

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

**Criminal**  
**Case No. 18/982 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: George Junior Naio**  
Defendant

*Date:* Wednesday, 30 May 2018  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Ms L. Lunabek for the Public Prosecutor  
~~Mr F. Tasso for the Defendant~~

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**SENTENCE**

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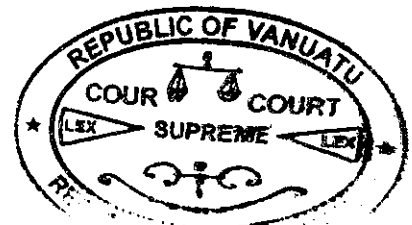
A. Introduction

1. Mr Naio has pleaded guilty to:

1 - Causing Death by Reckless Driving, laid contrary to section 12 of the Road Traffic (Control) Act [Cap 129]. The maximum sentence for this offence is a term of 5 years imprisonment and/or a fine of VT 500,000.

3 – Driving under the Influence of Drink, laid contrary to section 16 of the Road Traffic (Control) Act [Cap 129]. The maximum sentence for this offence is a term of 1 month imprisonment and/or a fine of VT 10,000.

4 – Driver to have a Driver's Licence, laid contrary to section 42 of the Road Traffic (Control) Act [Cap 129]. The maximum sentence for this offence is a term of 1 month imprisonment and/or a fine of VT 10,000.



5 – Driving with Expired Learner Driver’s Licence, laid contrary to section 42(1) of the Road Traffic (Control) Act [Cap 129]. The maximum sentence for this offence is a term of 1 month imprisonment and/or a fine of VT 10,000.

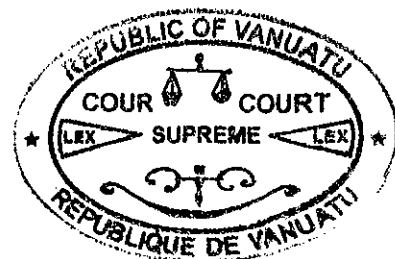
2. I note that section 55 of the Road Traffic (Control) Act also permits this Court to disqualify Mr Naio from holding or obtaining a driving licence in respect of charges 1 and 3 for a period of up to 5 years.

B. The Facts

3. There was a fatal accident on Elluk Road at about 11pm on 10 March 2018.
4. Mr Naio was driving a green Hyundai bus Registration no. 16916, having earlier been drinking with friends, including the deceased. Mr Naio suggested to the others that they go for a ride in his bus; and the three men continued to drink. Mr Naio was showing off to his friends by travelling at high speed, even though the road was wet and the deceased protested.
5. A car pulled out of the entrance to Vate Industries onto Elluk Road, at the same time as Mr Naio’s bus had to swerve left to avoid road construction works. Mr Naio’s bus hit the oncoming car a glancing blow, despite efforts by the car driver to avoid the bus.
6. The bus spun and rolled, out of control, at high speed across Elluk Road and hit the sign to the Ramada Inn and a fence before stopping.
7. Mr Naio and one of his friends immediately bolted.
8. The third passenger was hanging out the front window of the bus, not moving. The occupants of the car went to his assistance and pulled him out of the bus and gave mouth-to-mouth resuscitation – but, even with the assistance of emergency medical officers, the passenger was unable to be revived and died at the scene from head injuries and loss of blood.
9. Later enquiries confirmed that Mr Naio had been drinking and was intoxicated; and that he only held an expired Learner’s driving licence.

C. Submissions

10. The prosecution pointed to 5 precedent authorities as to the appropriate level of sentencing for Mr Naio:
  - *PP v Kanas* [2010] VUSC 5
  - *PP v Joseph* [2009] VUSC 22
  - *PP v Nawia* [2010] VUSC 52
  - *PP v Kaltang* [2002] 9
  - *PP v David* [2012] 166.



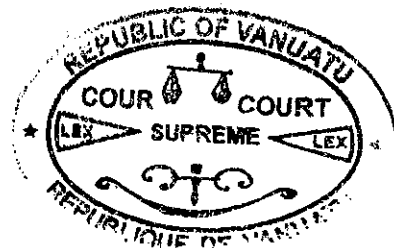
11. Mr Tasso further referred to *Jenkison v PP* [2000] 5.
12. The cases indicate a common start point for sentence of between 2 to 3 years imprisonment, depending on the particular facts of the case; and suspension of sentence on occasions.

D. Starting Point

13. The prosecution pointed to the following aggravating factors:
- Mr Naio was aware of the risks involved in driving in this fashion
  - Mr Naio did not hold an appropriate driver's licence
  - Mr Naio elected to drive his friends while under the influence of alcohol, and
  - Mr Naio was warned of the dangers by the deceased, but went ahead anyway.
14. I consider all those points are valid, but are really part of the reason these particular charges were laid. To my mind they do not aggravate the nature of the offending or escalate Mr Naio's criminal culpability.
15. The prosecution submitted that the appropriate starting point in terms of Step 1 of *PP v Andy* [2011] VUCA 14 was in the order of 2 to 3 years imprisonment.

E. Personal Factors

16. In terms of step 2 of *PP v Andy* Mr Tasso made the following points:
- Mr Naio is only 22 years of age, unemployed and residing with his parents
  - Mr Naio has no previous convictions
  - Mr Naio has co-operated fully with police enquiries
  - Mr Naio is extremely remorseful – the deceased was a very good friend and Mr Naio acknowledges his acts caused his friend's death
  - Mr Naio was remanded in custody for a month before being granted bail
  - Mr Naio has a good work history and has strong community support
  - Mr Naio has performed a reconciliation ceremony with the family of the deceased; and has made substantial reparation.



F. Pleas

17. Mr Naio pleaded guilty at the first available opportunity. The discount available to him for that is a maximum of one-third of the sentence: see *PP v Andy*.

G. Sentences

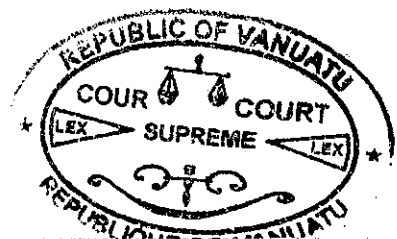
18. The main purposes and sentencing principles in this type of offending are to:

- hold the offender accountable for his exceedingly negligent conduct and the harm done
- promote a sense of responsibility for the harm done
- provide for reparation
- denounce the conduct
- deter the offender and the public at large from this type of behaviour
- protect the community
- assist in the offender's rehabilitation and re-integration
- take into account the gravity of the offending
- take into account the seriousness of the offending in comparison with other offending, and
- consider consistency of sentencing and parity of sentences.

19. The driving in this instance was very poor. Mr Naio should have known better than to drive while under the influence of alcohol; and to keep drinking while driving is an aggravating factor to his criminal culpability. That is further compounded by Mr Naio's insistence to not allow passengers to alight and to continue to speed. A valuable life was lost as a direct result of this conduct – and Mr Naio knows how valuable that life was, as it was his close friend who suffered as a result of his acts.

20. I set the start point for sentence at 30 months imprisonment, taking both lead charges together and adding in the 2 driving licence charges, on a totality basis.

21. Mr Naio's personal circumstances dictate some reductions from that starting point. Firstly, I accept that he has been remanded in custody for a period of 1 month, prior to be bailed. He has co-operated with the authorities throughout the investigation. He has shown true remorse for his actions. He has no previous convictions and good community support. The most significant factor in terms of mitigation is the reconciliation ceremony he undertook with the deceased's family – the colour photographs reveal remorse, respect, and forgiveness and understanding. These factors combine to reduce the start point for sentence to 21 months imprisonment.



22. Lastly, Mr Naio is entitled to one-third further discount for his prompt pleas.
23. The end sentence is therefore set at 14 months imprisonment. That will be imposed on charge 1. On charge 3, Mr Naio is sentenced to 1 month imprisonment, to be served concurrently. In respect of the licencing charges, charges 4 and 5, given that I have dealt with the offending on a totality basis, I am convicting and discharging Mr Naio without further penalty.

#### H. Suspension

24. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate:

- In view of the circumstances,
- In particular, the nature of the crime, and
- The character of the offender.

25. In my analysis, Mr Naio's sentence must be suspended – for the reasons articulated previously relating to Mr Naio's personal factors. To not suspend the sentence would be a condign punishment for what was really a series of poor decisions on Mr Naio's part, for which he has already paid a heavy price. He still has to live with his conscience, knowing he was responsible for the death of his friend.

26. The sentence of 14 months imprisonment is accordingly suspended for 2 years. Mr Naio needs to understand he needs to remain offence free for 2 years from today, or he will be incarcerated for 14 months.

27. Suspending a sentence is often accompanied by a direction that the offender be subject to a period of supervision by the Probation service, to ensure that re-offending risks are minimised. I am satisfied that is not required in this instance.

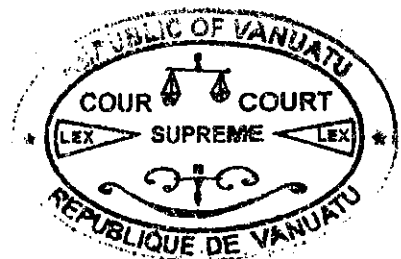
#### I. Compensation

28. Section 40 of the Penal Code requires this Court to consider whether compensation should be imposed, due to the death occasioned.

29. I am satisfied in this case, that there is no need for such an order – the reconciliation ceremony involved significant reparation including the gift of land. No further order in relation to monetary compensation is therefore required.

#### J. Disqualification

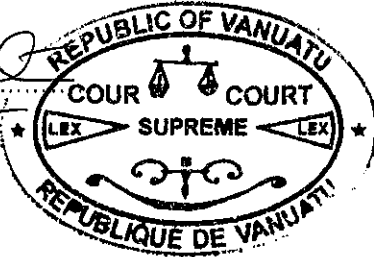
30. The driving standard displayed was exceedingly poor. To be able to drive is a privilege not available to everyone – and to be able to earn an income from driving requires far more responsible and considerate behaviour than Mr Naio displayed. His bad driving on this occasion dictates a meaningful period of disqualification.



31. In the particular circumstances of this case, Mr Naio is disqualified from holding or obtaining a drivers licence for a period of 18 months. I impose that in respect of charges 1 and 3.
32. Mr Naio has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 30<sup>th</sup> day of May 2018  
BY THE COURT

*Gandrei Uilo*  
Justice G.A. Andrée Wiltens

The seal of the Republic of Vanuatu Supreme Court is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR" and "COURT" are positioned on either side of the scale, and "SUPREME" is centered below it. The word "LEX" is written in two small boxes on either side of "SUPREME". Two small stars are located on the left and right sides of the seal's border.