

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

MICHEL TABI

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Lent Tevi for Public Prosecutor
Mr Felix Laumae for the Accused

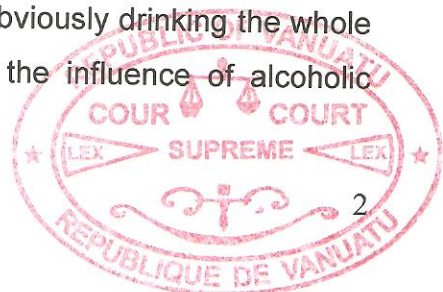
Date of Hearing of Sentencing Submission: 26th February 2010
Date of Sentence: 18th March 2010

SENTENCE

1. Michel Tabi you were charged with two counts under section 108(c) of the Penal Code Act Cap 135: Unintentional Assault Causing Death, and under section 16 of the Road Traffic (Control) Act Cap. 29: Driving under the Influence of Alcoholic Liquor.
2. On 10th February 2010 you pleaded Guilty to both charges. You should be made aware that the penalty for an offence under section 108(c) is a maximum imprisonment for 5 years. And for driving under the influence of alcoholic liquor the maximum penalty is VT100.000 fine or imprisonment of a maximum of 1 year (12 months) or to both.
3. The facts of this case are as follows:-
 - (a) On Sunday 5th July 2009 you drove your car registered 5903 down the Chapuis Road after you had been drinking beer at the cemetery.

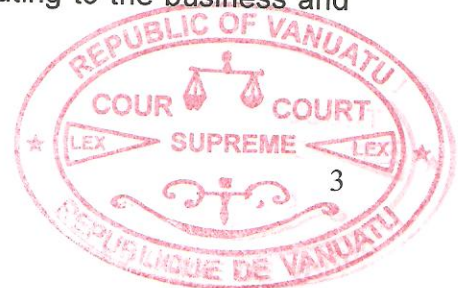


- (b) Between the hours of 04.00 and 04.30 adjacent to the Nandao Nakamal you were involved in a 'hit and run' accident.
- (c) You had three passengers, all of whom were your friends and relatives at the time and who were eye witnesses to these events prior to and after the collision.
- (d) You drove at high speed with loud music at the time of the collision.
- (e) You and your relatives had been drinking beer whole night before the collision occurred.
- (f) You realized you had hit something on the road but did not stop to check it out.
- (g) When you arrived at the Green Light Nakamal you discussed with your three friends that you had hit something on the Chapuis Road but that you did not know what it was.
- (h) It was only in the morning you were told that you had hit a boy and that he had died as a result.
4. You appear to have accepted these facts as true and correct except the assertion in (d) that you drove at high speed. However the statements from your three passengers show to the contrary.
5. The sketch map taken by the Traffic Officers and the Medical Report by Dr. Santus Wari dated 7th July 2009 show impacts and descriptions of what was apparently a tragic and horrendous accident. These draw the Court to conclude that only a car traveling at high speed can be capable of causing injuries of such extent and nature as it occurred in the early hours of 5th July 2009. Your victim died instantly. He had nil chance of survival. His skull was broken and the brain matter extracted from it with bits and pieces, and blood strewn along the road over an area of 15 metres in length. And your victim's blood is still crying out from the ground on which it fell. You were obviously drinking the whole night and it is apparent you drove under the influence of alcoholic

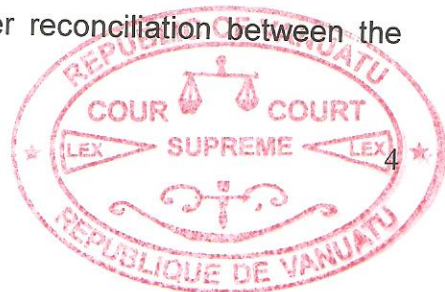


drink. Section 16 of the Road Traffic (control) Act makes this an offence.

- 5.1. You took advantage of the fact that it was the early hours of the morning with no traffic on the road that you could own the road to yourself and travel at high speed with loud music with friends drinking beer, no doubt in high spirits. You could have, but failed to foresee the possibility that people and especially kava drinkers would still be hanging around kava nakamals including their access roads at 03.00 hours and later especially on pay days and weekends. The perfect example was on 5th July 2009 when after you had had the accident, you ended up at the Green Light Nakamal before finally returning home that morning. It is apparent therefore that through your recklessness, negligence or failure to observe the law, you unintentionally caused damage to the late Joel Maki which damage resulted in his death. (See Public Prosecutor v. Kuvu Noel Cr. 87 of 1998).
- 5.2. These are the aggravating features for your offending which the Court considers and upon which the Court hereby convicts you on two counts of:-
- (i) Unintentional Harm Causing Death – Section 108(c); and
 - (ii) Driving Under the Influence of Alcoholic Drinks – Section 16 of the Road Traffic (Control) Act Cap. 29.
6. And now for your sentence. The Court considers sentence in light of your Pre-Sentence Report and the relevant mitigating factors as submitted by Counsel which are –
- (a) That you are a local businessman contributing to the business and economic development of Vanuatu.



- (b) That you are a first-time offender with no previous criminal record.
 - (c) That you changed your initial plea to guilty thus saving time and costs.
 - (d) That you have performed customary reconciliation by paying VT200.000, 1 life pig, 4 mats and local food presentation to the family of the deceased.
 - (e) That by this, you have shown remorse for your actions.
7. The Court is assisted in assessing sentences by following the sentencing principles in Public Prosecutor v. Tafan Bob Cr. 78 of 2005, Public Prosecutor v. Silas Robert Cr. 51 of 1997 and Public Prosecutor v. Kuvu Noel Cr. 87 of 1998 as referred by Counsel. The other recent case not referred to by Counsel is Public Prosecutor v. Joe Keke Botleng Cr. 24 of 2008 where the Court imposed a suspended sentence and ordered compensation against the accused.
8. It was submitted by Mr Laumae that there is no specific penalty for a section 16 offence and that section 36 of the Interpretation Act Cap 132 is to be applied. That submission is rejected.
9. Section 53(3) of the Road Traffic (Control) Act Cap 29 provides specifically the penalties for section 16, 41(1), 51 and 52 offences being fines not exceeding VT100.000 or imprisonment not exceeding 1 year, or to both.
10. Weighing the aggravating features of this case against the mitigating factors, this is a case that warrants a custodial sentence for the 108(c) offence but that sentence should be suspended. This is to act as a deterrence to future offenders. In addition, a sentence of compensation will also be imposed pursuant to section 40 of the Penal Code Act Cap. 135 as amended. This is to promote further reconciliation between the



accused and the victim's families and relatives, and to preserve and maintain the traditional Melanesian values in this nation.

- 10.1. The family and relatives of the deceased, late Joel Maki have demanded compensation payment of VT1.000.000 based on some verbal undertaking that you made to them. There is a handwritten Note dated 23rd February 2010 attached to the Prosecution Submissions revealing this arrangement.
- 10.2. Mr Laumae submitted that the deceased had contributed to his death by getting drunk and sleeping on the public road at the time of the accident. The Court accepts that submission and assesses the degree of contributory action to be 30%. For this reason, the figure of VT1.000.000 will be reduced down to VT700.000.
11. For the section 16 offence the appropriate sentence will be a fine. This is to act also as a deterrence to future offenders and to punish you adequately for the offence.
12. Having said all that, I now Sentence you Michel Tabi as follows:-
 - (a) (i) For Unintentional Harm Causing Death, 3 years imprisonment wholly suspended for 3 years. This is imposed under Section 57 of the Penal Code Act as amended. You must understand that within these 3 years you must not commit any further offences against any Act, Regulation, Rule or Order.
 - (ii) A Sentence of Compensation to Hokau Maki the surviving brother of the deceased in the sum of VT700.000. You have paid VT200.000 but the balance of VT500.000 must be paid



in installments of VT100.000 per month beginning 30th April 2010 and thereafter at the end of each ensuing month until 31st August 2010 when the final installment shall be paid.

(b) For the Section 16 offence, a fine of VT50.000 payable within 28 days from today. In default you will be imprisoned for 6 months.

13. That is the Sentence of the Court.

DATED at Luganville this 18th day of March 2010.

BY THE COURT


OLIVER A.SAKSAK

Judge

