

PUBLIC PROSECUTOR
V
OBED MAKALI

Coram: Chief Justice Vincent LUNABEK

Counsel: Mr. G. Takau for the Prosecution
Mr. J. Boe for the Defence

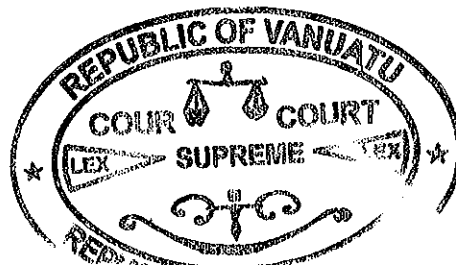
SENTENCE

1. Mr. Obed Makali, you appear today for sentence. On 4 May 2010 you entered a guilty plea for one count of Causing Death by Reckless Driving, Contrary to Section 12 of the Road Traffic Control Act [CAP 29].
2. You are 28 years of age and you are originally from Sasaki village of the Island of Emae in the Province of SHEFA. You are currently residing at Ohlen Nabanga, Port-Vila, Efate.
3. Section 12 of the Road Traffic (Control) Act [CAP 29] provides:

“CAUSING DEATH BY RECKLESS DRIVING

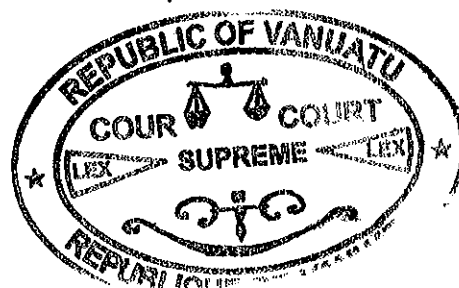
12. A person who causes the death of another person by driving a motor vehicle on the road recklessly shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT500, 000 or to imprisonment for a term not exceeding 5 years or to both.”

4. The facts of this case are this. The complainant in this case is a police officer, Mr. William Seru. On or about the 5th April 2010, around 10.00am, the complainant received a report of a road accident that took place at Lelepa Landing. Around 10.27am, the complainant and another police officer namely Sgt. Edward Kalvra attended the accident scene. Upon their arrival at the accident scene, the complainant and his colleague saw a JMC camion, registration No.10289, was lying on its left side on the road.

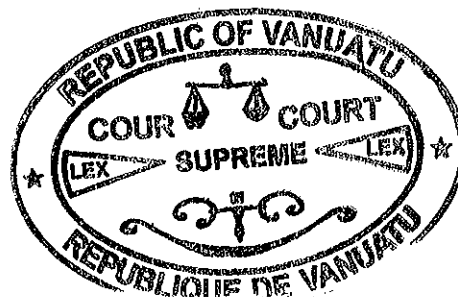


1

5. The Complainant drew a sketch diagram of the scene of the accident. They came back to Port-Vila. The complainant went then to the hospital and found out that a 9 year old boy by the name of Christiano Karis died instantly as a result of the accident. On 5 April 2010, the JMC camion was loaded with 22 passengers including yourself as the driver. The deceased boy was sitting at the back of the JMC camion with his mother when you were driving the vehicle at gear three down the hilly road. You then decided to change gear to gear 2 on the vehicle after stepping on the clutch when suddenly the heavy duty vehicle (loaded with 22 passengers at the particular time) speed down the hilly road very fast. You lost the control of the vehicle. The vehicle zigzag down the road and turnover which caused some of the passengers jumping out or got thrown out of the vehicle and onto the road. The mother of the deceased boy died few days later as a result of the injuries she sustained from the accident. 18 other passengers sustained injuries on their bodies; one passenger suffered from broken rib, some of the injured passengers are recovering from their injuries. Others are still undergoing medical treatment. You were questioned and interviewed about the accident on 6th April 2010 and you admitted you were driving the heavy duty JMC camion recklessly on 5 April 2010 which caused the death of the young boy.
6. I have read and heard the submissions from the Public Prosecutor and the submissions by your lawyer on your behalf. I have also read the pre-sentence report filed by the Probation officer on your behalf. When I consider your sentencing, there is a need to denounce you behavior and you cannot drive in this way. You must be held accountable for the harm you have caused. In this case, the harm was considerable because it resulted in the death of an innocent boy and many others sustained serious bodily injuries on the day of the accident. The mother of the deceased boy died 2 days after the accident as a result of the injuries she sustained from your reckless driving.
7. The sentence I am going to impose on you must give you some sense of responsibility. It must also serve as a deterrence to others. I need also to consider the compensation if appropriate for the victims of your offending. Finally as a process of sentencing, I need to consider your rehabilitation together with the principles relating to the promoting of reconciliation pursuant to sections 37, 38 and 39 of the Penal Code Act [CAP 135].
8. In this case, you were the driver of the heavy duty truck, all 21 passengers trusted you and their life and safety depended on you. You have abused their trust which is an aggravating factor to your offending.
9. In mitigation, your lawyer submitted and I accept to take into account the following mitigating factors:



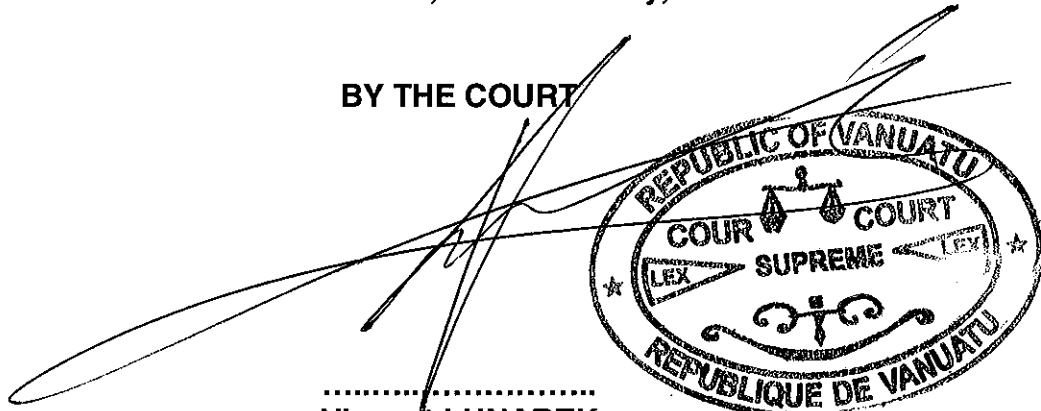
- You are a first time offender and you do not have any conviction in your records,
 - You pleaded guilty at the first opportunity given to you,
 - You are a person of good character,
 - You are remorseful,
 - You have performed custom reconciliation ceremonies to the father of the deceased boy and to the chief and brothers of the boy's deceased mother with a payment of money totaling Vatu 138, 000.
10. I note that no reconciliation or custom ceremony was performed in relation to other injured passengers of the accident of 5 April 2010.
 11. The present case is an example of serious driving offences causing death and serious injuries. It warrants a custodial sentence. The appropriate starting point for the sentence is 3 years imprisonment. I increase it to 1 year imprisonment which is totaling 4 years imprisonment. I then balance the aggravating features with the mitigating factors I mention above and after cross-referencing them, then I sentence you to 2 years imprisonment.
 12. The next question is whether or not I should suspend your 2 years imprisonment sentence.
 13. You are a first time offender with good character, good employment record and involvement in your community affairs. I make an order to suspend your sentence which allows you the best opportunity for your rehabilitation.
 14. I make no order as to compensation as no compensation report was sought nor provided as to your financial means and capacity to pay any compensation.
 15. You are therefore sentenced to 2 years imprisonment for the offence of Reckless Driving Causing Death, Contrary to Section 12 of the Road Traffic (Control) Act [CAP 29]. That sentence is suspended for a period of 2 years. If you reoffend within the period of 2 suspended years, your sentence of 2 years will be re-activated in addition to any new conviction you may face on the new charge.
 16. I also order that you are disqualified from driving a motor vehicle for a period of 18 months pursuant to section 55 of the Road Traffic (control) Act [CAP.29].



17. You have 14 days to appeal this sentence if you are not satisfied with it.

Dated at Port Vila, this 8th of July, 2010

BY THE COURT



.....
Vincent LUNABEK
Chief Justice