

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

Criminal
Case No. 20/1486 SC/CRML

BETWEEN: Public Prosecutor

AND: Kalmospa Kalmet
Defendant

Date of Plea: 21st July 2020
Date of Sentence: 28th August 2020
Before: Justice Oliver.A.Saksak
Counsel: Mr Ken Massing for Public Prosecutor
Mr Lorenzo Moli for the Defendant

SENTENCE

1. Kalmospa Kalmet is appearing for sentence today for having pleaded guilty to one charge of causing death by reckless driving contrary to section 12 of the Road traffic (Control) Act [CAP 29].
2. The maximum penalty for this offence is a fine not exceeding VT 500.000 or imprisonment for a term not exceeding 5 years.
3. The defendant, a bus driver by profession collided with a Year 8 student on 1st March 2019 on the public road at Epule, North Efate. The accident happened during the day. The victim died as a result of the accident.
4. The deceased and her guardian had boarded another truck to travel to another village. On their way they asked the driver of their vehicle to stop as they had forgotten a bag in the house. The driver stopped his vehicle and put on his indicator light showing he had stopped. The deceased then jumped out of the truck and wanted to cross the road in order to pick up a bag they had forgotten from their house. At the middle lane of the road the defendant approached at high speed and hit the deceased. She was thrown out at a distance of 2 meters away from the point of impact. The deceased was taken to a nearby clinic but died on arrival.

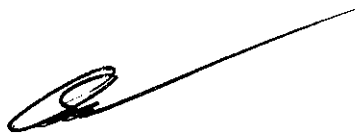
5. A medical report issued out of the Vila Central Hospital later on 1st March 2019 shows a severe subdural haemorrhage and traumatic brain injury with multiple injuries to the abdomen and a fractured right leg. The cause of death was a motor vehicle collision.
6. The defendant was reckless in his driving. He travelled too fast. He was in his right mind, not affected in any way by alcoholic drinks of any sort. A young student's life was taken causing a huge loss to her parents financially, physically and psychologically.
7. By comparison with **PP v Luis** [2020] VUSC 115 and **PP v Alick** [2018] VUSC 94 the defendant's case is more serious in that the defendant in this case was not drunk or under the influence of any alcoholic drinks, unlike in these 2 cases.
8. Taking the totality of the defendant's offending together with the aggravating features it is my view a custodial sentence is warranted. I therefore set the starting sentence at 4 years imprisonment.
9. In mitigation I consider and allow 1/3 reduction for the defendant's guilty plea. I deduct 1 year and 4 months from the start sentence for 4 years imprisonment. The sentence is reduced to 2 years and 8 months.
10. He has no previous criminal history. And he has performed substantial custom reconciliation with 18 pandanus mats, a roll of 2 yard calico, 2 rolls of 20 yard calico, 5 kilograms of kava roots, 2 Island Dresses, 2 25kg rice, 1 bale sugar, VT 8.000 cash and VT 1.500 worth of Island food (root crop). Together with his personal factors, I am prepared to allow a further reduction of 8 months from his 2 years sentence.
11. I now convict and sentence the defendant to an end sentence of 2 years imprisonment for his offending.
12. I consider that the sentence of 2 years imprisonment be suspended for a period of 3 years under section 57 of the Penal Code Act. This is on condition that the defendant must not commit this offence again or any other offences for which he would be charged and convicted. If he does, he will go to prison for 2 years.

13. Finally and in addition, I impose a sentence of community work for a total of 200 hours under section 58N of the Act. He must serve those 200 hours within 12 months from the date of this sentence.

14. There is a right of appeal against this sentence within 14 days if the defendant does not agree with it.

DATED at Port Vila this 28th day of August 2020

BY THE COURT

A handwritten signature in black ink, consisting of a stylized 'O' followed by a long, sweeping horizontal line that extends to the right.

OLIVER.A.SAKSAK

Judge