

PUBLIC PROSECUTOR

V

PIERRE NOAL
GLEN KOVOI
MICHAEL SAMUEL
BEN KORO

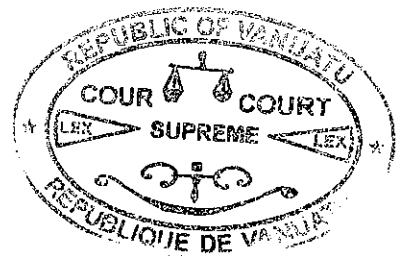
Sentence: Monday October 3rd 2016 at 9 am

Before: Justice JP Geoghegan

*Appearances: Damien Boe for the Public Prosecutor
Andrew Bal for Defendants*

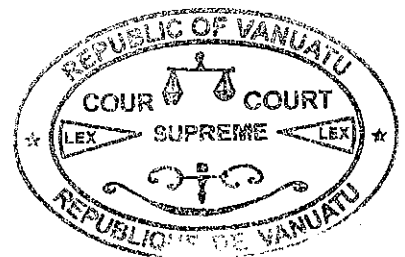
SENTENCE

1. Pierre Noal, Glen Kovoï, and Ben Koro you appear for sentencing today in respect of charges of kidnapping and unlawful assembly. The charge of kidnapping carries a maximum term of imprisonment of 10 years and the charge of unlawful assembly carries a maximum term of imprisonment of three years. Michael Samuel you appear on a charge of aiding and abetting kidnapping but you are liable to the same sentence as those charged with kidnapping and as you have heard me say to Mr Bal I am somewhat mystified as to why you were not charged as a principal offender.
2. The summary of facts are not in dispute. The facts establish that you all travelled in a bus from Star wharf on March 13th this year for the specific purpose of abducting Ms Lengkon from her office. The reason for that



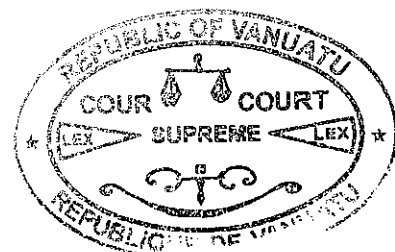
was that she had posted comments on Facebook which you regarded as being critical of bus and taxi drivers. You took offence to these comments and you wanted her to apologize for them to the 50 or more bus and taxi drivers gathered at Star Wharf. The utter and obvious irony of your actions was clearly lost on you. Mr Noal, Mr Kovoï and Mr Koro got out of the bus and went to Ms Lengkon's office demanding that she come with them to apologize to the drivers. Mr Samuel remained in the vehicle. You were aggressive towards Ms Lengkon and while she stood her ground initially Mr Koro grabbed her arm and pushed her outside. You marched Ms Lengkon from her office to the bus and during the drive to Star Wharf you made comments about taking action against another individual who had made comments on Facebook allegedly critical of drivers.

3. Once at Star Wharf Ms Lengkon was required to apologize to an increasingly hostile crowd. Threats to kill her were made by unknown persons. During this incident she was struck forcefully in the face by an unidentified person present there. The circumstances would have been terrifying for her and your actions exposed her that day to immediate and very real danger. After she was struck she was placed in a taxi and returned to her office. All in all although time estimates are difficult to assess, it would appear that her ordeal lasted for 30 minutes or perhaps more.
4. I have expressed before, but I do so again, the fact that the silence of those present who witnessed the assault on Ms Lengkon and the threats to kill her is an absolute indictment of those individuals. It is frankly a disgrace that those individuals have lacked the basic courage and decency to bring those responsible to account.
5. In sentencing you today I consider that each of you should be treated as playing an equal part in these incidents. Although you Mr Samuel



remained in the vehicle and did not go to Ms Lengkon's office you have chosen to be a part of this and I can see no particular reason to differentiate between you and the other offenders. As I have said, frankly I cannot understand why you were not charged with kidnapping. The fact that you remained in the vehicle does not lessen your involvement to a degree that warrants differentiation between you and other offenders.

6. I have read your pre-sentence reports. You are all first time offenders and, with the exception of Mr Koro who is 58 years old you, are all men in your 30s. You all have dependent families. You are all the sole bread winners for your families. Your personal circumstances appear to be very similar.
7. The pre-sentence reports tell me that while you Mr Kovoï and Mr Samuel accept the part that you played in this event and are remorseful, Mr Koro and Mr Noal are still endeavouring to justify their actions. In addition it is apparent that Mr Noal committed this offence while on bail for other alleged offences. You are recorded Mr Noal as disputing the verdict. In that regard, let me remind you that you pleaded guilty. You were not found guilty after a defended trial. You clearly accepted your guilt. In entering a guilty plea, you cannot now dispute it. In addition I note the reference to you being sorry for what your co-offenders had done to the victim which seems to me to me denying, to a degree, your responsibility in this episode.
8. Mr Koro you appear to be suggesting that the victim agreed to come with you. That is nonsense. I have heard her evidence and it is clear that she had no choice.
9. Accordingly, in respect of those matters there must be significant doubt about your remorse. The pre-sentence report also talks about the effect



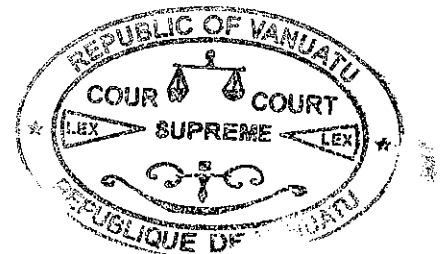
upon your victim. Those effects are profound. She has lost the sense of security and no longer feels safe. She has had to access psychological and medical help. The effects are likely to be long lasting on her.

10. I have received and read the submissions of Mr Boe and Mr Bal and they are very helpful. Mr Boe has referred to the sentencing principles applicable in this case which are the protection of the society, deterrence of you and others you may be tempted to act in this way, retribution and reform. You need to be held accountable for your actions but the Court also needs to give consideration to the fact that it should impose the least restrictive sentence commensurate with the offence committed. In this case there are no real rehabilitative needs identified for any of you.
11. Mr Boe also refers to the English case of the R v Spence & Thomas¹ where there was reference to the wide possible variation and seriousness between one instance of kidnapping and another. They range from cases involving the taking of hostages for ransom down to family disputes. Mr Boe has referred to a significant number of authorities regarding sentencing for kidnapping and it is appropriate that I refer to some of those.
12. PP v George² involved offenders who kidnapped the employees of Tanna Lodge to interrogate them regarding the killing of a young man. They arrived at Tanna Lodge as part of a larger crowd. Many were assembled with stones, knives and axes. They terrorised the staff of the lodge and detained the victims for at least three hours. In that case the Chief Justice adopted a starting point of three years which he increased to three years and 3 months for aggravating factors. The Chief Justice adopted a similar starting point in the case of PP v Urinmal³. That involved seven offenders who kidnapped the victim in an effort to

1. (1983) 5 CR. App. R, 5.

2. [2016] VUSC 67

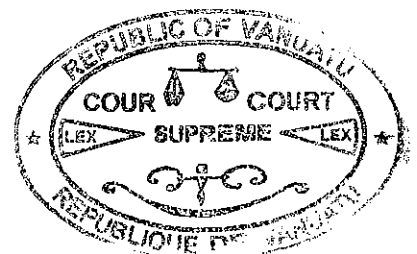
3. [2013] VUSC 95



prevent steps being taken to challenge an election result. The offence was the subject of a high degree of planning and premeditation. The victim was subjected to a significant level of violence and was detained for some eight to ten hours. In the case of the PP v Amokori, that case involved the kidnapping and repeated rape of the victim including the use of serious violence. A sentence of five years was imposed in respect of the kidnapping charge.

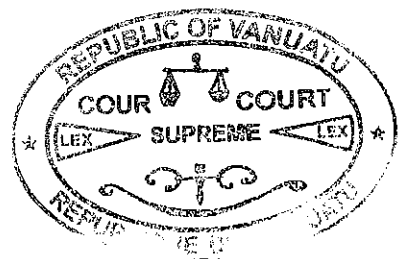
13. Finally, the case of PP v Moses⁴ involved the kidnapping and assault of the victim by a group of six men who at the time were armed with weapons and who subsequently seriously assaulted the victim who was detained for a significant period. The starting point including aggravating factors was one of three years.
14. All of these cases show the different circumstances in which kidnapping occurs. But there is also a need to refer to them as the Court must endeavour to achieve consistency in sentencing despite the different circumstances of different cases. What can be said is that when looked at overall, this case could not be regarded as being as serious as those cases and in my assessment a lower starting point is therefore warranted.
15. The Public Prosecutor submits that an appropriate starting point is one of three to four years imprisonment. It will be apparent from what I have said that I do not think that that can be sustained when one considers the other authorities which I have just referred to.
16. The Public Prosecutor has also referred to a number of aggravating features regarding this offending and I shall refer briefly to those. There is reference to the high degree of planning and premeditation. With respect to the Public Prosecutor, I do not agree with that submission. There was certainly premeditation and the evidence established that you

4. [2011] VUSC 246



have seen the Facebook message and you have then resolved almost immediately to abduct Ms Lengkon from her office and bring her to the wharf. There did not seem to me to be a high degree of planning involved in this offending. There is reference to violence being committed during the course of the offending. There is no question that Ms Lengkon was subjected to violence. That included the violence imposed in grabbing her hand and removing her from the office. But it is important to record that the violence she suffered when struck was not at your hands but at the hands of an unidentified third party.

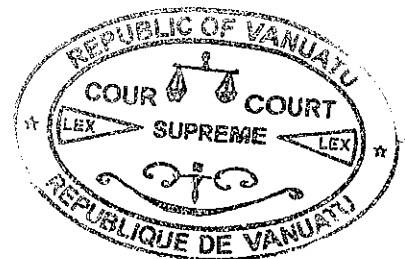
17. What I will say though is that in taking Ms Lengkon to Star Wharf you must have known that there was a high degree of likelihood that she would be threatened or hurt or both, which is exactly what happened. There is reference to threats to Ms Lengkon in the course of the offending. There was certainly the implied threats which accompany most kidnapping. There was also reference during the trip to Star Wharf of an intention to injure another person who have been critical of the drivers. That in itself would have been both distressing and terrifying for Ms Lengkon.
18. The Public Prosecutor refers to your actions having put Ms Lengkon in real danger of being injured or killed and I have already referred to that matter.
19. Mr Boe refers to the fact that it was a joint criminal enterprise being an aggravating feature. While the fact that there was more than one of you that may be an aggravating feature I do not regard it as a particularly significant one. But there was also reference to the fact that the offence was committed during the day time and of course to the effects upon the victim. They are two different issues. The fact that it occurred during day time is not particularly an aggravating feature. The fact that you walked into the victim's office in such a public area is testimony to your



swaggering arrogance in your approach to this offending. I accept, as I have said, that the incident will have a lasting and serious impact upon the victim.

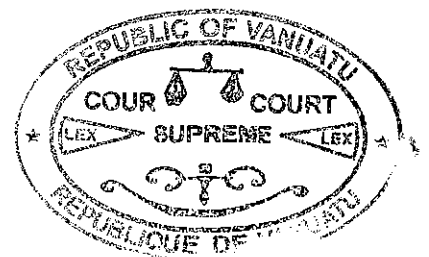
20. There is finally reference to the fact that none of you entered a guilty plea at the first opportunity. In that regard I wish to make it clear that that is not and cannot be regarded as an aggravating feature of your offending. It simply reduces the adjustment in sentence which would otherwise be available to you.
21. Mr Bal on your behalf focussed on the decision in the PP v. Kilman⁵ and I think he has done that for two reasons. Firstly, the fact that that case involved a plan to kidnap the President of the Republic and secondly, the fact that the offenders in that case received a suspended sentence of two years imprisonment. In fairness to Mr Bal he also recognises and refers to the subsequent cases of George and Moses which I have already referred to.
22. On your behalf Mr Bal emphasizes the fact that in this case there were no weapons involved and in addition the relatively brief period during which Ms Lengkon was detained. Both of those points are well made and distinguish this case from others that I have referred to. As you have heard me say to Mr Bal, he also refers to the fact that you have pleaded guilty at the first available opportunity. I wish to make it absolutely clear that you did not do that. The first available opportunity was on June 9th, when your pleas were first taken. You can gain very little credit for the entry of a guilty plea on the first day of the trial.
23. Mr Bal submits that an appropriate sentence would be one of 22 months on the kidnapping charge and 12 months on the unlawful assembly charges. He submits that the sentence should be suspended given the

5. [1997] VUCA 9.

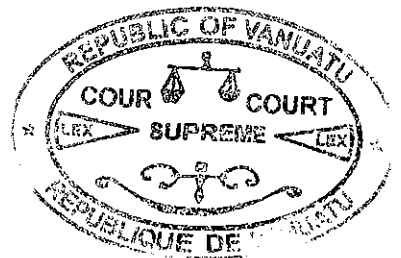


mitigating features referred to in his submissions and the personal circumstances of each of you which, as you have heard me say, I regard as being broadly similar.

24. Taking all matters into account including the aggravating features that I have identified, I consider an appropriate starting point on the leading charge of kidnapping to be one of two years and three months for Mr Kovoï, Mr Samuel and Mr Koro. An appropriate starting point for Mr Noal is one of two years and five months. I have a higher starting point for Mr Noal as these offences were committed by him while he was on bail and that is an aggravating feature which must be taken into account. I deduct three months for the entry of your guilty pleas on the first day of the trial as that reflects the fact the trial was shortened as was cross examination of the complainant by the entry of a guilty plea.
25. As you have heard me say however, I do not accept Mr Bal's submission that you are entitled to a deduction of one third for the entry of a guilty plea on the first day of your trial.
26. I make a further allowance of three months for Mr Kovoï, Mr Samuel and Mr Koro to take account of the fact that you are first time offenders and in the case of Mr Kovoï and Mr Samuel have expressed appropriate remorse. In the case of you Mr Koro although you have not expressed remorse as I have already referred to the fact that, at 58 years of age you are entitled to greater recognition for the fact that you have no previous convictions. In Mr Noal's case I allow only 2 months given what appears to be a clear lack of remorse and shifting of the blame onto your co-offenders. The unlawful assembly is a component of the kidnapping and therefore it is appropriate that a concurrent sentence should be imposed in respect of that charge.



27. Accordingly, that leaves the following sentences. For you Mr Noal, on the charge of kidnapping a sentence of two years imprisonment and a sentence of nine months' imprisonment on the unlawful assembly. In the case of Mr Kovoï and Mr Koro as sentence of one year and nine months imprisonment on the charge of kidnapping and a sentence of nine months' imprisonment on the charge of unlawful assembly. In the case of Mr Samuel a sentence of one year and nine months imprisonment on the charge of aiding and abetting kidnapping. These sentences are to run concurrently.
28. Having arrived at those sentences I then need to consider whether pursuant to sections 57 and 58 the sentences should be suspended in whole or in part. I take into account the matters set out in section 57 (1) (a)(1) to (3).
29. You are all the sole bread winners for your families and have no previous convictions. But that is common to many if not most offenders this Court deals with. There is no question and I accept, that a sentence of imprisonment will undoubtedly cause hardship to your families.
30. As against those considerations, this is a brazen and arrogant kidnapping which took no account of the potential dangers to the victim and was committed in central Port Vila in broad daylight. This did not involve the unthinking and impulsive action of youths. This involved a deliberate action by mature men in their 30's and in the case of you Mr Koro in your 50's. This was a classic example of offenders who felt that they were above the law and who could take the law into their own hands. There is an increasing level of public concern and disquiet regarding offending against women and I have reached the view that in this circumstance the Court must emphasize the deterrent element of sentencing to send a clear message that conduct such as this will not be tolerated.



31. For those reasons I am not prepared to suspend your sentences.
32. Accordingly to confirm, Mr Noal, you are sentenced to two years imprisonment on the charge of kidnapping and 9 months imprisonment on the charge of unlawful assembly.
33. Mr Kovoï you are sentenced to one year and nine months imprisonment on the charge of kidnapping and nine months imprisonment on the charge of unlawful assembly.
34. Mr Koro you are sentenced to one year and nine months imprisonment on the charge of kidnapping and nine months imprisonment on the charge of unlawful assembly.
35. Mr Samuel you are sentenced to one year and nine months imprisonment on the charge of aiding and abetting kidnapping.
36. The sentences of Mr Noal, Mr Kovoï and Mr Samuel are deemed to have commenced on August 30th 2016 and the sentence of Mr Koro is deemed to have commenced on September 28th 2016.
37. You have 14 days to appeal your sentences.

Dated at Port Vila this Monday 3rd day of October 2016

BY THE COURT

