

PUBLIC PROSECUTOR

- v -

**CHIEF SAM KASAURA (DOB 1946)
SAM KASARUA (DOB 1973)
NAONAPEK IAWIKO
RAKA NAWEI
ISUT NAWEI
TOMLE KATMATUM (NAWEI)
MATHEW NAWEI
MANASA IERU
ANDREW IERU**

Coram: Vincent Lunabek - CJ

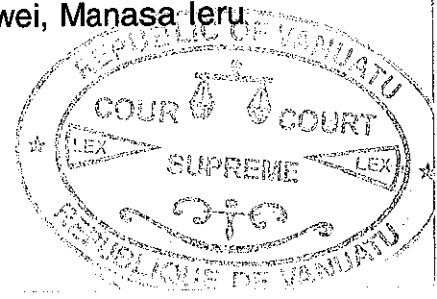
Counsel: Mr Philip Toaliu for Public Prosecutor
Mr Henzler Vira and Mr. Harrison Rantes for Chief Sam Kasaura
Mr Daniel Yawha and Ms Anna Sarrisets for 7 other Defendants

Date: 25th May 2018

SENTENCE

I. Introduction

1. This is the Sentence of each and all above named Defendants (Except defendant Isut Nawei whose trial was postponed for the reasons contained in the Minutes and Orders issued on 1 March 2018 at Isangel, Tanna and a separate trial will be managed according to his situation).
2. On 19th march 2018, you were all found guilty and convicted by the Court of the following offences after a week trial at Isangel, Tanna:
 - i. Chief Sam Kasaura of the offence of counselling and procuring Intentional Homicide, contrary to subsection 106 (1) (a) and section 30 of the Penal Code Act [Cap 135]; and
 - ii. Defendants: Sam Kasaura (Junior) Noanapek Iawiko, Raka Nawei, Tomle Katmatum (Nawei), Mathew Nawei, Manasa Ieru

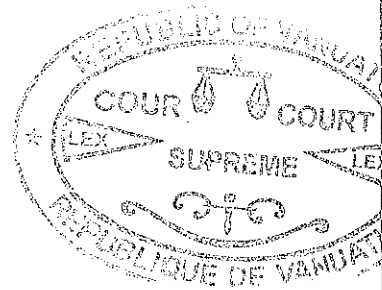


and Andrew Ieru of the offence of Intentional Homicide, contrary to s.106 (1) (a) of the Penal Code Act [Cap 135].

3. The detailed facts are contained in the reasons for verdict delivered at Isangel Tanna, on 19 March 2018. Suffice it to say this.
4. The offence occurred on 11th June 2017 at around 6.00am in the morning. The deceased was assaulted at his house.
5. Upon arrival at the hospital, the deceased was diagnosed with fresh bleeding and cuts through the left side of the head just above the ear and a scalp of skin cut through where the skull was visible at the back of the head.
6. X-ray also shows that there is a fracture at the left side of the deceased's head just above the ear.
7. Examination revealed that on arrival at Lenakel Hospital, late Sam Beau was already Brain Dead - irreversible brain damage causing the end of independent respiration rightly indicative of death.
8. The injuries sustained by late Sam Beau, as described above, resulted in his death and were caused by the accused persons.

II. Background Information and Facts on Sentencing

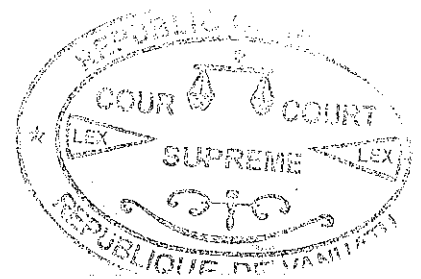
9. Before this tragic incident involving the homicidal attack on a member of village or community at Middle Bush, Tanna, a dispute arose at Kaunameiken village over corrugated iron sheets distributed after Cyclone Pam to the villages and communities. Sam Beau (deceased) and his family claimed that the iron sheets which were at Ieru's house were theirs. Sam Kasaura (Jnr.) and his family and other Defendants claimed that the iron sheets belong to Kaunameiken Community. The tensions between the family of the deceased and the members of the community under the custom authority of Chief Sam Kasaura (Snr.) were not limited to corrugated iron sheets but also to other community projects or properties (water tank tap).



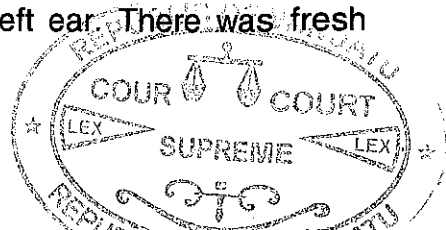
10. On 8 June 2017 in the afternoon, while Chief Sam Kasaura (Snr.), Noel, Iesut, Raka, Mathew, Dominique Dick and others prepared kava at Kaunameiken nakamal, someone shouted from Sam Beau's garden questioned "who brushed in the garden." It was discussed in the nakamal as to who shouted.
11. When the kava is ready Chief Sam Kasaura (Snr.) made the following statement: "*sipos ufala I meetim someone lo garden ia we I brush ufala I killem hem I dead*". (If you met someone who brushed in that garden, you kill him." When the statement was made no one else talked.
12. Domonique Dick was at Kaunameiken Nakamal with his grandfathers Chief Sam Kasaura and Chief Nanuman Peter, his uncles Noel, Iesut, Raka, Mathew and all his brothers in laws referring to Chief Sam Kasaura's family who were present at the nakamal at that time. They prepared and drunk kava when the statement was made. Chief Sam Kasaura could not have made this sort of statement to strangers at the nakamal. No one else at the nakamal talked after the statement was made. It was very serious and frightening. Dominique Dick was afraid of that statement. Dominique Dick understood the seriousness and gravity of what such a statement meant.
13. After the kava at Kaunameiken nakamal, later that evening of 8th June 2017, Dominique Dick brought some "Makas" kava to Sam Beau's nakamal and met the deceased at his nakamal. Dominique Dick told Sam Beau of the statement made by Chief Sam Kasaura. Dominique Dick told Sam Beau that if he wanted to go to the garden he must go with one or two of his sons.
14. A meeting was to take place on 11th June 2017 at Kaunameiken Village in the afternoon over the corrugated iron sheets disputed between Chief Kasaura and his family on behalf of the community on one side and Sam Beau (deceased) and his family on the other.
15. But in the early morning of 11th June 2017, Sam Beau sent his sons (Felix and Brian) to take the iron sheets to their house. Felix and Brian went to take the iron sheets and on their way to their house, Sam Kasaura (Jnr.) confronted them on the road at about 6.00 am leading to the first fight on the road at Kaunameiken village on that day.



16. Sam Kasaura (Jnr.) confronted them on the road on their way to their house leading to Felix Beau causing Sam Kasaura serious injuries on his body with a knife.
17. Sam Kasaura's wife, named Ruth Sam, witnessed the assault on her husband cried, shouted and called for help.
18. When Sam Ruth was calling for help, Felix and Sam who assaulted Sam Kasaura run away with Brian taking the direction of their father's house, Sam Beau (Deceased)).
19. Raka and Iesut were on the road at the first incident and helped Sam Kasaura chasing Felix and his brothers to their father's house.
20. Raka, Iesut and Andrew were among others who were at Kaunameiken Nakamal on 8th June 2017 when Chief Sam Kasaura made the call or order to kill a person in the deceased's garden.
21. Sam Kasaura was injured, angry and he chased the sons of the deceased and wanted to kill them. They run away following the road to their father's house.
22. Sam Kasaura came through the yard of the deceased with Raka Nawei and Iesut Nawei.
23. In the meantime, Sam Beau (deceased), his wife Rebecca and their youngest son Joseph Beau were in their kitchen preparing breakfast. They fried cold "laplap".
24. While in the kitchen, Felix and Sam Capen run passed them and told them "faet faet", and asked their parents to run away as others will kill them.
25. That was when Sam Beau, Rebecca and Joseph came out from their bush kitchen and wondered what happened.
26. Iesut Nawei followed Sam Kasaura and Raka with a knife and stick wood to Sam Beau's house. Others arrived soon after and grouped them together there at the deceased's yard.

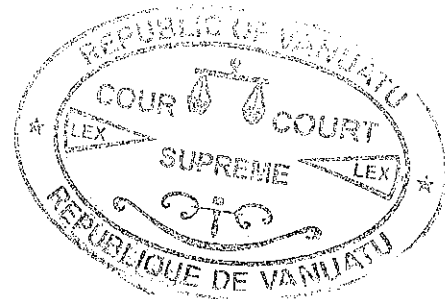


27. Rebecca and Joseph Beau run away. Deceased Sam Beau run into his bush kitchen and locked him up in the kitchen with his old mother Nauka.
28. The defendants while grouped together there made a statement that they must kill one today. They made the statement among themselves and they moved to take Sam Beau who they saw was running in the kitchen and locked him up in there.
29. The defendants did not focus anymore on the sons of the deceased who caused injuries on Sam Kasaura and run away. They concentrated then on their father (Sam Beau – deceased). Sam Kasaura tried to open the door of the kitchen but it was too strong. Sam Kasaura started to remove the coconut thatch leaves of the kitchen. He was assisted by Tomle Katmatum (Nawei) and Andrew Ieru to remove the coconut thatch leaves of the kitchen.
30. Sam Kasaura made a hole in the coconut thatch leaves; he saw Sam Beau was behind the door; he saw the back of his head, he then took a timber (2x2) and speared Sam Beau's back of the head. Sam Beau fell on the floor as a result.
31. Noanapek, then kicked the door and broke it open. Noanapek was the first Defendant to enter into the kitchen. Noanapek held his knife on that date after he changed his horses from the plantations. Noanapek went into the kitchen twice. The first occasion was when he kicked the door and went inside. Raka and Iesut followed Noanapek inside the kitchen. Sam Kasaura, Tomle, Mathew, Andrew and Manasah followed them. There were noises of them assaulting the deceased in the kitchen. Raka had an axe. Mathew had a knife, Manasa had a knife. Iesut had a knife and a stick. Sam Kasaura assaulted Sam Beau with a brick on his left ear. The size of the brick was big enough to cause serious injuries. The brick was reduced into pieces after its use.
32. Sam Kasaura did not ask Noanapek for help. Sam Kasaura did not ask Tomle, Mathew, Manasa, Andrew and Iesut for help. Noanapek, Raka, Iesut, Sam Kasaura, Tomle, Mathew and Manasa went inside the kitchen with knives, axe and stick (wood). The brick was already in the kitchen. Sam Kasaura assaulted the backside of Sam Beau's head causing him to fall on the floor. He also assaulted Sam Beau with a brick on his left ear. There was fresh



bleeding and scalp of skin cut through where the skull was visible at the back. These assaults and injuries on the body of the deceased Sam Beau were caused by any or all of the defendants.

33. Sam Kasaura, Raka, Iesut, Tomle, Noanapek and Ieru came back into the kitchen to assault to death the deceased. They were stopped. That was the second occasion when Noanapek went back into the kitchen.
34. As family and community members of Chief Kasaura, they decided to join Sam Kasaura (Jnr.) to retaliate and take revenge of what the sons of the deceased did to Sam Kasaura (Jnr.) on the deceased himself. They must have in mind of the chief Sam Kasaura's order to kill of 8th June 2017. That killing has to be executed. That killing was more probable than not that it would be against the deceased and his family. They decided to kill one on that day. They independently and together then joined with Sam Kasaura and decided to take the deceased Sam Beau and killed him.
35. The statement of Chief Sam Kasaura was a call or an order to kill a person. A person shouted or called out in that garden in the later part of the afternoon when Chief Sam Kasaura and others were in the nakamal drinking kava. The person who shouted in the deceased's garden towards those drinking kava at the nakamal must have been either Sam Beau or any member of his family. It is rational that the order to kill is intended to kill anyone on its face but on the particular circumstances of this case, it was more likely toward Sam Beau and any member of his family.
36. When the sons of the deceased runaway and the defendants could not find them, then, they decided and agreed that they: " *must kill one today*" and they referred to the deceased and his family while grouping together amongst themselves at the yard of the deceased. It is rational to say that they had in mind the order of their Chief to kill dated 8th June 2017, coupled with angeriness and frustrations that Felix assaulted Sam Kasaura with a Knife but they could not find Felix and his brothers. At that time, Raka had an axe, Andrew had a knife, Manasa had a knife, Mathew had a knife, Iesut had wood (stick).



37. The defendants agreed by their conducts or joined in this criminal enterprise to kill the deceased on 11 June 2017 as a combination of the execution of the order of Chief Sam Kasaura to kill dated 8th June 2017 and the retaliation in relation to the first incident on the road on 11 June 2017 at 6.00 – 6.30 am.
38. The above understanding or arrangements amongst all the defendants (including Sam Kasaura (Jnr.) or between some or other defendants and Sam Kasaura are rationally assessed from the circumstances of the present case. That understanding or arrangement amounted to an agreement between them to kill the deceased as a retaliation and revenge and also to execute the order of Chief Sam Kasaura of 8th June 2017.
39. The planning started on 8th June 2017. It was a plan to be executed and still pending. The incident that happened on the road between Felix and Sam Kasaura earlier on the 11th June 2017 had triggered what has planned on 8th June 2017. It is accepted as a fact that at that moment, it did not matter anymore that whether it was in the garden or at the deceased's home. The plan as done at Kaunameiken Nakamal on the 8th June 2017 was to kill someone at that garden. That garden refers specifically to the deceased Sam Beau's garden.
40. On 11th June 2017, that plan still stands and the incident between Felix and Sam Kasaura triggered it. It did not matter anymore at that point the killing must happen now because that earlier incident on the road triggered it.
41. The multiple prosecution evidences as accepted are proven facts to this effect. The defendants also stated that they were not happy and were angry because the sons of the deceased assaulted Sam Kasaura with a knife causing him injuries and they opened the water tap of the tank of the community (wasted water). The defendants knew that Sam Kasaura was going to kill Sam Beau. They deliberately joined him by making the statement to kill one (members of deceased family) today; they helped removing the coconut thatch leaves of the kitchen, kicking the door and breaking it open and entered inside the kitchen. They joined Sam Kasaura to assault Sam Beau to death. The plan of 8th June 2017 was executed by the defendants and Sam Kasaura on 11th June 2017 by the killing of Sam Beau, the deceased.



42. Chief Sam Kasaura (Snr.) had counselled or solicited and/or procured the killing of a person in his order of 8th June 2017 at Kaunameiken Nakamal to the defendants or some of them. Raka Nawei, Iesut Nawei, Andrew Ieru and other defendants who were at the Kaunameiken Nakamal when Chief Kasaura ordered the killing (common purpose) executed the killing with Sam Kasaura (Jnr.) or all defendants joined together in this criminal enterprise with Sam Kasaura as a group to execute the plan of killing (common purpose) on 11 June 2017.

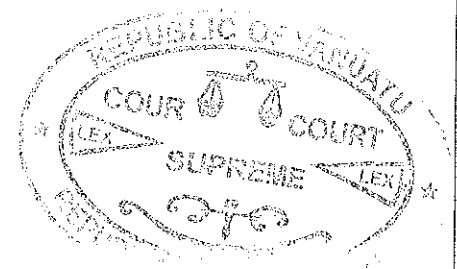
III. Pre-Sentence Reports

43. Pre-sentence reports are prepared in respect to each of you and filed by the Probation officers to assist the Court in your sentencing. I read and take them into account when I consider your respective sentences.

IV. Law and Seriousness of Offences

44. Defendants, Sam Kasaura (Jnr.), Noanapek Iawiko, Raka Nawei, Tomle Katmatum (Nawei), Mathew Nawei, Manasah Ieru and Andrew Ieru, you have committed the offence of Intentional Homicide, contrary to s.106 (1) (a) of the Penal Code Act [Cap 135].
45. Defendant Chief Sam Kasaura, you have committed the offence of counselling and procuring Intentional Homicide, contrary to subsection 106 (1) (a) and section 30 of the Penal Code Act [Cap 135].
46. The offences you have committed are very serious offences. To have an idea as to how the nature of these offences are very serious indeed, we have to set out their respective maximum penalties that parliament which makes the law set them-
47. S. 106 (1) (a) provides:

"Intentional Homicide



(1) No person shall by any unlawful act or omission intentionally cause the death of another person.

Penalty: (a) If the homicide is not premeditated, imprisonment for 20 years;

..."

48. In this case, the principle offence is intentional homicide. Chief Sam Kasaura was found guilty and convicted of complicity in the commission of the principle offence under section 30 which provides:

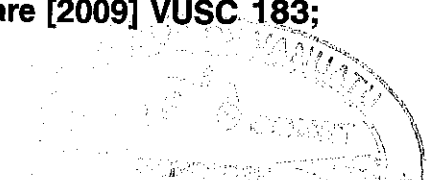
"Complicity

Any person who aids, counsels or procures the commission of a criminal

offence shall be guilty as an accomplice and may be charged and convicted as

a principal offences."

49. So here, the maximum penalty is the same as that of the principal offence of intentional homicide under s.106 (1) (a) of 20 years imprisonment.
50. The statutory maximum penalties prescribed by the legislature (Parliament) manifest its policy in the enactment of the maximum penalty which may be imposed. They are very serious offences. Intentional Homicide falls within the classification of the most serious criminal offences.
51. The nature and the seriousness of the offending warrant that a custodial sentence must be imposed upon each of you.
52. As I said previously and repeated again here that criminal sentencing exercise is not an easy task when giving punishment. The purposes of criminal punishment are various: protection of the society, deterrence of the offender and of others who might be tempted to commit the same type of offence, retribution and reform. They can overlaps and none can be considered in isolation from the others when determining what an appropriate sentence is in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions. **[PP -v- Ware [2009] VUSC 183;**



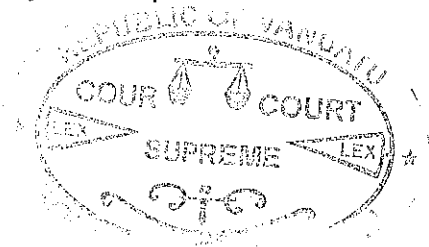
Criminal Case 82 of 2008 (26 February 2009 – referring to Veen –v- The Queen (No.2) (1998) 164 CLR 465].

53. As I assess earlier, the nature and circumstances of the offending in this case will be a custodial sentence. In **Morris Ben –v- Public Prosecutor [1993] the Court of Appeal referring to Veen –v- The Queen (No.2) (1998) 164 CLR,** stated the purpose of imposing a custodial sentence in this way:

“The purpose of imposing custodial sentence is not only to protect society from the prisoner, but also to punish the prisoner for his crime. Whilst it is clear that a judge may take into account the needs of society it is not appropriate to increase the sentence purely of the protection of the society. A judge should not impose sentence longer than that which is appropriate in the circumstances of the case simply for the purpose of protecting the society, although the protection of the society is a matter to be considered in imposing the sentence.”

V. Submissions of Prosecution and Defence Lawyers on appropriate sentence

54. The prosecution and your respective lawyers made submissions with comparable case authorities to assist the Court in your sentencing.
55. I read and consider these submissions and case authorities referred to when I consider your sentencing and what will be the appropriate sentence in this type of offending.
56. The prosecution submitted that the appropriate starting point sentence for the principal offenders of intentional homicide should be of 18 years imprisonment (inclusive of aggravating factors) relying on **Public Prosecutor –v- Namuly [2011] VUSC 5; Criminal Case 114 of 2010 (11 February 2011)** and applying the Court of Appeal judgment in **Public Prosecutor –v- Andy [2011] VUCA 14**. And the prosecution submitted also on the same approach and case authorities (**PP –v- Namuly and PP –v- Andy**) that the starting point sentence of Chief Sam Kasaura should be of 8 years imprisonment and after some deductions for his old age, an end sentence of 6 years imprisonment should be imposed.

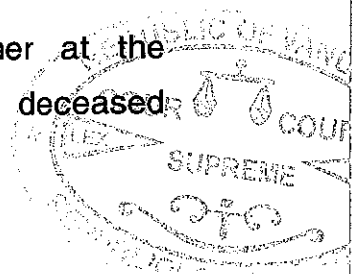


57. Mr. Rantes relying on **Public Prosecutor –v- Tupum [2003] VUSC 93** submitted that the starting point sentence for Chief Sam Kasaura should be 7 years imprisonment instead of 8 years in the case of Tupum as defendant Chief Sam Kasaura gave the order to kill 3 days before the actual action and he was not at the crime scene to give orders to kill on 11th June 2017.
58. Mr. Daniel Yahwa on behalf of the other Defendants referred to the case of **Public Prosecutor –v- Andy [2011] VUCA 14** as the correct approach to sentencing. He then relied on **Public Prosecutor –v- Sawan and others (Criminal Case 199 of 2002)** which was referred to by the Defence in their submissions in **Public Prosecutor –v- Paul Ware [2009] VUSC 183**. In **PP – v- Sawan and others (Criminal Case 199 of 2002)**, the Court stated:
59. *“Where the homicide is committed by two (2) or more men acting together, the starting point is 15 years...The offence of intentional homicide should in any event be treated as aggravated by any of the following factors:*
- 1) *Violence is used*
 - 2) *A weapon is used to commit the offence*
 - 3) *The Defendant has previous convictions for serious intentional assault or intentional homicide.”*
60. Mr. Yawha submitted that the appropriate starting point sentence for the defendants convicted of the offence of intentional homicide in this case should be 15 years based on **Public Prosecutor –v- Sawan and others (Criminal Case 199 of 2002)** and further deductions for mitigating factors and an end sentence of 11 years and 10 months and 6 days (inclusive of time already spent in custody during the remand periods).

VI. Relevant Aggravating Factors relating to circumstances of offending

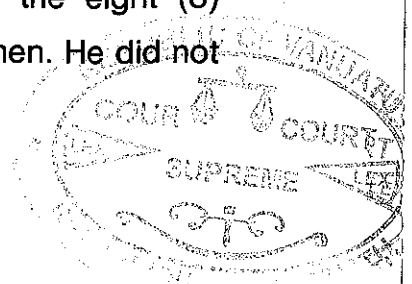
61. The following aggravating features accompanied the crimes committed by the defendants on 11th June 2017 at Kaunameiken Village, Middle Bush, Tanna:

- 1) There was violence used. Defendants grouped together at the deceased's yard. There was assault on the son of the deceased.



(Joseph Beau). They created a situation of terror when they entered into the deceased's yard on the morning of 11th June 2017. People were afraid of them. They assaulted the deceased with a timber (2x2) on the back of his head; they assaulted the deceased on his left head; they assaulted the deceased on his left ear side of his head. They assaulted the deceased on the head fracturing the skull of his head. Lots of bleeding (loss of blood and very serious injuries). The deceased was diagnosed brain dead. He died as a result of the assaults on his body.

- 2) There were weapons used at the time of offending on 11th June 2017 such as knives, axes, woods (sticks), timber size (2x2) and a brick on the body of the deceased causing serious injuries resulting in his death.
- 3) Trespass into the yard and home of the deceased. Defendants trespassed into the yard and home of the deceased when they looked for the deceased's son. They trespassed with the weapons such as knives, axes and woods (sticks). The deceased and his family were no longer safe in their home where they should be. The deceased and his wife and younger son were terrified by the actions of the defendants at their home that morning when they prepared their breakfast. Joseph Beau and Rebecca Beau run away to save their life. The deceased and his old mother run away into the kitchen and the deceased locked the door of the kitchen from the inside for their protection and safety.
- 4) Defendants committed the offence of intentional homicide jointly and together as a group. They decided to kill one of the members of the deceased's family. They saw the deceased running into and locked him up in his kitchen and they killed him.
- 5) They destroyed his kitchen (property) by removing coconut thatch leaves and by kicking the door and broke it open while the deceased locked him up in the kitchen with his old mother.
- 6) The deceased was an old man. He was older than the eight (8) defendants. They grouped together to kill him in his kitchen. He did not

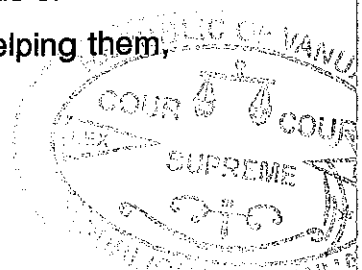


have anyone help defending him against each and all eight (8) defendants together.

- 7) The Defendants killed the deceased in front of his old mother in the kitchen. The old woman was terrified. She tried not to see what the defendants did to her son. She covered her face with a tissue – calico. She tried to hide her face. She cried and lay on the side of the body of the dead son.
- 8) The Defendants took the law into their hands to do justice to themselves. They should seek other peaceful and lawful avenues to deal with their anger and frustrations. Even before the fight on the main road at Kaunameiken Village (or after the first fight), Sam Kasaura should report the actions of the sons of the deceased to the police. He and others or with others took the law into their own hands by chasing the sons of the deceased with weapons such as axe, knives and wood but because the sons of deceased run away, they put their frustration and revenge on their old father and killed him in his kitchen. These actions are against the law.

62. In respect to the offence of counselling and procuring intentional homicide, the following aggravating factors occurred:

- 1) A custom (traditional) nakamal such as Kaunameiken Nakamal – is a place of traditional authority of custom, peace and unity under the authority of a chief. The authority of a chief has to be a positive and leading authority to do good things but not to do the bad and wrong things. A nakamal is **not** a place for a chief to counsel and procure criminal offences. Chief Sam Kasaura counselled and procured intentional homicide in his Nakamal on 8 June 2017.
- 2) The order to kill was given or made in the Nakamal to others and mostly young people. These people, young or mature, respect and obey orders of their chief. They ended up committing serious offences. They destroyed their life and that of their family instead of helping them, helping their villages and communities and their nation.



63. I consider the nature and circumstances of the offending including the above aggravating features. The following are appropriate sentences for the offences in this type of case:

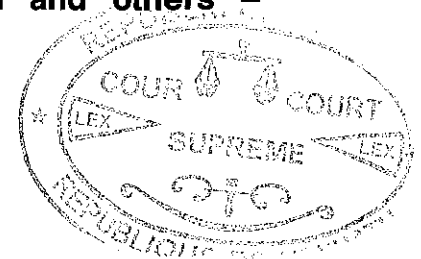
- 1) The appropriate starting point sentence for the offence of intentional homicide is 18 years imprisonment;
- 2) The appropriate starting point sentence of the offence of counselling and procuring intentional homicide in the particular situation of accessory before the facts as in this case is between 6- 8 years.

VII. How liability of each participating defendant assessed in this case?

64. All the Defendants participated in a joint criminal enterprise. They are equally guilty of the crime of intentional homicide, and subject to the same maximum penalty, regardless of the role played by each in the crime's commission. A person convicted of a crime due to the application of the doctrine of extended common purpose can be subject to the same maximum penalty if he or she foresaw the crime committed by the principal, or subject to the maximum penalty for the crime that they foresaw. The secondary party may not know of, or foresee, the principal offender's intention but may foresee the possibility of a crime as an incident to the common design.

65. However, despite each participating defendant to a particular joint enterprise or particular extended common purpose being equally liable for the same crime and subject to the same maximum penalty, it will often not to be appropriate to give each participating defendant the same sentence [**Lowe v The Queen (1984) 154 CLR 606**].

66. The Prosecution in their additional submissions highlighted the basis on the principle of proportionality borne out of the common law that the punishment must fit the crime. The principle requires that a sentence should be neither exceed nor be less than the gravity of the crime having regard to the objective circumstances **Public Prosecutor v Kalosil and others – Sentence [2015] VUSC 149**.



67. It has been held that the role each Defendant plays in an offence of intentional homicide is crucial to assessing their respective culpability. [**Lowe v The Queen (1984) 154 CLR 606; R v Howard (1992) 29 NSWCCA 242; Carruthers v R [2007] NSWCCA 276**].
68. The following shows the degree of involvement of each of the defendant in the commission of the offence of intentional homicide on 11th June 2018.

Defendant Sam Kasaura (Junior)

69. On 11th June 2018, earlier in the morning of that day, before the serious attacks resulting on the death of Sam Beau at Kaunameiken Area, Middle Bush, Tanna, he was involved in a physical confrontation (fight) over the corrugated iron sheets on the main road at Kaunameiken Village with the sons of the deceased.
70. He chased them to the house of their father (deceased). When he arrived at the deceased's yard, he along with the other defendants run towards the deceased's kitchen. He was helped by Tomle and Manasah to remove the coconut roof thatches of the kitchen. He made a hole in the roof thatches of the kitchen. He picked up a 2.2 timber and threw it at the deceased's head. The timber hit him at the back of his head. He then entered the kitchen after Noanapek kicked open the door. He picked up a brick and smashed it against the left side of the deceased's head while the deceased was lying down.
71. Sam Kasaura (Jnr.) was the main offender (or the dominant party in this criminal joint enterprise). On this basis, he is more culpable than any of his co-offenders who joined in at the start or once the attacks had started.
72. Sam Kasaura is sentenced to 18 years imprisonment as a starting point sentence.

Defendant Raka Nawei

73. He arrived on the first incident on the road. He told Felix to put down the knife. He then along with Sam Kasaura chased Felix and Sam Capen to their father's house. He did not have a knife at that time. He also was at the deceased's house and joined Sam Kasaura and the other defendants as they

ran towards the deceased's kitchen. He picked up an axe outside the kitchen and entered the kitchen with it after Noanapek had kicked it open. He was not verbally asked by Sam Kasaura to assist him. His presence however is regarded as assisting Sam Kasaura. He was inside the kitchen when Sam Kasaura smashed the deceased's head. He assisted and supported Sam Kasaura in the commission of the offence.

74. I assess Raka Nawai's participation in this joint criminal offence and sentence him to 8 years imprisonment as a starting point sentence.

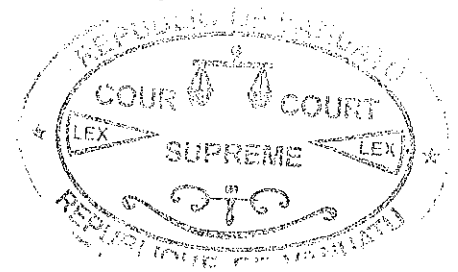
Defendant Tomle Katmatum (Nawai)

75. He ran after Raka and Sam Kasaura to Sam Beau's house. When they arrived at the house, he, Raka and Isut said *"they must kill one today."* They were referring to Sam Beau's family when they saw that Felix and Sam Capen were not there. Tomle then along with the other men ran into the deceased's yard. He assisted Sam Kasaura in removing the coconut leaves to the bush kitchen roof. He went into the kitchen after the kitchen door was kicked open by Noanapek lawiko. He has aided and also supports Sam Kasaura in removing the thatched leaves so he could stone the deceased and also was inside the kitchen indicating his support and participation in the commission of the offence.

76. I sentence him to 12 years imprisonment as a starting point sentence.

Defendant Manasah Ieru

77. He ran after Raka and Sam Kasaura to Sam Beau's house. He was spotted in the kitchen with the other defendants when Sam Kasaura went inside and smashed the brick on the deceased's head. He was also with the other defendants inside the deceased's yard running towards the deceased's bush kitchen shouting *"Hemia longwe umi go kilim dead hem."* He had a knife on when they entered the kitchen. Sam Kasaura did not ask for his help. He voluntarily joined in. He also aided Sam Kasaura in that he took his knife and cut the coconut leaves of the thatched roofing on the deceased's kitchen before they entered the kitchen. He also supported Sam Kasaura by entering



the kitchen with him when Sam Kasaura went and smashed the brick on the deceased's head while he was lying down.

78. I sentenced him to 12 years imprisonment as a starting point.

Defendant Andrew Ieru

79. He ran after Raka and Sam Kasaura to Sma Beau's house. He also was present with the other defendants when they entered the deceased's yard on that day. He also joined others inside the deceased's yard when they ran towards the deceased's kitchen. He also entered the kitchen with Sam Kasaura after Noanapek kicked open the door. He was inside the kitchen when Sam Kasaura smashed the brick on the deceased's head. He told the other defendants to kill Joseph Willie too and Joseph Willie ran away. He showed support for Sam Kasaura by running with him into the deceased's yard and then entering the kitchen with him when Sam Kasaura threw the brick against the deceased's head.

80. I sentence him to 8 years imprisonment as a starting point.

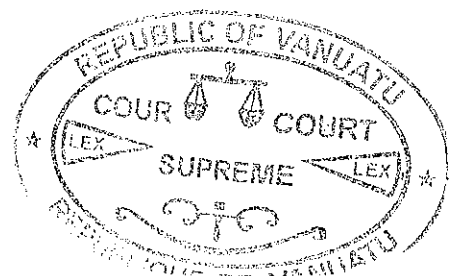
Defendant Mathew Ieru

81. He ran after Raka and Sam Kasaura to Sam Beau's house. He had a knife and also entered the kitchen to assault the deceased with other defendants. He was also seen running towards the deceased's kitchen with the other defendants inside the deceased's yard. This shows his support for the defendant he was also seen inside the kitchen when Sam Kasaura smashed the brick against the deceased's head.

82. I sentence him to 8 years imprisonment as a starting point.

Defendant Noanapek Iawiko

83. Noanapek ran after Sam Kasaura after the first incident and arrived shortly after Sam Kasaura had arrived at the deceased's house. He joined the rest of the defendant who run into the deceased's yard. He was the one who kicked the kitchen door open and Sam Kasaura and the other defendants entered the



kitchen. He was the one who caused the door to open up and allow the rest of the defendants inside the deceased's kitchen.

84. I sentence him to 12 years imprisonment as a starting point.

Defendant Chief Sam Kasaura (Senior)

85. I consider Chief Sam Kasaura's liability as accessory before the facts. I assess his culpability and sentence him to 6 years imprisonment as a starting point.

VIII. Relevant Aggravating and Mitigating Factors relating to each Defendant

86. I now turn to aggravating and mitigating factors relating to each defendant. There are no aggravating factors personal to each defendant. Each defendant has no past record (no previous conviction). They are all first time offenders.

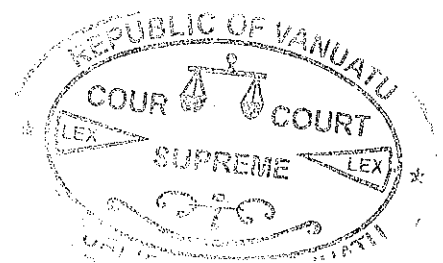
87. I read and consider what your respective lawyers say on behalf of each and all of you. Mr. Yawha also refers to the principle of proportionality and the case on the point: **Public Prosecutor v Kalosil and others – Sentence [2015] VUSC 149**. The following mitigating factors can be noted in respect to each defendant.

1. Chief Sam Kasaura

- You are a first time offender;
- You are an elderly man of 72 years old;
- You show sign of remorse when questioned by the probation officer;
- You were in custody since April 2018.

2. Noanapek Iawiko

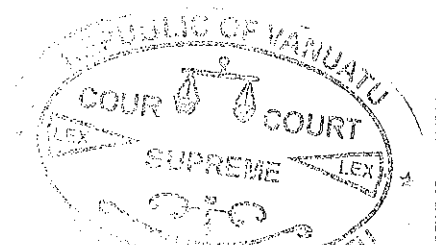
- You are 26 years of age. You come from Kaunameiken Village, Middle Bush, Tanna;
- Your married with 5 children;



- You completed your primary school in grade three (3) at the Lousula Primary school and never attended any more educational institution;
- You have the skills to build traditional houses and gardening;
- You cultivate taro, kava and other cash crops to gain income to support your family;
- Prior to the incident you were working at the White Grass plantation to support your family, particularly your children's school fees and other family needs;
- You associate with elderly members of the village who believe in custom rules;
- You are a quiet person who prefers to be alone with your family;
- You are a first time offender;
- You are the only bread winner of the family of five (5) children and three (3) go to school;
- You were remanded since 19th March 2018 with good compliance.

3. Raka Nawei

- You are assumed to be in your late 40's;
- You married with three (3) children;
- You are an ordinary member of the community and involves a lot in community projects;
- You attended your primary level of education at the Middle bush primary school, and can only reach class/grade three (3), due to shortage of school fees;
- You are the sole bread winner of the family;
- You are an active member in the community;
- You do not consume alcohol or smoke cigarette;
- You are a member of the apostolic church of Vanuatu;
- You are a first time offender;
- You were remanded since 19th March 2018 with good compliance;
- You regretted being at the scene of the crime;



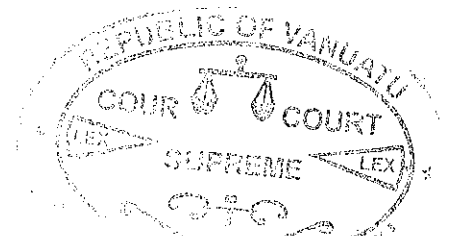
- You are remorseful for what happened that day.

4. Tomle Katmatum

- You are 43 years of age;
- You are married with Four (4) children;
- You are a member of the Bahai Faith (Religion);
- You were remanded since 19th March 2018;
- You are a first time offender;
- You are remorseful to what you witnessed that happened that day;
- You are motivated to undertake community based sentences such as supervision and community work to help address your offending behaviour and any other rehabilitation programs.

5. Mathew Nawei

- You are 20 years of age;
- You maintain good relations with your chief and community members;
- Your mother has passed away and you remain at home to look after your father;
- You are a first (1st) time offender;
- You are remorseful for what you did and said not to re-offend again in the future;
- You were remanded for 16 days since the verdict on the 19th March 2018 but you had been remanded before on 14/06/2017 for two (2) months and 17 days before returning to Tanna to await trial at Isangel, which totalled to two (2) months and 33 days spend inside the remand unit;
- You are motivated to undertake any community based sentences such as community based sentences such as community work and supervision as a form of punishment for the wrong you had committed as a second chance.



6. Manasa Ieru

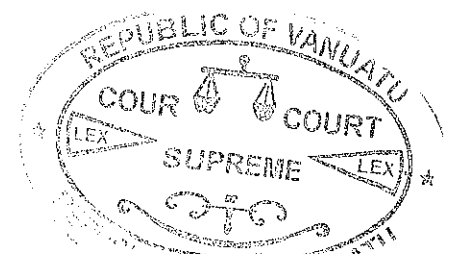
- You are 19 years of age;
- Your parents are very old;
- You are the Church of Christ (COC) Youth leader in your community;
- You were remanded in custody on the 19th of June 2017 to the 23rd of March 2017, when you were granted release on bail;
- However on the 19th of March 2018, you were remanded again until appearing for sentencing;
- You are a first time offender at the age of 18 when you committed the offence.

7. Andrew Ieru

- You are 21 years of age;
- You are the sole income earner of the family and meet any financial issues that arise in your family since you are the only son in the family;
- You are motivated to undertake any community based sentences such as community work and supervision as a form of punishment for the wrong you did, as a second chance.

8. Sam Kasaura (DOB 1973)

- You are 45 years of age;
- You are married to Mrs. Ruth Sam with five (5) children;
- You are a leader in your community;
- You are a first time offender;
- You were remanded in custody for a period from 14th June 2017 to the 20th July 2017, bailed then remanded again on 19th March 2018 until present day with good compliance;
- You accepted your wrongful actions contrary to the law in a sympathetic lower tone of voice reflecting remorse;



- You are motivated to any community based sentence to help address your offending.

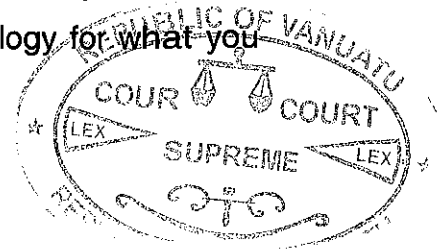
IX. Balancing exercise between Aggravating and Mitigating Factors and Cross Referencing to and on each other in respect to sentence of each defendant.

88. **Defendant Chief Sam Kasaura**, I take into account of the following three factors: Your good character, remorse and your old age. This represents a deduction allowance of 2 years of your sentence of 6 years imprisonment. Your end sentence is 4 years imprisonment. You have spent a total of two months in pre-trial custodial periods since April 2018. This will be taken into account in your favour either by deducting it to your end sentence or to make your sentence effective from April inclusive of time already spent in custody.
89. **Defendant Noanapek lawiko**, I take into account of the following factors: your good character, some remorse as showing insight of your offending and you are a first time offender and with no previous conviction. I give you a total allowance of 2 years to deduct from your sentence of 12 years imprisonment. Your end sentence is 10 years imprisonment. You have spent a total of 2 months and 6 days pre custodial period. This will be taken in your favour either by deducting from your end sentence or by making your sentence effective from a specific date.
90. **Defendant Raka Nawei**, I take into account of the following factors: your good character, show some remorse of your offending, you are a first time offender and you have no previous convictions. You regret and want to change. I allow you a total of 2 years deduction from your sentence of 8 years imprisonment. Your end sentence is 6 years. You too were remanded on 19 March 2018 witch is 2 months and 6 days. It will either be deducted from your end sentence or your sentence will start effectively from a specific date..
91. **Defendant Tomle Katmatum (Nawei)**, I take into consideration your good character, some sign of remorse and regret of what happened. You are a first time offender and you do not have any previous conviction. An allowance of 2 years is to be deducted from your sentence of 12 years. Your end sentence is



10 years. You were remanded in custody from 17 June 2017 to 3 September 2017 (2 months and 16 days) and released on bail. You were remanded again on 19 March 2018 until you are sentenced today (2 months and 6 days). The total period you have already spent in custody is 5 months and 22 days. This will be deducted from your end sentence.

92. **Defendant Mathew Nawei**, I take into account of your good character, some remorse on your part and regret of what happened. You are a first time offender with no previous conviction. An allowance of 2 years is given to you to be deducted from your sentence of 8 years imprisonment. Your end sentence is 6 years imprisonment. You have already spent a total of 1 month and 3 days in custody which will be deducted from your end sentence or your sentence will be effective from a specific date.
93. **Defendant Manassa Ieru**, the following factors will be taken into account, your good character, your young age (18 years at time of offending), you are a first time offender with no previous conviction. I will give you a substantial allowance of 4 years to reflect your young age and immaturity as you may be easily influenced by the actions and behaviours of those older than you. Your end sentence is 8 years imprisonment. You have already spent some time in custody before you are sentenced today (14 June 2017 – 20 July 2017 and 19 March 2018 - 25 May 2018) which is a total period of 3 months and 12 days. That period will be taken into account in your sentencing.
94. **Defendant Andrew Ieru**, the following factors will be taken into account: your good character and remorse, you are a first time offender; you do not have any previous conviction. I will give you an allowance of 2 years to be deducted from your sentence of 8 years imprisonment. Your end sentence is 6 years imprisonment. You have already spent 3 months and 8 days in custody before you are sentenced. This will be deducted from your end sentence or your custodial term sentence should be effective from a specific date.
95. **Defendant Sam Kasaura**, the following factors will be taken into account: your good character, remorsefulness and your acceptance of wrongdoing and guilt and your readiness to perform custom reconciliation ceremony and your apology. You asked and you personally repeated your apology for what you



did to the victims and the court. I give you an allowance of 3 years to be deducted from your sentence of 18 years. Your end sentence is 15 years imprisonment. You have already spent 4 months and 7 days in custody before sentence. This will be taken into account in your favour by deducting it from your end sentence.

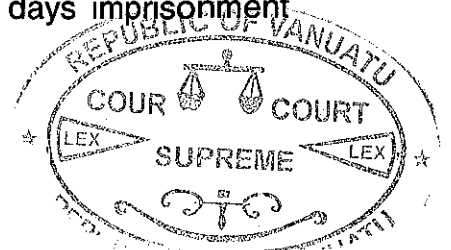
X. Sentence Suspension considered

96. I consider whether the sentence of each defendant could be suspended. The nature of the offences and the circumstances of the offending in this case do not justify the suspension of sentence imposed on any or all defendants.

X. Sentence Orders

96. Each defendant shall serve following imprisonment terms as ordered:

1. Chief Sam Kasaura (Senior) - 4 years imprisonment which is deemed effective from 1 April 2018.
2. Sam Kasaura (Junior) – 14 years and 7 months and 23 days imprisonment with immediate effect.
3. Noanapek Iawiko – 9 years and 9 months and 24 days imprisonment with immediate effect.
4. Tomle Katmatum (Nawei) – 9 years and 6 months and 8 days imprisonment with immediate effect..
5. Manassa Ieru – 7 years and 8 months and 18 days imprisonment with immediate effect.
6. Raka Nawei – 6 years imprisonment which is deemed effective from 19 March 2018
7. Mathew Nawei – 5 years and 10 months and 23 days imprisonment with immediate effect.

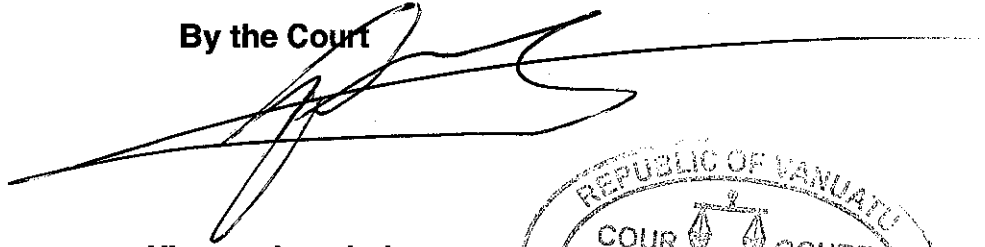


8. Andrew Ieru – 5 years and 8 months and 22 days imprisonment with immediate effect.

97. Each defendant has 14 days to appeal against his sentence if he is not satisfied with it.

Dated at Port Vila, this 25th day of May 2018.

By the Court



**Vincent Lunabek
Chief Justice**

