

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

Criminal
Case No. 24/3602 SC/CRML

PUBLIC PROSECUTOR

v

KALTOI TOM

Date of Plea: 11th March 2025
Before: Justice Josaia Naigulevu
Counsels: Acting Public Prosecutor – Mr. Christopher Shem
Public Solicitor – Mr. Harrison Rantes

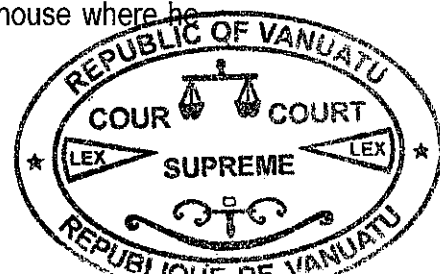
SENTENCE

Introduction

1. Mr. Kaltai Tom, you appear today for sentencing after you pleaded to the charges of Intentional assault contrary to section 107(b) of the Penal Code, Malicious damage to property contrary to section 133 of the Penal Code and Threats to kill a person contrary to section 115 of the Penal Code. When the summary of facts was read, you indicated that you understood and agreed with it.
2. You were duly convicted on your pleas.

Facts

3. On the 23rd of March 2023, at about 4:30pm you approached a Toyota bus registered number 2143 that was parked at Iwaru Beach. You were accompanied by two other male persons. You confronted Keven Narua who was inside the bus, and enquired about the driver of the bus. Keven called out to the complainant who was swimming in the sea. When the complainant came towards the vehicle, you asked who his name was. He replied, "John". You asked whether he was the driver of the parked bus. The complainant confirmed that he was. You then slapped the left side of his face with your hand, and accused the complainant that he was going to his house where he



would pick up your daughter. The complainant attempted to reason with you and explain that you may have been mistaken.

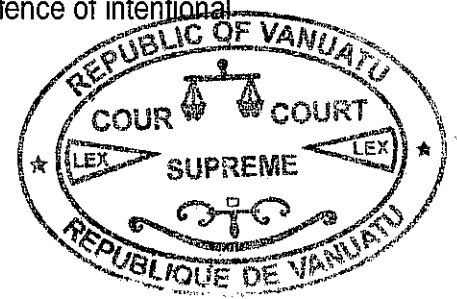
4. You instead picked up a stone and threw it towards the glass of the vehicle door and broke it. You then returned to your vehicle and brought out a big knife which you used to break the other glass of the bus, including the rear glass. As you were doing this, the complainant pleaded with you to stop. You responded by warning the complainant that if he reported the incident to the Police, you would kill him.

Sentencing purpose and Guideline

5. There are several principles that guide the sentence to be imposed on you. They include the proposition that you must be held accountable and must take responsibility for your action. Additionally, your action is the kind that is denounced by society, and that similar future acts by you and others must be deterred.
6. Equally important is that you must be given ample opportunity to rehabilitate.
7. The approach taken in the present case follows the guidance given by the Court of Appeal in the case *Philip v Public Prosecutor* [2020] VUCA 40.

Starting Point

8. In assessing the appropriate starting point, I have taken into account the statutory maximum sentence, as well as the aggravating and mitigating factors of the offending.
9. The maximum penalty for the offence of Intentional assault is imprisonment for 5 years, for Malicious damage to property is imprisonment for one year or a fine of VT 5,000, or both; and threats to kill is imprisonment for 15 years.
10. Your counsel proposed on your behalf the starting point of 2 years for the offence of threats to kill, 6 months for malicious damage to property and 1 year imprisonment for Intentional assault. He referred the Court to a number of helpful authorities, each suggesting a range of starting points.
11. The prosecuting counsel on the other hand recommended as starting points the terms of 36 to 40 months imprisonment for the offence of threat to kill; 12 to 15 months for the offence of malicious damage to property and a term of 12 to 15 months imprisonment for the intentional assault. The Court has taken into account these submissions as well as the authorities they relied on for their submissions and adopt as starting points of 36 months for the offence of Intentional assault, 10 months for the offence of Malicious damage to property and 12 months for the offence of intentional assault.



Guilty Plea

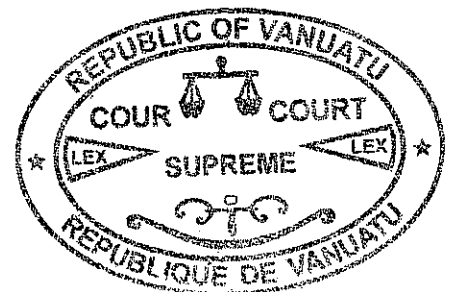
12. You pleaded guilty to this Court at the earliest opportunity. As the result, you are entitled to a discount of 12 months, a period to be deducted from the starting point.
13. It is noted also that when first confronted by the police, you admitted under caution that you had committed the offences.
14. Your early guilty plea and admissions to the police are an indication of remorse and contrition: *Public Prosecutor v Gideon*: [2002] VUCA 7.

Aggravating Factors

15. The following circumstances constitute the aggravating factors in the present case:
 - a) There was a degree of planning:
 - b) the assault targeted the head region, a vulnerable part of the body.

Mitigating and Personal Factors

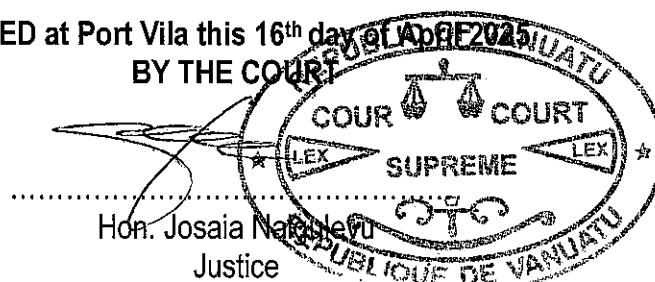
16. Mr. Tom, you are 58 years old, are married and have four children and five grandchildren. You are also a guardian to three secondary school students who moved to Tanna Island for further studies. You attended school until year 6 at Primary School.
17. You own a registered construction company that employs more than 50 men and women on Tanna Island.
18. Your pre-sentence report discloses that you are a deacon and are the chair of the building fund committee in your local church, and voluntarily contributes to work in the community particularly in the Lenakel town area, and towards the local chief's council.
19. Of note also is that you performed Kastom ceremony seeking the forgiveness of the complainant and his family. Your request and gifts were accepted by his family.
20. You are the sole breadwinner in the family and have shown remorse.
21. These factors reduce your sentence by 10 months.



End Sentence

22. The lead offence in this case is that of threats to kill. The sentence for each offence will be served concurrently. In the result, I impose an end sentence of 14 months imprisonment and a fine of VT 5,000.
23. On the question of how this sentence will be served, your counsel has urged me to suspend the entire term for one year. The prosecuting counsel has indicated that it is a course that would not be objected to.
24. I take into account the circumstances, the nature of the offending and your character and have decided to suspend the entire remaining period pursuant to section 57 of the Penal Code.
25. During the interview with the probation officer who authored your pre-sentence report, you told the officer that your reaction was one of an agitated father of a daughter who had been given in marriage according to Tanna custom to her husband, who is presently in Australia on a RSE program. You told the officer that you had become aware that the complainant was fraternising with his daughter and that she became pregnant as the result of the relationship.
26. Mr. Tom, your report suggests that your offending may have been the result of trepidation and your anguish as a father. That may have been so, but when you threatened and assaulted the complainant, and caused the damage to his property, you exceeded the bounds of what is regarded as acceptable conduct. The Court hopes that you have learnt that such action cannot be condoned.
27. The suspending of your sentence of 14 months will be for the period of the next 12 months. You are warned against committing another offence over that time. However, you must pay a fine of VT 5,000.
28. You must also over the period of the next 12 months, carry out 100 hours of supervised community work.
29. You have 14 days to appeal this sentence.

DATED at Port Vila this 16th day of April 2025
BY THE COURT



Hon. Josia Natulevu
Justice