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**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)
Held at Isangel, Tanna

CRIMINAL CASE No.05 OF 2010

PUBLIC PROSECUTOR

-V-

IAMNIKO FALET

Coram: Chief Justice Vincent Lunabek

Counsel: Mr Tristan Karae for the Public Prosecutor
Mr Andrew Bal for the Defendant

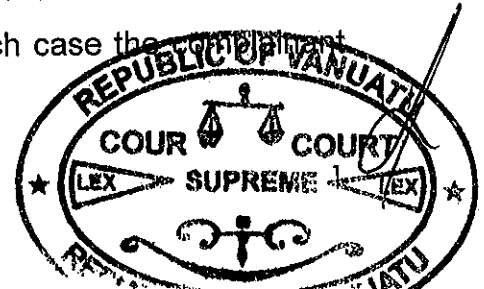
SENTENCE

Mr Iamniko Falet, you appear today for sentence. Yesterday 23 August 2010, you entered a guilty plea on the one count of intentional assault, contrary to section 107(c) of the Penal Cod Act [CAP.135] charged against you. You were also convicted of that offence accordingly. The brief facts of your offending are this.

On or about the 11th of October 2008 the complainant and his families were at Iru Rahotiken area, planting yam for his brother in law David Sel, when they saw a group of about 10 men coming over to them with the intention to assault the complainant's little brother. This was because of the complainant's little brother, Tuouw Iamak, previously had destroyed Iata Iatiknolu's yam garden at Letoupom village, Tanna. One of the 10 men was yourself, Mr Iamniko Falet.

When the complainant saw this he tried to stop you and your friends from fighting each other and that he tried to tell you and other to call a meeting where all of you could sit down and talk it over.

Defendant, Iamniko Falet, after hearing what the complainant said, you walked over the complainant and said "every time yufala mekem fashion ia olsem" and then you assaulted the complainant with your leg in which case the complainant used his left hand to protect himself.



The complainant felt that his left hand was broken from the blow to his left hand by you leg and so he sat down and was holding onto his hand. Defendant Iamniko, you however still wanted to fight and was going after David Sel.

The complainant tied his left hand with a cloth and went to the Isangel Police station and reported the assault. The complainant then left to the Lenakel Hospital. At the hospital he went through an X-Ray examination. According to the medical report by Dr. Nampon, the X-Ray examination revealed that there was a disfigure in the left arm, swelling of the left arm and that there was a fracture on both the ractius and ulnar bone which are the middle two bones in the arm.

The complainant stated that because of the injuries he sustained from his left hand the complainant claims that you should compensate him because he is unable to do the daily works that he used to do as he suffers pain from the injury.

On or about the 5th of February 2010 Police Officer, Tom Lann David, took you in for questioning. You were then cautioned and interviewed. During the interview you admitted to have assaulted the complainant by kicking the complainant's left hand.

Section 107(c) of the Penal Cod Act is the prohibiting section. It provides that:

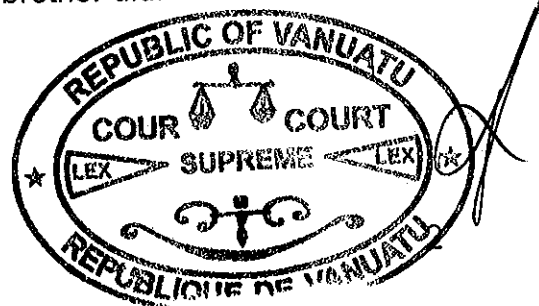
"107. No person shall commit intentional assault on the body of another person.

Penalty:

(c) If damage of a permanent nature is caused, imprisonment for 5 years.

..."

This is a serious offence. The circumstance of your offending described a group of about 10 men attacking on another group in a garden. You assaulted the complainant by breaking the bones of his left hand not because he was doing anything wrong to you but because of what his little brother did.



When considering your sentencing, there is need for the Court to condemn in the strongest terms your offending behaviour and to pass a sentence that can punish you and deter others not to behave in this way.

As the same day report reveals, the true reason for the disputes is not over gardening but disputes over land. Land disputes are not excuses for individuals or groups of individuals or families to fight each other or against others. There are avenues to deal with land disputes and if you have any land disputes with the complainant or his families follow the normal process for land disputes settlements.

Defendant, Iamniko Falet, on 11th October 2008, you were not happy with what the little brother of the complainant did previously. You tried to do justice your own way. It was wrong because by taking law into your own hands you broke the laws of Vanuatu and you caused very serious injuries to the body of the complainant. You must be responsible for what you did.

In your sentencing, I heard, read and considered the submissions made by the prosecution and submissions made by your lawyer on your behalf. I also read and considered a same day report provided by the Probation Officer to assist the Court in your sentencing. I sentence you to 3 years imprisonment.

In mitigation, your lawyer informed the Court that you are a first time offender; you plead guilty at the first opportunity given to you by the Courts. You are remorseful and you told you lawyer to tell the Court that you will not re-offend. You attempted on four different occasions to perform a custom ceremony to the complainant but the complainant refused to accept a custom ceremony.

At the moment, you live with your wife and three sons (aged 9, 5 and 2). Your first son is at Primary School and you pay for his school fees and look after the financial and daily needs of your family.

I balance your mitigating factors with the aggravating ones and I reduce your sentence to 2 years imprisonment and I suspend it for a period of 2 years.



I note that the complainant requests the Court to make a compensation order. I consider making a compensation order against you to compensate the complainant. However, although no compensation report is made, I am informed you do not have financial means to satisfy a compensation order. I decline to make such a compensation order.

The complainant may pursue his request for compensation in a civil proceeding.

In addition to you 2 years suspended imprisonment terms, you are ordered to perform 100 hours community work.

You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Isangel, Tanna this 25th day of August 2010

BY THE COURT

Vincent LUNABEK
Chief Justice

