

PUBLIC PROSECUTOR

v

AUGUST TAMENDAL
APET TAPKANDI
ROGER TAPKANDI
JEAN YVES ARIS
MORRIS ATUARY
CHARLEY TAPKANDI

Date: 13 October 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Melfebury
Defendants – Mr E. Macreveth

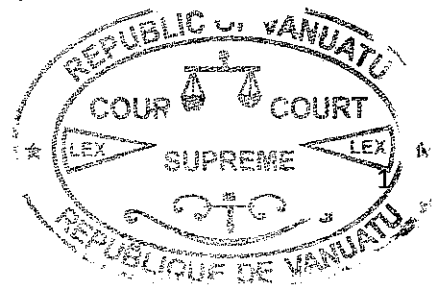
SENTENCE

A. Introduction

1. The Defendants August Tamendal, Apet Tapkandi, Roger Tapkandi, Jean Yves Aris, Morris Atuary and Charley Tapkandi pleaded guilty to kidnapping (Charge 1) and Mr Apet Tapkandi pleaded guilty to taking and driving away vehicle without consent (Charge 3). They are convicted on their own pleas and the admitted facts.

B. Facts

2. On 29 October 2021 afternoon, the complainant Moise Tanabit parked the grey Toyota Hilux truck that he was driving (owned by Noel Tanabit) at Lakatoro area on Malekula. The other complainant Jean Noel Ley was sitting at the back of the truck. Mr Tanabit was locking the truck when Mr Tamendal grabbed his right hand. As he turned around, he saw that the other Defendants had already surrounded him. Mr Tamendal told him to hand over the vehicle keys and his mobile phone. He did. Then Mr Tamendal pulled Mr Tanabit to the back of the truck and the other Defendants also climbed onto the truck. Mr Tanabit tried to escape but he could not as Mr Tamendal held onto him tightly. Mr Apet Tapkandi got the vehicle keys and ignited the truck engine. At that point, Mr Ley tried to leave the vehicle but the Defendants blocked him from escaping (Charge 1).



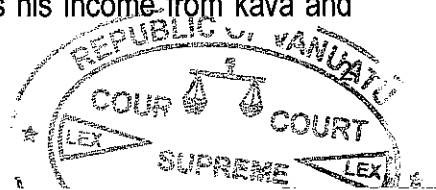
3. Mr Apet Tapkandi drove them in the truck to Mae village (Charge 2). The Defendants returned Mr Tanabit's phone and he called his chief to come and resolve the dispute between them. The Defendants kept the complainants at a house overnight. They had hoped that by doing so, they would get Noel Tanabit to come to Mae village so that a meeting could be held to discuss a long-standing dispute over land between the Defendants and the Tanabit family which culminated in Mr Tanabit and another member of the Tanabit family stoning another member of the Tapkandi family earlier in the day on 29 October 2021. This is the wider context to the offending and which Mr Macreveth submitted amounted to provocation of his clients. That does not, of course, excuse taking and keeping the complainants against their will. In the morning, a Mae village chief came to the complainants' rescue and took them to the Lakatoro Police station. The Defendants held onto the truck until 2 November 2021.
4. The Court made separate comments to Mr Macreveth as to the following up of complaints lodged with the Police. Mrs Tamau did not wish to be heard as to that.

C. Sentence Start Point

5. The sentence start point is assessed having regard to the offending, its aggravating and any mitigating features and the maximum sentence set by Parliament.
6. The maximum sentences are:
 - a. Kidnapping – 10 years imprisonment (para. 105(b), *Penal Code* [CAP. 135]; and
 - b. Taking and driving away vehicle without consent – 1 year imprisonment or VT100,000 fine or both (subs. 52(3), *Road Traffic (Control) Act* [CAP. 29]).
7. The mitigating aspect of this offending was that the Defendants were provoked by members of the complainants' family.
8. The aggravating factors included:
 - Premeditation on the part of the Defendants;
 - The fear caused to both complainants; and
 - The Defendants taking matters into their own hands to resolve a dispute instead of following up with the Police their complaints about the threats made by the complainants' family.
9. Taking all matters into account, the global sentence start point adopted is 12 months imprisonment.

D. Mitigation

10. The Defendants entered prompt guilty pleas. Thirty-three per cent (33%) is deducted from the sentence start point for the guilty pleas.
11. Mr Tamendal is 41 years old, married and has 6 children who depend on him. He is a school Year 8 leaver. He is a subsistence farmer who earns his income from kava and



copra. He is a chairperson of the village development committee. He has no previous convictions. On 29 October 2021, he performed a custom reconciliation ceremony involving kava with the complainants, witnessed by the chiefs of Mae village. He remains willing to perform another reconciliation ceremony and is remorseful as demonstrated to the pre-sentence report writer.

12. Mr Apet Tapkandi is 34 years old, married and has 3 children who depend on him. He is a school Year 8 leaver. He is a subsistence farmer who earns his income from kava. He has no previous convictions. On 29 October 2021, he performed a custom reconciliation ceremony involving kava with the complainants, witnessed by the chiefs of Mae village. He remains willing to perform another reconciliation ceremony and is remorseful as demonstrated to the pre-sentence report writer.

13. Mr Roger Tapkandi is 34 years old, married and has 4 children who depend on him. He is a school Year 13 leaver. He is a subsistence farmer who earns his income mainly from kava. He has no previous convictions. On 29 October 2021, he performed a custom reconciliation ceremony involving kava with the complainants, witnessed by the chiefs of Mae village. He remains willing to perform another reconciliation ceremony and is remorseful as demonstrated to the pre-sentence report writer.

14. Mr Aris is 40 years, married and has 4 children who depend on him. He is a school Year 7 leaver. He is a subsistence farmer who earns his income from kava and tobacco. He is a youth president of the Mae Catholic Church. He has no previous convictions. On 29 October 2021, he performed a custom reconciliation ceremony involving kava with the complainants, witnessed by the chiefs of Mae village. He remains willing to perform another reconciliation ceremony and is remorseful as demonstrated to the pre-sentence report writer.

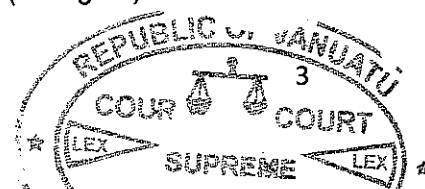
15. Mr Atuary is 45 years old, married and has 4 children who depend on him. He is a school Year 11 leaver. He is a subsistence farmer and earns his income mainly from fishing. He promotes sports in his community. He has no previous convictions. On 29 October 2021, he performed a custom reconciliation ceremony involving kava with the complainants, witnessed by the chiefs of Mae village. He remains willing to perform another reconciliation ceremony and is remorseful as demonstrated to the pre-sentence report writer.

16. Mr Charley Tapkandi is 32 years old, married and has 4 children who depend on him. He is a school Year 4 leaver. He is a subsistence farmer who earns his income from kava and copra. He has no previous convictions. On 29 October 2021, he performed a custom reconciliation ceremony involving kava with the complainants, witnessed by the chiefs of Mae village. He remains willing to perform another reconciliation ceremony and is remorseful as demonstrated to the pre-sentence report writer.

17. A further 3 months is deducted for the Defendants' personal factors.

E. End Sentences

18. The end sentence imposed for each Defendant for kidnapping (Charge 1) is 5 months imprisonment.



19. The sentence imposed for Mr Apet Tapkandi in respect of taking and driving away vehicle without consent (Charge 3) is a VT20,000 fine to be paid by 4pm on 13 November 2023.

F. Suspension of Sentences

20. The offending was serious. That counts against suspension of the sentences. On the other hand, the lack of prior convictions, the mitigating aspect of the offending, their family circumstances and remorse demonstrated by the early guilty pleas and custom reconciliation ceremony counts in favour of suspension of the sentences. I am therefore prepared to suspend the sentences for 1 year. The Defendants are warned that if they are convicted of any offence during that 1-year period that they will be taken into custody and serve these sentences of imprisonment, as well as the penalty imposed for the further offending.

21. In addition, the Defendants are each sentenced to 60 hours community work.

22. The Defendants have 14 days to appeal against their sentences.

**DATED at Lakatoro, Malekula this 13th day of October 2023
BY THE COURT**

VM Trief
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Justice Viran Molisa Trief

