

CF

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

CRIMINAL CASE No.08 OF 2011

PUBLIC PROSECUTOR -v- GERSON WAYANE

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr Felix Toa Ngwango for the Public Prosecutor
Mr Tom Loughman for the Defendant*

SENTENCE

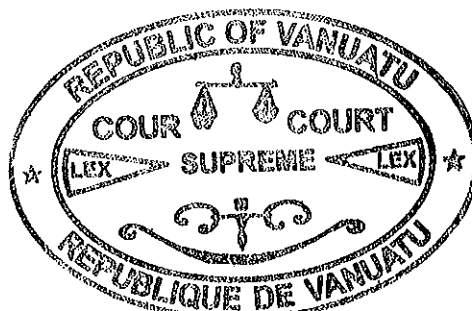
Mr Gerson Wayane, you appear before the Court today for sentence. You are sentenced on 2 charges:

- (i) Driving under the influence of alcoholic liquor, contrary to section 16 of the Road Traffic (Control) Act;
- (ii) Causing death by reckless driving, contrary to section 12 of the Road Traffic (Control) Act [CAP.29].

On 2 March 2011, you pleaded guilty to the 2 charges and you were convicted on each of both charges accordingly.

You are 40 years of age. You come from Erakor village, Efate and you live with your de facto partner and two daughters in the village. The facts of this case show that on Tuesday 1 February 2011, in the morning, you were doing some work politically related matters. You then planned on the said Tuesday morning to go to the tank place, when one Morris Ben called you up.

As soon as Morris Ben arrived after his call and still in the morning part of Tuesday 1 February 2011, the trip to the tanks did not materialize as you and Morris Ben went and drunk alcohol liquor instead. At 14.00hrs of 1 February 2011 you and Morris Ben



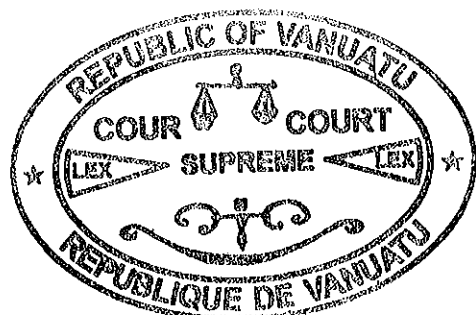
[Handwritten signature]

bought more tusker and continued drinking. From 16.00hrs to 18.30hrs you and Morris Ben were still drinking and listening to music at Erakor village Half Road.

At about 7.00pm o'clock at night, you were drunk with alcohol liquor and you drove a white Mitsubishi single cabin pick-up on the road from Erakor Bridge towards Erakor village and you caused a traffic accident. You were driving the white Mitsubishi at high speed down the hill at the Nabanga forked road and you hit one Anthony Wayane who was walking with his girlfriend Serah on the side of the road.

When the truck you were driving hit Mr Anthony Wayane, his body was thrown 31 meters away from the point of impact (P.01) which is the vehicle itself. At about 19.00pm o'clock a call was made to the police. The traffic accident scene Police Officer Kalontas Titus arrived at the accident scene at about 19.41pm o'clock. You were driving toward Erakor village at 70kmph and you noticed that there were people walking on the side of the road. You said there was a particular vehicle that came from the village towards Port-Vila town whose lights blinded your eyes and this caused you to go on the side of the road and hit Anthony Wayane. You stopped your truck about 40 meters after the point of impact (P.01). You were told that you have hit your cousin. There were people coming to see what was happening. The body of Anthony Wayane was hanging on the wire of the fence and blood covered his face. His head was broken; his chest and neck were held by the wire of the fence. One Tang Kalon who came onto the road to see what had happened tried to feel the pulse on the body of Anthony, there was no pulse on the body of the victim that he could feel.

The body of the victim was removed and put onto a passing Mitsubishi double cabin Government vehicle (white in colour) driven by Presley Carlo to the Hospital along with the victim's girlfriend. Police Officer Kalontas Titus arrived at the Hospital to find Anthony Wayane was confirmed dead at about 20.06pm o'clock. The deceased's father also arrived at the Hospital when it was already dark to find out from the doctors at the Hospital that his son was declared dead. At about 20.55pm o'clock, two police officers, Kalontas Titus and Constable James Bila returned to the scene of



the accident to take photos, sketching the scene and locating the blood stains on the flowery fence.

Anthony Wayane was buried on 2 February 2011 at Erakor village cemetery. On 2 February 2011, you were released from police custody cell No.6 in the afternoon about 2.10pm o'clock. You were cautioned about your rights and interviewed.

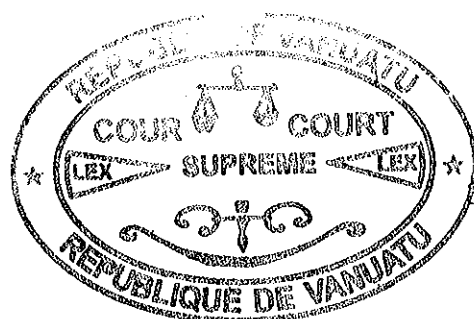
Sections 12 and 16 offences are specific offences and they are also very serious offences under the Road Traffic (Control) Act [CAP.29].

I read, heard and consider the prosecution submissions and submissions from your lawyer when I consider your sentencing. I have also had the benefit of perusing the pre-sentence report filed by the Probation Officer.

In sentencing you, I denounce your behaviour that you cannot drink and drive and you cannot drive at an excessive speed. You are responsible for your action and you must be held accountable for the harm you have caused. In this case, the harm is considerable because it resulted in the death of an innocent person. 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 to consider also the compensation if appropriate for the family of the victim. I need to consider your rehabilitation together with the principles relating to the promotion of reconciliation.

In this case, the seriousness of your offending and the circumstance under which you committed the offences are aggravated by the following factors:

- Excessive speed.
- Failure to apply brakes when you saw people walking on the side of the road.
- Failure to stop your truck when your eyes were blinded by the lights of the truck coming on the opposing direction.



A handwritten signature in black ink, consisting of a series of loops and a long vertical stroke, positioned to the right of the court seal.

- Your consumption of alcohol liquor from part of the morning and all afternoon of Tuesday 1 February 2011, until 6.30pm o'clock, clearly affected your ability to drive. This is more so when you were not aware that you hit the deceased.
- Being drunk, you became a danger to the public.
- You have previous convictions for the offence of theft and was imprisoned.

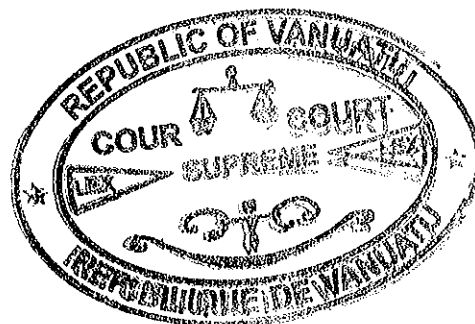
In mitigation, I accept what your lawyer told me in Court and in his submissions and I take them into account and they include:

- Your guilty pleas
- You cooperate with the police.
- You cooperate and assist people in your community.
- You are remorseful for your wrongdoing and apologized and you say you would learn from your offending.
- Few days after the burial of the deceased body, your father with good intent tried to calm down the tension between your family and that of the victim, provided some food and custom items as a sign of reconciliation although, the father of the victim felt it was premature.
- You have good work references.

The nature of your offending, the facts and circumstances of your offending warrant a custodial sentence to be imposed. I consider the aggravating factors and the mitigating ones and I balance and cross-reference with each of those and after giving an allowance for the time already spent in custody, I sentence you to 2 years imprisonment for count 2 and you are sentenced to 3 months imprisonment for count 1 and to be served concurrently.

I consider whether I should suspend your sentence. I decline to suspend the whole sentence but I just suspend it for 1 year.

I order you to be detained in the lawful custody for a period of 1 year immediately and the balance of 1 year of your term of imprisonment shall be suspended for a period of 2 years.

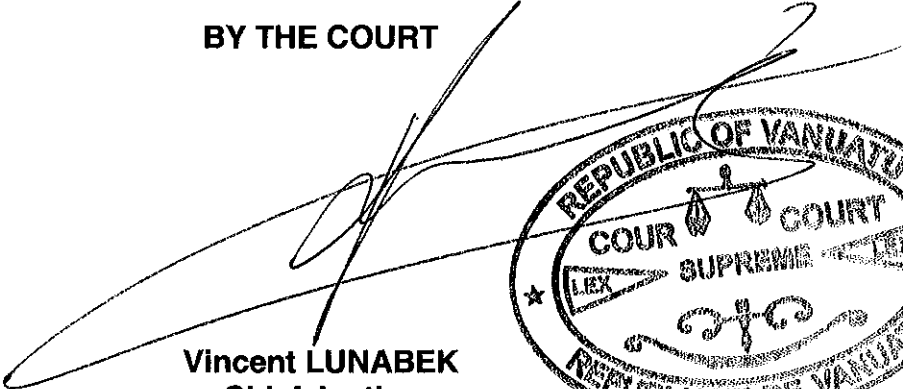


I also order that you are disqualified from driving a motor vehicle for a period of 2 years commencing from today's date.

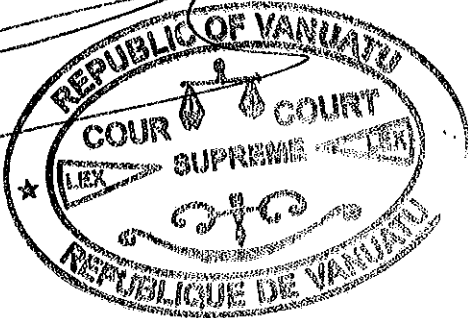
You have 14 days to appeal this sentence if you are not happy with it.

DATED at Port-Vila this 31st day of March 2011

BY THE COURT



Vincent LUNABEK
Chief Justice



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it says "COUR SUPREME" and "COURT SUPREME". There is a star on the left and a decorative flourish at the bottom.