

MINIE EDMOND – VS – PUBLIC PROSECUTOR

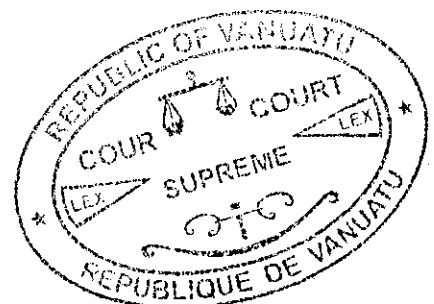
Coram: *Mr Justice Oliver A. Saksak*

Counsel: *Andrew Bal for the Appellant
Damien Boe for the State (Respondent)*

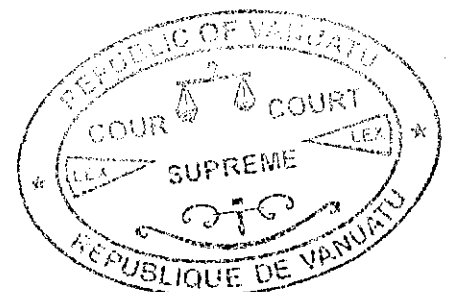
Date: *10th September 2014*

JUDGMENT

1. This is an appeal against the sentence of 11 months imprisonment imposed by the Magistrate Court on 25th June 2014.
2. The Appellant raises 2 grounds of appeal that-
 - a) Her sentence is manifestly excessive, and
 - b) The Court below erred by not taking into consideration mitigating factors to reduce the sentence.
3. The Appellant was charged with intentional assault under section 107 (b) of the Penal Code Act Cap. 135 (the Act). The maximum penalty for this offence is 1 year (12 months) imprisonment.
4. The facts of the appellant's offending are that on 8th February 2013 at the Lakatoro Market, Malekula, she approached the complainant and used a pocket knife to assault her causing temporary injury. The incident occurred over an alleged affair by the complainant with the appellant's husband. The appellant performed a reconciliation ceremony later with the complainant.
5. I heard Mr Bal in relation to the written submissions he filed earlier this morning. I also heard Mr Boe who conceded to the appeal. On the basis of that concession, the Court orally announced that-
 - a) The appeal is allowed
 - b) The Sentence of the Magistrate's Court dated 25th June 2014 is quashed.
 - c) The Court substitutes a sentence of 5 months imprisonment suspended for 12 months on good behaviour.



6. The Court now publishes its reasons. For the first grounds the Court accepts that the sentence of 11 months imprisonment was excessive for an offence under section 107 (b) of the Act. The Court below had in fact imposed the maximum penalty of 12 months and reduced it by only 1 month arriving at the end sentence of 11 months. But the Court had awarded a 1/3 reduction for early guilty plea and remorse. And for those mitigating factors the Court below allowed only a reduction of 1 month. Clearly that is an error of law. The Court of Appeal case of **Keven Gideon V. Public Prosecutor** [2002] VUCA 7 clearly lays down that for an early guilty plea a 1/3 reduction is allowable.
7. The Court below had adopted 12 months (1 year) imprisonment as the starting point due to the aggravating features such as attempts made by the appellant on 3 separate occasions, the use of an offensive weapon (knife), the incident occurring in a public place and her failure to stop when the care-taker of the Market House attempted to stop her from her actions.
8. Working on that starting point as the basis of the original sentence, which the Court below was perfectly empowered to do, the error then occurred in the calculations when the Court did not include the 1/3 reduction separately according to **Gideon's** case. The proper calculation should have been 12 months less 4 months (representing 1/3) for early guilty plea reducing the starting sentence down to 8 months.
9. The Court below erred by failing to make allowances for other mitigating factors such as
 - a) Customary reconciliation showing remorse, and
 - b) Clean past recordIn the view of the Court, the appellant was entitled to a further reduction of 3 months for these. That reduces her sentence of 8 months down to 5 months imprisonment.
10. There were other factors which the Court below could have considered to decide whether or not to suspend the sentence. These were-
 - a) 2 little children of the appellant, and
 - b) The appellant's asthmatic conditionThe Court accepts that the failure or omission by the Court was an error.
11. All the cases referred to by the appellant's Counsel show a consistent approach by the Supreme Court. The case of **PP V. Toby** [2013] VUSC 121 was a more serious offending under section 107 (b) but the defendant was sentenced to 6 months imprisonment suspended for 2 years. The case of **PP V. Kalsau** [2009] VUSC 79 was less serious than this case but the Court sentenced the offender to 4 months imprisonment suspended for 12 months. And the case of **PP V. Dick** [2010] VUSC 167 was a lesser offending under section 107 (b) but the Court sentenced the offender to 3 months imprisonment suspended for 12 months. This consistent approach should be maintained. It would appear the Court below was not assisted adequately or at all with these cases to assist the Court maintain the consistency. That failure and/ or omission caused the Court below to fall into error.



12. Accordingly the appeal succeeds and is allowed on the two grounds advanced by the appellant.

DATED at Port Vila this 10th day of September 2014

BY THE COURT

OLIVER.A.SAKSAK

Judge

