

PUBLIC PROSECUTOR

-v-

JAMESON KALATEI

*Coram: Vincent Lunabek, Chief Justice
Mr Tristan Karae for Public Prosecutor
Mr Brian Livo for Defendant*

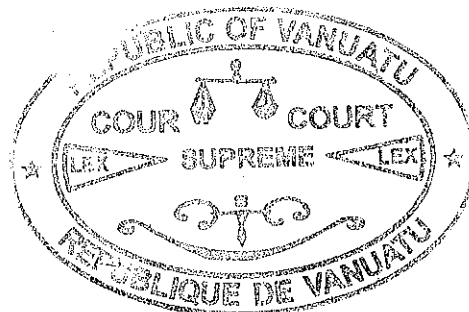
SENTENCE

This is the sentence of the Defendant Jameson Kalatei. Jameson Kalatei, you are 24 years of age and you are charged with the following offences:

- Three Counts of threats to kill a person, contrary to s.115 of Penal Code Act [Cap135] (counts 1, 2, and 7);
- One Count of intentional assault, contrary to s.107(b) of Penal Code Act [Cap135] (count 3).
- One Count of malicious damage to property, contrary to s.133 of Penal Code Act [Cap135] (count 4);
- One Count of unlawful entry, contrary to s.143 of Penal Code Act [Cap135] (count 5);
- One Count of theft, contrary to s.125(a) of Penal Code Act [Cap135] (count 6) and;

On 6th of August 2013, you entered following pleas in respect to each of the offences charged against you in the information dated 6 August 2013:

- Not guilty pleas for the three (3) Counts of threats to kill a person;
- A not guilty plea for the offence of malicious damage to property.
- A not guilty plea for the offence of unlawful entry;
- A guilty plea for the offence of intentional assault; and
- A guilty plea for the offence of theft.



You were convicted for the offences of theft and intentional assault on the same date of 6 August 2013. The Public Prosecution informed the Court that you will be tried on the offences of threats to kill a person (x3 counts), unlawful entry and malicious damage to property.

The Court directed that your sentence on the counts of theft and intentional assault, be adjourned pending the outcome of your trial on the balance of offences in the information. Your trial is scheduled for two (2) days on 20 - 21 August 2013 at 9.00am at Isangel, Tanna, as all the prosecution witnesses reside and live on Tanna Island.

On 20 August 2013, at Isangel, Tanna, the prosecution informed the Court that they were ready for trial.

Your Lawyer, Mr Brian Livo, informed the Court that you wish to be re-arraigned on the three counts of threats to kill a person, unlawful entry and malicious damage to property upon which you entered not guilty pleas in respect to each of them on 6 August 2013.

Before you were re-arraigned, Mr Tristan Karae informed the Court that the prosecution abandoned the offence of unlawful entry, contrary to s. 143 of Penal Code Act charged in Count 5. The offence of unlawful entry in the information is dismissed and you are, thus, discharged of it.

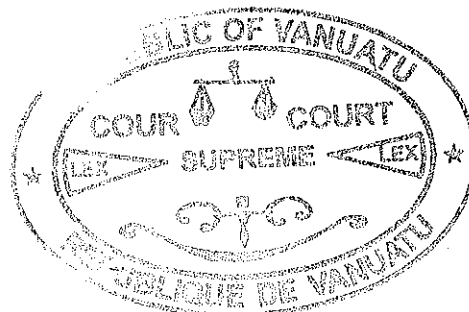
On your re-arraignment, you changed your previous "not guilty pleas" on Counts 1, 2, 4 and 7 into "guilty pleas" in respect to each of them. You are convicted of each of these offences accordingly.

In summary, you are now sentenced for 3 Counts of threats to kill a person, contrary to s.115 of Penal Code; one count of intentional assault, contrary to s.107(b) of Penal Code; one count of malicious damage to property, contrary to s.133 of Penal Code and one count of theft, contrary to s.125(a) of Penal Code Act.

The facts of this case are provided by the prosecution brief of facts. You accept these facts as provided by the prosecution, save, that you say you have returned the amount of Vatu 150,000 you have stolen and which is the subject of count 4 offence in the information. The facts are now set out below:

Jameson Kalatei, you are indicted with various offences under the Penal Code Act [Cap 135] including threats to kill, intentional assault causing temporary injury, malicious damage to property and theft. The seriousness of events leading up to the offences alleged against you occurred between the 23rd of December 2012 and the 25th of December 2012 and proceedings commenced pursuant to an official complaints lodged by Chief Vatamil and the alleged victims namely, Chief Alexis Kawas, Chief Jack Mataki, Mr. Perez Mataki and chief Solomon keivunu.

You were at all material times unemployed and resided with Chief Alexis Kawas in the village. You were ordinarily subjected to the authority and headship of the alleged victims.



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It is alleged that on or about the early hours of 23rd of December 2012, you were drinking alcohol with your friends. While they were drinking, you told them that you will kill the victims. You told your friends that "you had enough of the chiefs (victims) telling you not to smoke marijuana. You told your friends that you will get drunk on Christmas day and kill them". In your own words you stated *"every time ol chief oli stap rao long mi from marijuana. Bae mi trong long 25th December long Christmas, bae mi killem dead wan long ol chief ia wei oli stap rao long me from marijuana ia"*.

Sometime later yet in the forenoon of the same day, you set about looking for Chief Solomon Keivunu. You had in your person a cane knife, an axe, and a pinch bar. You chanced upon the alleged victims who just happened to be at the same location at the material time. You told them that you were looking for Chief Keivunu and that "if you find him you will cut his neck".

You then uttered abusive words to Chief Jack Mataki to this or like effect. "fuck you, bae mi killim you pispis" (Fuck you, I will kill you and you will piss). You then walked towards Mr. Mataki, Mr. Kawas, and Mr. Bosco and assaulted them. Mr. Perez Mataki who was drinking kava at that time saw the alteration and tried to stop you but you assaulted him together with the other alleged victims. They sustained temporary injury as a result of the assault.

You then proceeded towards the house of Chief Alexis and damaged the kitchen door and entered the house and took a box containing CDs and VUV 150,000 enclosed in a plastic bag. You availed yourself of the money and only VUV 5,000 was recovered or returned to Chief Alexis by the police officers after investigations.

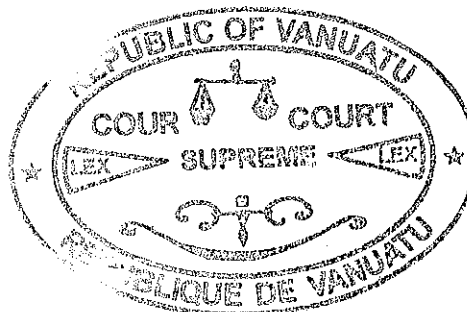
Chief Alexis Kawas made haste towards Chief Solomon Keivunu's house. He relayed to Chief Keivunu your intentions and what you had told them and Chief Alexis Kawas advised them to vacate their home immediately. While they were conversing you arrived. You still had the weapons with you. You proceeded towards Chief Keivunu but a James Kalili intervened and grabbed you. Mr. Keivunu and his family took flight.

Chief Keivunu his wife and his children moved out of their home and harbored at Chief Daniel latamil's house. They were frightened of you for as much as they did nothing to incite you to behave in such as a fashion.

On Christmas day the 25th of December 2012 which was two days after the initial offending and 2 days before your arrest, you told a James Kalili and a Michael Laken in the presence of Chief Kawas that "you will cut the neck of Chief Solomon Keivunu". You were sober at the time.

All the families of the alleged victims and other members seek refuge in other villages and in nearby bushes as they were frightened wanton perpetrated by you. They returned after you were arrested on the 27th of December 2012 by the police.

You were interviewed under caution on the 28th of December 2012. You elected to remain silent.



Applicable Law: The laws that you have broken which set out the penalties to be imposed are as follow:

Threats to Kill contrary to section 115 of the Penal Code Act [Cap135] which states that:

No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill a person.

Penalty: Imprisonment for 15 years.

Intentional Assault contrary to section 107 of the Penal Code Act [Cap135] which states that:

No person shall commit intentional assault on the body of another person

Penalty:

(b) if damage of a temporary nature is caused imprisonment for 1 year.

Malicious Damage to Property contrary to section 133 of the Penal Code Act [Cap135] which states that:

No person shall willingly and unlawfully destroy or damage any property which to his knowledge belongs to another.

Interpretation Act: 36(3) 5000 vatu or 1 year imprisonment or both

Theft contrary to section 125 of Penal Code Act [Cap135] which states that:

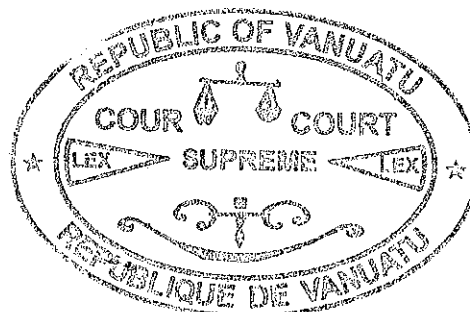
No person shall cause loss to another

(a) by theft

Penalty: Imprisonment for 12 years.

Based on your convictions on these offences, you are liable to the following penalties:

- 15 years imprisonment for threats to kill a person;
- 12 years imprisonment for theft;
- 1 year imprisonment for intentional assault causing damage of temporary nature and;
- 1 year imprisonment or a fine of 5,000 vatu or both for malicious damage to property.



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The offences you have committed are serious offences indeed as reflected by the maximum penalties imposed by law.

When I consider your sentencing, I take into consideration the submissions made on behalf of the Public Prosecutor and the submissions made by your lawyer on your behalf.

I have also the benefit of perusing the same day report filed by the Probation Officer to assist the Court on your sentencing.

The Prosecution refers the court to relevant case authorities. They submitted that the case of *Walker v Public Prosecutor [2007] VUCA 12* which provides the appropriate guideline. In the case of *Public Prosecutor v Kell Walker [2007] VUSC 07* the Court held that:

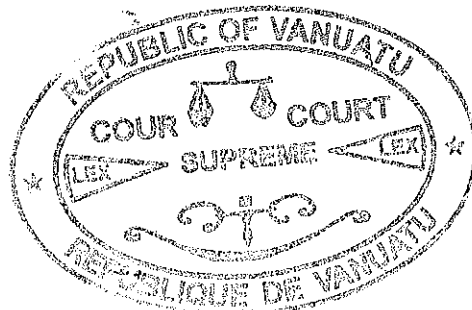
"Cases of this nature must always warrant imprisonment sentence to reflect the seriousness of the offence. For offence of threats to kill a person, by a defendant with presence of weapon and the use of the weapon is on the higher scale of aggravation and seriousness. A suspended sentence of imprisonment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

The prosecution also referred the court to other case authorities. The Prosecution submitted that the following aggravating factors were present in this case (for the most serious offences):

1. You consumed alcohol drinks.
2. You were frustrated and for being told not to consume marijuana (cannabis).
3. You caused fear towards the people of Loutapanga village to run to the bushes for safety.
4. Chief Solomon Keivunu and his family were forced to vacate their homes and live in a different place.
5. You have in your possession weapons (cane Knife, axe and pinch bar).
6. You took steps to use the weapons.

They submitted that your offending is a serious matter given the offence itself and the aggravating factors. However, the circumstances surrounding your offending warrants that an imprisonment sentence should be imposed on you. This is to show that you must take into account the responsibility and accountability for the harm that you caused to the victims and the community at large and to denounce and deter you and the general public for such offending.

The Prosecution also submitted that as to whether or not to suspend your imprisonment sentence, following factors have to be taken into account:

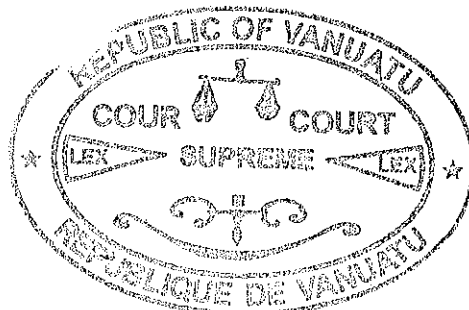


1. In this case you had in your possession three dangerous weapons (a cane knife, an axe and a pinch bar).
2. You did not use them but you intended to use them as you were grabbed by one James Kalili while you proceeded towards chief Solomom Keivunu.
3. You committed the offence of assault when you had in your possession the three dangerous weapons but did not use them.
4. You are a first time offender.
5. You have a problem with authority.
6. Repeated assaults on 3 different men.
7. The defendant is remorseful, intends to make customary reconciliation.
8. The offending of threats to kill was repetitive even after two days of the initial threat.

The prosecution submitted that for all the offences the sentences should run concurrently therefore the Court should sentence you to 18-24 months imprisonment and such term shall be suspended for a period of 2 years. In addition, 150 community works and 24 months supervision.

In mitigation, your lawyer submitted that the Court must take into consideration the following mitigating factors when considering your sentencing:

1. You are a first time offender, with no previous criminal records
2. You plead guilty to the offences of theft and intentional assault at the first opportunity given to you. The Court should make a discount of 1/3 and as to your other late guilty pleas some allowances should be given.
3. You have cooperated well with the police during the time of arrest and investigation.
4. According to the same day report, you have returned back the amount of VT 150,000 you have stolen from Mr Alexis Kawas
5. You have already spent a total of 117 days in pre-custody from 29 December 2012 to 30 January 2013 and remanded again from 26 May 2013 to 22 August 2013.
6. You have an ambition to be an auto mechanic in the future.
7. You are remorseful of what you have done.



[Handwritten signature]

Your lawyer submitted that for the all six offences, they should have a lower starting point since each of the offending is at the lower scale of such offending.

As to the offences of threats to kill a person, your lawyer refers the Court to the following case authorities: Public Prosecutor -v- Kawas Kalia [2008] VUSC 32; Public Prosecutor -v- Philip Enaus [2008] VUSC 31; Public Prosecutor -v- Manses [2005] VUSC; Public Prosecution -v- Sualo [2009] VUSC 110 and Public Prosecutor -v- Moffet [2010] VUSC, criminal case 79 of 2010. Your lawyer submitted that those cases have shown the community base sentence is the appropriate sentence for this kind of offence. But your lawyer said the weapon use must not be as in the case of PP -v- Kell Walker and PP -v- Moli.

As to the offence of Theft, your lawyer also submitted that the table of cases provided in his submissions also shows that the community base was a more appropriate sentence. He said you have stolen 150,000 Vatu and you have returned back the money as provided in the report. Your defence lawyer submitted that any punishment that the court wishes to impose, it must be a community based sentence or suspended sentence. Your lawyer submitted to the like effect in respect to the offences of intentional assault and damage to property.

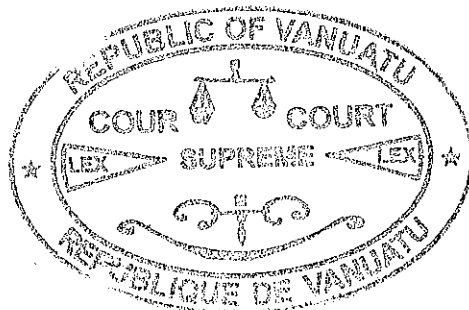
Your lawyer further submitted that all punishment must run concurrent to each other.

Your lawyer finally referred the Court to section 37 of the Penal Code Act which provides:

"COURT TO HAVE REGARD TO KEEPING OFFENDERS IN TH COMMUNITY 37. If an offender is convicted of an offence punishable by imprisonment, the Court must in addition to other sentencing options it may impose, have regard to the possibility of keeping offenders in the community so far as that is practicable and consistant with the safety of the community. "

In the present case, I have considered the nature of your offending, the circumstances in which you have committed those offences, I must say they are very serious offending. The seriousness of your offending are aggravated by the following factors:

1. You were frustrated for being told by the chiefs not to consume marijuana (cannabis).
2. You then planned to take law into your own hands.
3. You consumed alcohol.
4. You armed yourself with a cane knife, an axe and a pinch bar.
5. You asked and looked for a Chief Solomon Keivunu
6. You uttered abusive words to the chiefs



7. You caused repetitive assaults on the chiefs
8. You caused fear towards the people of Loutapanga Village to run to the bushes for their safety.
9. You took steps to use the weapons when you proceeded towards Chief Keivunu in his house with his wife and children.
10. You caused fear to Chief Solomon Keivunu, his wife and children for as much as they did nothing to incite you to behave in such a fashion.
11. You caused Chief Solomon Keivunu, his wife and children to vacate their home and live in a different place for their safety until you were arrested by the police.

In sentencing I must take into account your responsibility and accountability for harm to the victims and to the victim in general. I must denounce your conduct particularly the presence and steps taken to use the weapons indicating your firm intention of so acting.

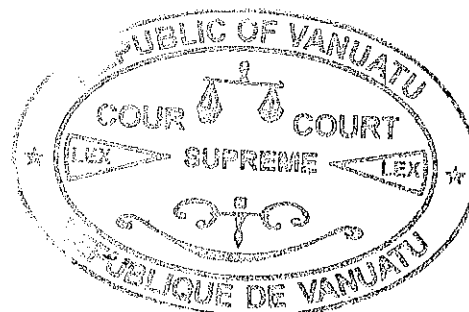
I must deter you and other like minded offenders from the sort of behaviour. I must also protect the victims of your crimes and the community at large. I bear in mind that I will impose the least restricted outcome upon you that is appropriate.

In mitigation, I will take into account your guilty pleas. I note that I will need to consider your early guilty pleas. I do not consider that the conduct of the chiefs (victims) that you alleged merit the sort of response that you gave. However, I take your expression of remorse and contribution and your previous good character as a first time offender.

As to the offence of theft I note that there was a factual difference between the version of facts of the prosecutor and what you said in the same day report. I note that the difference is of a degree but not substantial. In that circumstance, I accept that the amount of VT 150,000 were returned to Chief Alexis Kawas and it is to your credit.

In this case, the aggravating feature clearly outweighs by significant margin the mitigating features.

On Count 1 of the threatening to kill charge, you are sentenced to 7 months imprisonment. On the second threatening to kill charge combined with the steps taken to go into the house of Chief Solomon Keivunu, to proceed towards him with the weapons (a cane knife, an axe and a pinch bar) with the firm intention to use them on Chief Solomon Keivunu's person but you were grabbed by someone else, you are sentenced to 20 months imprisonment. On Count 3 of intentional assault, you are sentenced to 8 months imprisonment. On count 4 of malicious damage to property, you are sentenced to 6 months imprisonment. On Count 6 of theft, you are sentenced to 3 months imprisonment.



I am of the view that the threatening to kill charges in Counts 1 and 2 and their sentences may be served concurrently. I am also of the view that the offences of damage to property and theft and their sentences may also be served concurrently to each other and also concurrent to the sentences imposed for offences of threats to kill in Counts 1 and 2.

However, the threatening to kill charge in count 7 of 25 December 2012 was separate incident that 7 months must be served accumulatively on the other sentences. This means that the total imprisonment I impose on you, Mr Jameson Kalatei, today is 27 months imprisonment.

I must now allow you some credit for your mitigating factors. I bear in mind that you have entered early guilty pleas on two offences in the information on 6 August 2013. You caused a trial to be scheduled at Isangel, Tanna, where the witnesses are but you entered late guilty pleas on the majority of the charges in the information on 20 August 2013. There was no trial. I need to make it simple and not to complicate things as sentencing exercise is not mathematical science.

I allow you 1/3 for all your guilty pleas. I reduce the 27 months imprisonment to 16 months imprisonment in total, that allows you 1/3 for your pleas of guilty and some allowance for other mitigating factors.

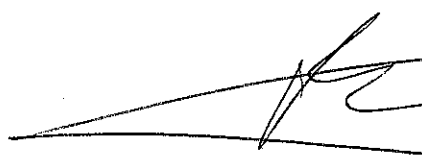
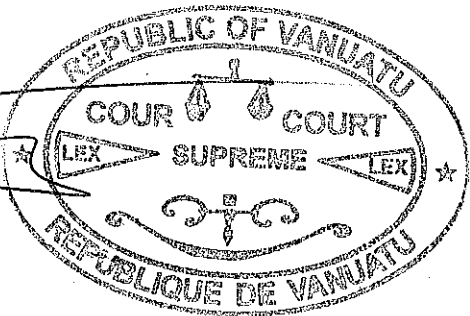
You have already spent a total of 117 days in pre-trial custody. This will be deducted in your favour also in the totality of your term of imprisonment which will be deemed to start from 29 December 2012.

I consider whether I should suspend your imprisonment sentence of 16 months. I consider the specific circumstances of this case, I decline to suspend your imprisonment sentence of 16 months.

You are ordered to serve 16 months imprisonment which is deemed to start on 29 December 2012. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Isangel, Tanna this 23rd day of August 2013

BY THE COURT

**Vincent LUNABEK
Chief Justice**