

**PUBLIC PROSECUTOR v KERE MATA LIVO**

**Coram:** *Hon. Chief Justice V. Lunabek*

**Counsel:** *Mr. D. D. Boe for the State*  
*Mr R. T. Willie for the Defendant*

**Date of Plea:** *11 July 2022*

**Date of Sentence:** *05 August 2022*

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**SENTENCE**

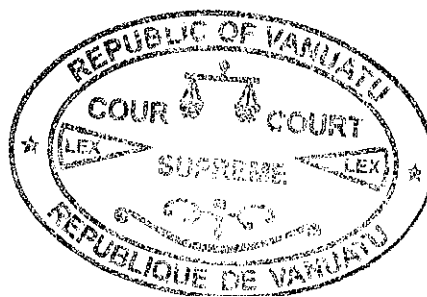
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**A. Introduction**

1. Kere Mata Livo, you appear today for sentence. On 11 July 2022, you entered guilty pleas on two (2) Counts of intentional assault on the bodies of two different persons causing permanent injuries, contrary to Section 107(c) of the Penal Code.

**B. Summary of Facts**

2. Kere Mata Livo, you are from Malo Island and you live at Malo Island.
3. The two victims (complainants): Walter Pagoro and Mike Pagoro are also from Malo Island and they reside also on Malo.
4. You related to both victims and they are your uncles. They both lodged formal complaints against you on 25<sup>th</sup> October 2019 for committing the offence of intentional assault resulting in permanent injuries on their respective bodies.

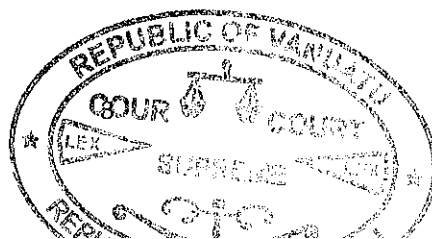


5. On Friday evening on the 3<sup>rd</sup> of May 2019 after the work at one Kalo Pakoro's place, the first victim (Walter PaKoro) with Rian Pakoro and Philip Pagoro, all three consumed local made alcohol namely homebrew at the victim's home village at Ambilahe village, Malo.
6. Around 7pm some other victim's relatives joined and started drinking with the victim. These are Erick Mwele and Kiman. Timothy Vuti and his wife also joined and consumed homebrew at the victim's house.
7. Kere Mata Livo, you also came and sit down and you smoke, however, you were already drunk when you came to join the victim and the group.
8. While drinking some members of the group started dancing. One of the ladies called Coline danced too. However, it was suggested that she was not allowed to dance in front of her brothers Erick and Kiman according to Malo's custom.
9. Kiman feel upset so he slapped Coline while she was dancing. Timothy felt offended towards Kiman's action so he then started to fight with Kiman.
10. You, Kere Mata Livo, got up helped Timothy to fight, Erick was also involved. You, Kere Mata Livo, fell down and you managed to get up and you run to your house and told the other that "yufala e wait long place ia" or (you guys wait here.).
11. Erick run after you, other members of the groups called Erick back and they told him not to follow you.
12. The first victim (Walter Pagoro) felt that it should be his responsibility as you are his nephew so he followed you to try to stop you before further problem occurred.
13. Your uncle (Walter Pagoro) went with a torch when he came across the road near the house of Jansen Molisingi, he was shocked when you jumped out of the bushes and swing at the left side of your uncle a bush knife and you assaulted him (Walter Pagoro) with the knife on his eyes.
14. Walter Pagoro fell down on the ground and managed to run but he could not because of his bleeding. He moved to the side of the road and you assaulted him again the second time and at this time he fell down and was unconscious.
15. Your uncle (Walter Pagoro) was transported to the Malo clinic and was later transferred to the 'Northern Luganville Hospital and was medically examined by Doctor Basil Leodoro.
16. The medical findings revealed the following:

- Assault with weapon – knife – alcohol intoxication – 04 May 2019;



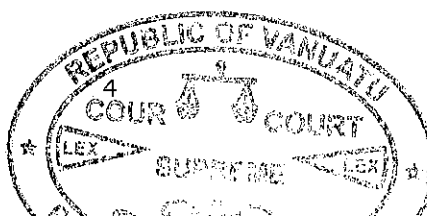
- Lacerations to left upper chest, left scapula area left upper and middle zone of face, left temporal scalp area, left Subauricular scalp area, right areole area;
  - Left eye complete blindness. Previously right eye completely blindness;
  - Right Brachial plexus partial injury with radial, ulnar and medical nerve palsy of right hand and muscle atrophy;
  - Post – traumatic stress disorder – depression.
17. The Doctor's opinion stated that Walter Pagoro will suffer from permanent physical scarring due to the nature of his injuries. His psychological state can be reassessed after he had a mental health evaluation at Medical Unit.
18. Your other uncle, Mike Pakoro, the second victim in Count 2, was also assaulted with the knife by you on the 03 of May 2019. He went after the first victim holding his mobile phone and he switched on the torch of his phone.
19. When he moved closer around 10 meters he was shocked you jumped out from the side of the road and assaulted him with the knife in the middle of his head.
20. You pulled out the knife out of the victim's head and assaulted him again on the head. This time the victim blocked his head with his hand and the knife cut his fingers and as a result he was also unconscious.
21. The second victim was also transported to the local clinic at Malo and later was transported to Northern Hospital in Luganville and was medically examined by Doctor Basil Leodoro.
22. The medical reports reveal the following:
- Assaulted with a weapon – knife;
  - Lacerations to left posterior triangle of neck, occipital and posterior scalp;
  - Deep laceration to right thumb over IP joint with extender tender injury and onto bone;
  - Alcohol intoxication.
23. The doctor's opinion is that he will suffer from permanent injuries due to the nature of the injuries sustained. His psychological state can be reassessed after he has had a mental health evaluation at the Mind Care Unit.



24. You participated in a recorded interview with the police after caution. You made full admissions.
25. You were arrested on the 04<sup>th</sup> of May 2019 but you were then released on bail.

**C. Start point and end sentence**

26. The maximum sentence for this offending is 10 years imprisonment. It is a serious offence.
27. The following are the aggravating and personal factors of the offending:
- (i) Unprovoked attacks;
  - (ii) The nature of the injuries cause on both eyes of the victim 1 (Walter Pagoro) rendered him blind from his 2 eyes;
  - (iii) The second victim (Mike Pakoro) also suffered permanent injury;
  - (iv) The assaults involved more than a victim;
  - (v) A dangerous weapon was used to assault both victims;
  - (vi) There were psychological and emotional impacts on both victims;
  - (vii) The assaults or attacks on both victims were repetitive;
  - (viii) The defendant was abusive and aggressive during the offending;
  - (ix) The defendant took law into his own hands;
  - (x) There were pain and suffering for both victims.
28. I consider your culpability and comparable cases referred by counsel to assist me in this sentencing. The prosecution provided a list of 18 cases related to section 107 of the Penal Code. Only two (2) of them concerned section 107(c) of Penal Code. The defence counsel referred relevantly to the case of Public Prosecutor v Melsul [2021] VUSC 223, Criminal Case No. 2397 of 2021 (7 September 2021).
29. I assess a start point sentence of 5 years imprisonment on each count.
30. The sentence of 5 years is uplifted to 7 years imprisonment to take into account of the aggravating factors present in this case.
31. In mitigation, I give the defendant 2 months allowance as it was his first time offending and another 2 months allowance for the delay in the prosecution of his case. His sentence is reduced to 6 years and 8 months.
32. I give the defendant 25% allowance for his guilty pleas at the first opportunity given to him by the authorities. Your sentence is further reduced to 60 months imprisonment i.e., 5 years

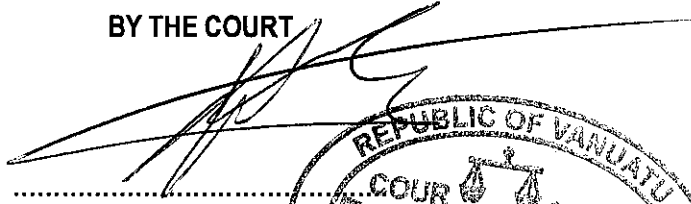


imprisonment on both counts concurrently. Those 5 years imprisonment is the defendant's end sentence.

33. I note that you were remanded in custody from 07 May 2019 to 04 June 2019. I treat it as a month. That one month shall be reduced from your total end sentence of 5 years imprisonment. Your end sentence is reduced consequently to 4 years and 11 months.
34. This is not a case where it is warranted to suspend the imprisonment sentence. I decline to do so. This effective sentence of imprisonment is to punish you and to deter others not to commit such offences again like you did.
35. I order that you serve your imprisonment sentence term of 4 years and 11 months imprisonment starting today 5 August 2022.
36. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Port Vila, this 5<sup>th</sup> day of August 2022**

**BY THE COURT**

  
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**Vincent LUNABEK\***  
**Chief Justice**

