

IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU  
(Criminal Jurisdiction)

Criminal  
Case No. 17/2887 SC/CRML

**PUBLIC PROSECUTOR**

**V**

**ADAMS LOPEZ**

*Date of Sentence:* 4<sup>th</sup> day of July, 2018 at 10:30 AM

*Before:* Justice David Chetwynd

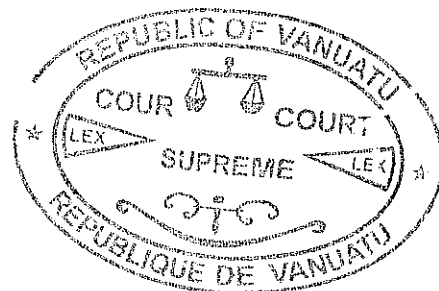
*Counsel:* Mr Simcha Blessing for Public Prosecutor  
Mr Colin Leo for Defendant

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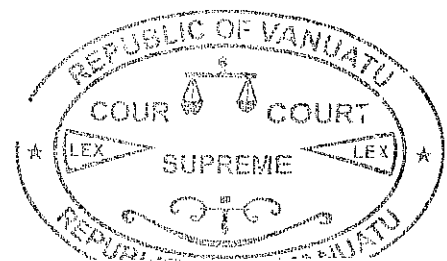
## SENTENCE

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1. The defendant, Adams Lopez, has been found guilty of an offence of intentional assault causing permanent injury contrary to section 107(c) of the Penal Code. The maximum sentence is 10 years imprisonment. An offence of this nature is obviously considered to be a serious offence.
2. The facts as found following trial are that the defendant came across the complainant by pure chance. The defendant walked up to the complainant and gave him what was described as a "baby slap". The defendant then walked back to his vehicle.
3. The complainant followed him and challenged him. The complainant dragged the defendant from the vehicle. The defendant, returned to the vehicle and took a knife which was on the dashboard.
4. There was then an exchange of punches and the defendant was pushed to the ground. It was then he started to wildly swing the knife around without any regard to what injuries he might cause. I held his actions were not in self-defence and that he was not provoked.



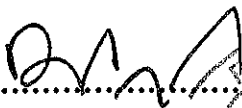
5. There is no doubt that that this was a serious offence. There was the deliberate use of a knife in the sense that the defendant made a conscious choice to take the knife and use it.
6. The starting point in this case is 3 years imprisonment. There is nothing personal to the defendant which further aggravates the offence. The defendant does have a previous conviction from 2008 but that can play no part in sentencing considerations.
7. This is because of the provisions of section 58 ZH of the Penal Code. Mr Lopez confirmed his conviction in 2008 and advised the Court he was sentenced to 12 months imprisonment. Accordingly, and pursuant to section 58 ZH (b) he was, as of right, rehabilitated sometime in 2015. Counsel should be prepared to advise a sentencing Court about section 58 ZH. It is important because as a result of being rehabilitated Mr Lopez is entitled to be treated as a man of good character. Probation Officers preparing pre-sentence reports should also mention the rehabilitation provisions in their reports. They will have ready access to information about convictions and sentences in the past.
8. In any event I would not have taken the previous conviction into account in this case, except as to character, because it was a conviction for an offence of dishonesty which has no real bearing on a conviction involving assault and violence.
9. I am also told that Mr Lopez has paid a substantial sum of money to the complainant. I will take that into account as satisfying the requirement of any reconciliation in custom and any civil liability for damages.
10. Taking these matters into consideration I can reduce, quite substantially, the sentence imposed on the defendant. I will reduce the sentence of 3 years by 1 year leaving a final sentence of 2 years.
11. As the defendant contested the charge he is not entitled to any deduction for an early plea. The end sentence is one of 2 years imprisonment.



12. I next consider whether the sentence should be suspended. Mr Lopez is an established business man and a net contributor to the community. Given his character I do not believe the defendant will be a danger to society. I consider his character to be such that he should be allowed remain at large in the community. The sentence of 2 years imprisonment will be suspended for a period of 3 years.
13. The defendant will also carry out 100 hours of unpaid work for the community and be subject to supervision by a Probation Officer for 12 months.
14. As a condition of bail the defendant was required to surrender his passport to the Chief Registrar of the Supreme Court. Having been sentenced he is entitled to have his passport returned and I order so accordingly.
15. The effect of a suspended sentence was explained to the defendant. He confirmed that he understood what was involved. He was also informed of his right to appeal both his conviction and sentence and the 14 day period for lodging any appeal will start to run when his counsel receives a copy of these written reasons.

**DATED at Port Vila this 5<sup>th</sup> day of July, 2018.**

**BY THE COURT**

  
.....  
**David Chetwynd**  
**Judge**

