

PUBLIC PROSECUTOR -v- HENRY MOLI

Coram: V. Lunabek CJ

Counsel: Ms Tabisa Harrison for the Public Prosecutor
Mr Eric Molbaleh for the Defendant

SENTENCE

Mr Henry Moli, you appear today for your sentence. On 9 August 2011, you have entered guilty pleas on the following offences charges against you:

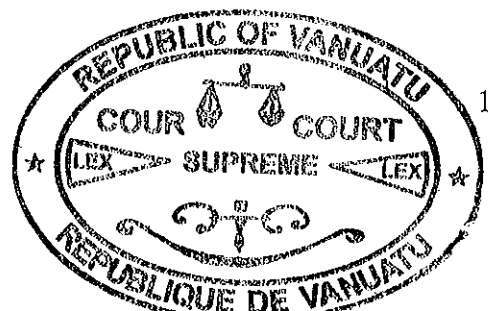
- 1 count of possession of firearms with intent to injure, contrary to section 26 of the Firearms Act [CAP.198];
- 1 count of threats to kill, contrary to section 115 of the Penal Code Act [CAP.135].

You are 32 years of age. You originate from the village of Navitora, West Ambae. You live with your partner and with 3 young children aged between 1 to 8 years.

The facts of this case happened in September 2009. They are set out in this way:

On or about the 29th of September 2009 in the afternoon the complainant Mr. Apo Batick and his two friends Mr. Shildas Bule and Mr. Ata Loah, finished working in the gardens at Erango rango and were walking on the road heading to their house in the area.

On their way home, they came across your dog that was running towards them and was barking at them. The complainant Apo Batick in his defense swung the knife intending to frighten the dog but the knife accidentally injured the dog on its left leg.



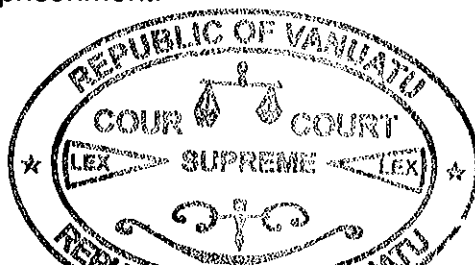
When this incident with the dog happened, you were not only upset because the complainant injured your dog but also because there were a lot of mischief's in the area which you and your family are tired and frustrated about. So, you took your riffle a .22 and you pursued the complainant and his companions with the gun. You caught up with them and asked who knifed your dog. Mr. Ata told you it was the complainant (Apo Batick). You then took out a bullet from your pocket and inserted the bullet in the rifle and threatened to shoot the complainant. Mr. Ata saw this and stood in front of the complainant to which you said words to the effect 'you come out mi shootem him'. This went on for sometime then you back down as Mr. Ata talked to you into calming you down. You said words to the effect 'you lucky Ata mi lookim save Ata sapos ino Ata mi shootem tufala ia shilda mo Apo'.

On the 1st October 2009 you were cautioned and interviewed regarding the allegations that were laid against you. You admitted to the allegations against you and stated that you acted out of frustrations and angry because of the injury your dog had suffered.

Mr Henry Moli, on 29 September 2009, you have broken the following laws:

1. The firearms Act [CAP.198]. Section 26 of that Act provides:
*"No person shall have in his possession any firearm or ammunition with intent to endanger human life or cause serious injury to property.
Penalty: Fine not exceeding VT750,000 or imprisonment for a period no exceeding 15 years or to both."*
2. The Penal Code Act [CAP.135]. Section 115 of the Act provides:
*"115. No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.
Penalty: Imprisonment for 15 years."*

Possession of a firearm or ammunition with intent to endanger human life or cause serious injury to property, is a very serious offence. The maximum penalty provided by law for such an offence is the payment of a fine of VT750,000 up to an imprisonment of 15 years or to both fine and imprisonment.



Threats to kill a person is also a very serious offence. The maximum penalty provided by law for such an offence is 15 years imprisonment.

A sentence of imprisonment should be imposed on you in respect to offences in count 1 and count 2 to reflect the seriousness of each and both offences, also to punish you for your offendings and to deter others not to commit offences of this nature and finally to protect the people and community from such offendings.

I have perused, read and considered the prosecution submissions and submissions of your lawyer. I have also had the opportunity to peruse the pre-sentence report filed by the probation office to assist the Court in your sentencing.

The prosecution refers the Court to the following cases:

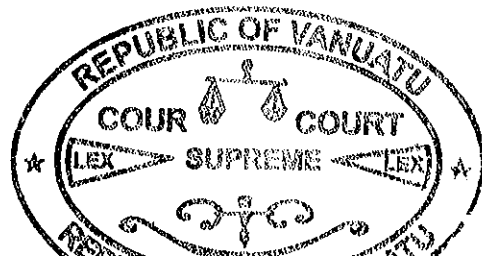
(1) **Walker v. Public Prosecutor** [2007] VUCA 12 which confirmed the Supreme Court judgment and sentence in **Public Prosecutor v. Kell Walker** [2007] VUSC 07.

In that case, it was held:

“Cases of this nature must always warrant imprisonment sentence to reflect the seriousness of the offence. For offence of threats to kill a person by a defendant with presence of a weapon and the use of the weapon is on the higher scale of aggravation and seriousness. A suspended sentence of imprisonment must only be granted if the circumstance of the case is justified.”

The Court sentenced the Defendant to 2 years imprisonment and the Defendant was ordered to partly served 12 months in prison while the other half of his imprisonment sentence is suspended by taking into account the age of the Defendant (60 years of age) and the Defendant’s health conditions.

(2) **Public Prosecutor v. Philip Enaus** [2008] VUSC 04. In this case, the Defendant threatened to kill the complainant with a bush knife like a big; after the threat was made, there was no attempt by the Defendant to cut the complainant with the bush knife. The Defendant was angry, he believed to have a claim over the land which the complainant was clearing. The Defendant was 39 years of age, had 5 children, entered early guilty pleas and a first time offender. The Court sentenced the



Defendant to 18 months imprisonment suspended for 2 years. In addition, the Court imposed 12 hours community work and 6 months supervision.

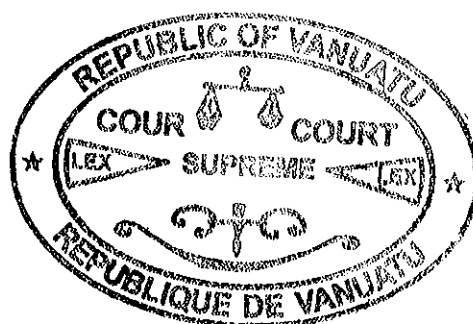
(3) **Public Prosecutor v. Kauras Kalia** [2008] VUSC 07, the Defendant threatened to kill his father's brother (uncle). The Defendant told the complainant that he would kill him while holding on to a knife and a natora. When the Defendant made the threat, the Defendant attempted to whip the complainant with the natora and knife but the complainant was able to avoid the weapons without injuries. The Defendant was 31 years of age, have 3 children, a first time offender and entered an early guilty plea. The Court sentenced the Defendant to 2 years and 6 months imprisonment suspended for a period of 2 years. In addition, the Court ordered the Defendant to perform 200 hours community work and 6 months supervision.

The defence counsel in his submission, referred the Court to the following cases:

- (1) **Public Prosecutor v. Kell Walker** [2007] (referred to earlier);
- (2) **Public Prosecutor v. Manses** [2005]. The Defendant went into the office of Peace Corp and threatened to cut the complainant with a bush knife. The Defendant had a bush knife on him. He pleaded guilty. The Court sentenced the Defendant to 3 years imprisonment and suspended the sentence for a period of 2 years.
- (3) **Public Prosecutor v. Moffet** [2010], Criminal Case No.79 of 2010. The Defendant approached two (2) girls with a bush knife and threatened to kill both with the bush knife if they both refused to perform oral sex with him. The two girls run away and on their run, they both fell into a big hole and got seriously injured. They were both transported to the hospital. One of the girls went through surgeries and the other had broken bones.

The Defendant pleaded guilty and sentenced to 12 months imprisonment and suspended for 2 years with additional community sentence and supervision.

- (4) **Public Prosecutor v. Soalo** (2009), Criminal Case No.144 of 2009. The Defendant sent text message to a girl by threatening her and her family. The Defendant was 25 years of age. He was single and a first time offender. He had performed a custom reconciliation ceremony. He was sentenced to 9 months imprisonment suspended for 12 months.



In their respective submissions, the Public Prosecutor and your defence lawyer submitted that the appropriate sentence for your offendings would be a suspended term of imprisonment with additional order for community work and supervision.

In the present case, the circumstance and seriousness of your offendings are aggravated by the following factors:

- You do not have control over your dog which attacked the complainant and his companions;
- You took a .22 gun and pursued the complainant and his companions;
- You asked to know who knifed your dog;
- You took out a bullet from your pocket and inserted the bullet in the riffle .22;
- You aimed the gun .22 at Mr Apo Batick to shoot him;
- Your action forced Mr Ata to stand in front of the complainant (Mr Apo) as a shield and to his own risk as well;
- You have recourse to a riffle .22 to deal with your frustrations instead of peaceful means of resolution of disputes.

I sentence you to 5 years imprisonment for the offence of possession of firearm with intent to injure, contrary to section 26 of the Firearms Act [CAP.198] as a starting point.

I sentence you also to 5 years imprisonment for the offence of threats to kill a person, contrary to section 115 of the Penal Code Act [CAP.135] as a starting point.

In mitigation, you are 32 years of age and you have 3 children with your partner. You are a first time offender and you do not have any previous convictions. You entered guilty pleas at the early opportunity given to you by the Court. You said you have no intention to kill the victims. You stated you overreacted under pressure from some actions of vandalism to your father's truck.

On each and both offences in counts 1 and 2, I reduce your respective sentence to $\frac{1}{3}$ to reflect your guilty pleas and further allowances to reflect your remorsefulness and other mitigating factors. You are sentenced to an end sentence of 3 years



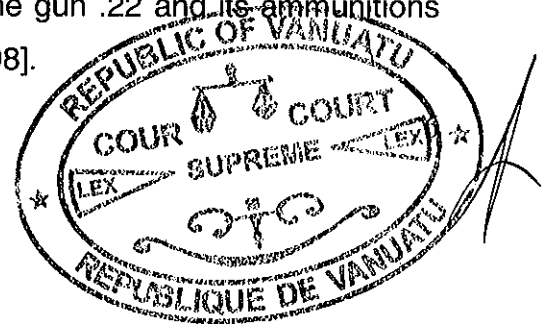
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imprisonment for the offence of possession of firearms with intent to injure, contrary to section 26 of the Firearms Act [CAP.198] and 3 years imprisonment for the offence of threats to kill, contrary to section 115 of the Penal Code Act [CAP.135]. Both sentences are to be concurrent. This means the 2 sentences are to be served together at once which represent a total of 3 years imprisonment.

The next question is whether the imprisonment sentence of 3 years should be suspended.

Both the prosecution and your lawyer submitted that any imprisonment terms shall be suspended on both counts. I do not agree with both submissions on the point of suspension. I approach your sentencing on the basis of the rationale of **Public Prosecutor v. Kell Walker** [2007] VUCA 07. Except for this case (**PP v. Kell Walker**), all other cases referred to this Court by the prosecution and your lawyer involved the presence of or the use of a bush knife or a piece of wood or threats to kill with a bush knife. There is a huge difference between a bush knife and a loaded gun (rifle) in respect to their danger and gravity and, therefore their seriousness. A loaded rifle is a deadly weapon. In the present case, you had a deadly weapon, namely a .22 rifle. You held the gun and pursued the complainant (Mr Apo Batick) and his companions with the rifle. You also had ammunitions (bullets) with you in your pockets. You took out a bullet from your pockets and inserted the bullet in the rifle .22 and you aimed with the loaded rifle .22 at the complainant and you threatened to shoot him (Mr Apo Batick). Mr Ata saw this and stood in front of the complainant as a shield. You asked Ata to remove himself so that you can shoot the complainant (Mr Apo). When Mr Ata succeeded to calm you down, you said words to the effect, "you lucky Ata mi lookim save Ata sapos ino Ata mi shootem tufala ia Shilda mo Apo". The circumstance of your offending is on the higher scale of aggravation and seriousness. A suspended imprisonment sentence is not justified in your case. I therefore decline to suspend your imprisonment sentence of 3 years.

The Court is further informed that the rifle .22 belongs to your father, Mr. Charley Moli. The rifle .22 and bullets were used to commit the offences in this case. The prosecution applies and an order is made to forfeit the gun .22 and its ammunitions (bullets) under section 39 of the Firearms Act [CAP.198].



SENTENCE ORDER

1. Defendant Henry Moli, you are sentenced to 3 years imprisonment with intent to injure, contrary to section 26 of the Firearms Act [CAP.198] (count 1) and 3 years imprisonment for threats to kill, contrary to section 115 of the Penal Code Act [CAP.135] (count 2).
2. You are ordered to serve the 3 years imprisonment on both counts concurrently and with immediate effect.
3. The riffle .22 belonging to your father, Mr Charley Moli, residing at Erangorango, Efate, is forfeited by order of this Court under section 39 of the Firearms Act [CAP.198]. Police officers are ordered to seize Mr Charley Moli's rifle .22 with its bullets ammunitions and disposed of them as soon as possible.
4. You have 14 days to appeal your sentence if you are unsatisfied with it.
5. A copy of this Order shall be served on the Police Commissioner of the Republic, his Deputy or responsible police officers to effect Order 3 above and provide a report to the Supreme Court of the execution of Order 3 above by 30 September 2011.

DATED at Port-Vila this 12th day of September 2011

BY THE COURT



**Vincent LUNABEK
Chief Justice**

