

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

Criminal Case No. 95 of 2010

PUBLIC PROSECUTOR

-V-

FREDDIE VIRA

Coram: Justice N. R. DAWSON

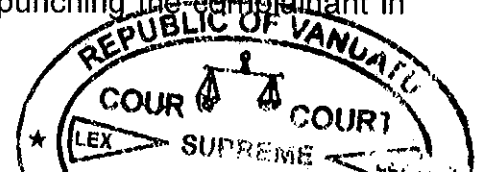
Date of Sentence: 14th December, 2010

Counsel: Mr. P. Wirrick for Public Prosecutor

Ms. H. Leo for Accused

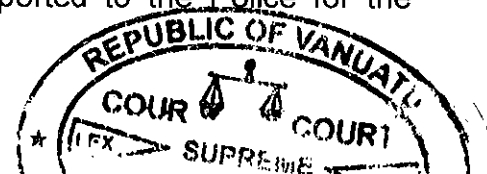
SENTENCE

1. Mr. Vira appears in Court today for sentencing on two counts. The first count is Unlawful Entry to a Dwelling House, the second count is Intentional Assault.
2. The facts of the matter are that on 3rd September, 2010 the complainant lodged a complaint to the Police with regard to the Unlawful Entry of his house and the assault made against him by the Defendant on 1st September, 2010. At approximately 7:30 pm on 1st September, 2010 the complainant had just finished drinking kava, was heavily intoxicated and asleep in his bed in his apartment at Tagabe. The Defendant is the complainant's cousin and also a resident in that area. While the complainant was asleep the Defendant who was at time drunk with alcohol came into the apartment and asked the complainant to have a drink with him. The complainant refused as he was already heavily intoxicated with kava. The Defendant made several attempts to have the complainant accompany him but the complainant did not. The complainant then told his wife to lock the door so that the Defendant would not be able to come back again to the apartment. After some time Mr. Vira returned to the apartment, found the door locked and kicked the door into the apartment and broke his way inside. Once inside the Defendant argued with the complainant and that lead to the Defendant punching the complainant in



the face several times, resulting in the complainant sustaining a fractured left jaw, a deep cut in the left cheek and bruising and swelling on several areas of his face. The victim was medically examined in the hospital on 6th September, 2010 and went through a mandibular close reduction operation in which metal bars were wired across both upper and lower jaws. The victim was not able to eat solid foods for a number of weeks after that operation.

3. I have received and read the submissions from the Prosecution and the Defence and also I have read the Probation Report. I note Mr. Vira you are 28 years of age and you have no previous convictions.
4. In sentencing you it is necessary to denounce the violent behaviour that you inflicted upon the victim on that night. The community is entitled to live peacefully in their homes and be protected from this sort of violence. There are a number of aggravating factors to your offending. The first is you used violence to break in the door to get inside the victim's house that night. The second factor is that the victim received severe injuries as a result of your offending. You also abused the position of trust in that the victim is a cousin of yours. The victim is also vulnerable as he was heavily under the influence of kava and unable to protect himself.
5. In mitigation, you have entered an early guilty plea, you have expressed remorse for your offending, you have no previous convictions and you offered a reconciliation ceremony. It is also noted that you were very drunk at the time of your offending and that seems to be regarded by you as an excuse. Mr. Vira, drunkenness is not an excuse for criminal behaviour. You are responsible for what you do whether you are drunk or whether you are sober.
6. The Probation Report notes that you have not performed a custom reconciliation ceremony but you have made three attempts to do so. I note that there seems to have been some bad blood between you and the complainant and you seemed to regard yourself as having the right to assault him because of some claimed offending by the victim. It is not your responsibility to take the law into your own hands Mr. Vira. If the victim had done something wrong then that should be reported to the Police for the



Police to deal with, it was not incumbent upon you to go to his house and inflict a punishment upon him. The essence of this offending is the intentional assault with the unlawful entry being a aggravating factor as you broke into the house for the purposes of assaulting the victim.

7. I form the view that an appropriate starting point for your sentencing is 15 months imprisonment after taking into account the aggravating factors. After taking into account the mitigating factors, you are convicted and sentenced to a term of imprisonment of 9 months on each charge to be served concurrently.
8. You have the right to appeal this sentence. For any appeal you must lodge a notice of appeal within 14 days of today's date.

Dated at Port Vila, this 14th day of December, 2010

BY THE COURT


N. R. DAWSON

Judge

