it needs to be recognised that an axe can easily kill or seriously maim when the person brandishing it is nearby. The Chief Justice had sentenced Mr Moli in the Supreme Court to 3 years imprisonment. There was also a charge in possession of a firearm with intent to injure and the starting point had been 5 years imprisonment. But the Court of Appeal said the proper starting point for an unloaded rifle being presented in this way would be 24 months imprisonment and for various reasons relating to the character of Mr Moli his guilty plea, a lengthy delay in sentencing and taking into account some time he had spent in custody the Court ended up effectively sentencing him to time served. When I compared this case with that I think a starting point of around 20 months imprisonment is appropriate.
8. There is also the case of *Kell Walker* [2007] VUCA 12 where there was a threat made at a restaurant to cut off the victim's head but that was a threat made without any weapon present allowing that to be done or at least immediately so. The defendant was 60 and he had some health issues and he was sentenced to 2 years imprisonment half of which was to be suspended. The Court of Appeal decided that was not manifestly excessive. I note that in accordance with usual appellate principles that is not necessarily authority to say that the Court of Appeal endorsed that sentence as appropriate or that it indicates the Court of Appeal itself would have imposed with that sentence if dealing with Mr Walker at first instance but rather it was found to be within range of the appropriate sentencing options.
9. Arguably this case is more serious than Mr Walker's case because of the immediate presence of the axe, you were brandishing and the male against female aspect. So

although in that case there was no guilty plea and it is significant that there is here, it seems to me that a starting point of around 20 months is appropriate as well.

10. Having reached that view I of course need to take into account personal medicating and aggravating factors. There is only one potentially personally aggravating factor and that is the fact that you have a previous conviction but it is for a very different kind of offending, I understand cannabis-related so I do not propose to increase the sentence because of that.
11. I have of course taken into account everything that has been said by Ms Kalwatman in her submissions on your behalf and the contents of the pre-sentence report. First and foremost you are clearly entitled to a credit for pleading guilty because you have acknowledged responsibility and importantly you have avoided the need for your aunt to give evidence and so to relive this nasty incident. But it was not a guilty plea at the first instance, as Ms Kalwatman submits it was, because you pleaded *not* guilty on the 1<sup>st</sup> of June before Justice Fatiaki. So I would say a maximum of 25% discount is appropriate for guilty plea and that brings it down to around 15 months.
12. I also think that it is clear from what I have read that you are someone with an anger problem, your father himself comments on this in the pre-sentence report and unless you can get some help or exercise greater self-control you are likely to offend again. Really this was a silly offence. The people you threatened told you that your father had authorised them to build what they were building. So clearly the sensible thing was to go and ask him whether he had or not. And if you had done that he would have told you yes, he had authorised them to do it. So there was no excuse for you to be aggressive towards them at all. In any event it is hardly likely that they would say to you that your father authorised the building if in fact he hadn't, they would know that you could easily check with your father whether that was so.
13. So if you were being calm and sensible about it, you would have thought to yourself well that is likely to be true, they wouldn't be saying that if it wasn't, but instead you became very aggressive suddenly and without any justification.
14. I take into account though that you have no other convictions relating to this kind of anger and that there has been a custom ceremony and that is important because this is

a family matter. She was your aunty and you are clearly remorseful and that's accepted. So I hope that you are not going to allow yourself to lose your temper as quickly as this again.

15. You need to try to think for a moment how she must have felt when you were standing there angry, wielding an axe and telling her you were going to cut her into small pieces. If somebody was doing that to you, you would be very scared. In the end I reduce the 15 month prison sentence further because of the custom ceremony and your remorse and the personal qualities that I have read about in the pre-sentence report and also take into account that you are a young man.
16. You are only 24 and you have time to learn from this and to change your behaviour. So in the end I think a prison term of 12 months is appropriate and that can properly be suspended in whole for 12 months. But as I have said earlier on another sentencing this morning, in essence you have offended against the community here and it is appropriate that you give something back to the community by way of community work and you are according sentenced to 250 hours community work together with supervision for 12 months. That is most importantly directed, if a program is available for you here on Tanna, at anger management. I make that a special condition if it is possible for Corrections to assist in that way. Obviously if that program is not available then they have no obligation to do so.
17. You need to understand what a suspended sentence of imprisonment means. It means that if you commit any offence within the next 12 months then you will be asked to serve the 12 month prison sentence. Breaching your community work is an offence so if you breach your community work you will not only serve the 12 months imprisonment that I have imposed but you will also serve a further sentence for breaching the community work. So you have a considerable incentive to make sure you do your community work , and do everything that the Corrections Department tells you to do in connection with your community work sentence.
18. I hope that this whole experience will have been a lesson for you and that we do not see you back before the Court again. The next time you feel angry or began to feel angry about something talk to one of the elder members of your community about

your problem and ask advice about what you should do. Don't take matters into your own hands in such an aggressive way because nothing good will come of it. I warn you that if you come back before the Court on another violent offence, it is very likely that you will be sentenced to imprisonment without the sentence being suspended.

19. You have 14 days to appeal against this sentence if you do not agree with it.

**BY THE COURT**