

PUBLIC PROSECUTOR

-v-

ADAMS TARI VUTI

Coram: Chief Justice, Vincent Lunabek
Counsel: Mr Gregory Takau for the Public Prosecutor
Mr Jacob Kausiama for the Defendant

SENTENCE

Defendant Adams Tari was charged with one Count of Unintentional Harm causing Death, contrary to section 108(c) of Penal Code Act [Cap135]. He was found guilty and convicted of that offence on 5 September 2013.

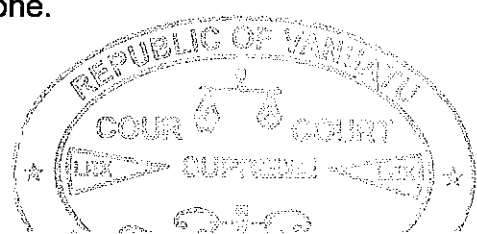
On 16 of July 2007 on the Teouma Road, Defendant Tari Adams was driving a vehicle Toyota Corolla Registration No. 9343. On the same date, a child victim, a boy of five years of age entered a red bus to take him to his home after the class from Eratap. The child lived with his parents on the road to Rentabao. On approaching the direction of the road past Teouma Shopping Center, the victim boy saw his parents and told the driver of the bus to stop.

A passenger opened the door of the bus so the deceased boy could get off the bus. The mother of the deceased boy then crossed the road to pay for her son's bus fare. As she was paying for the bus she let go of her son's hand and on seeing his father the boy ran across the road to greet him. That was when the vehicle Toyota Corolla Registration #9343 driven by Defendant Adams Tari Vuti hit the child boy as result of which he died on the spot.

The defendant Adams Tari drove the vehicle from a speed of 80-50Km per hour before the point of impact. He did not see the child before the impact as he was turning his eyes and head to wave to an old man on the side of the road before the impact. At the point of impact to where the body of the deceased child was projected to, the distance was 22.6 meters. The Defendant Adams Tari drove his vehicle at an excessive speed. He was reckless in his driving which resulted in the death of the child boy on 16 July 2007.

The pre-sentence report shows that the defendant is now 43 years old. He had committed this offending when he was 36 years old. He did not dispute the summary of facts presented by the Public Prosecutor. He felt guilty of what he had done to the deceased child. He did not plan or intent to commit this offence which resulted in the death of the child.

He felt very sorry of what he had done to the victim and it is a nightmare for him and he has realised his mistake and he does not want to commit such and offence again in the future. It is reported that he is very remorseful when he shed tears or became emotional when he realized what he had done.



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On two separate occasions, he attempted to make a custom reconciliation ceremony as a sign of "klinim fes" and seeking forgiveness and peace, but it was not accepted. He had arranged with his chief Isaac Vira to talk to the victim's chief if they would accept a custom ceremony. He said the chief are negotiating now so that a Kastom ceremony may take effect soon. He is prepared and ready for that custom reconciliation with 10 mats, a role of garments, a pig, a stamp of kava and five (5) baskets of Island food crops. He is now waiting for the family of the victim's approval of the ceremony. He has provided letters from his chiefs as references to the court. The court will take all that in the sentencing of the Defendant.

In mitigation, he is a first time offender. He has no previous conviction. He is remorseful for his action. He cooperates well with the police when they approached him regarding the offence. He has apologised to the court and to the victim for his actions. He is married. He has seven children with his wife. He is a responsible member of his community and he participated a lot in the activities organized by his community. He is the sole bread winner for his nuclear family. I consider and take all of what the Defence lawyer told the court in the sentencing.

The offence of unintentional harm which results in the death of another person is sanctioned under section 108(c) of Penal Code. It carries a maximum penalty of 5 years imprisonment. It is a serious offence as reflected by the maximum penalty imposed by law.

In the present case the offending is aggravated by the following factors: the age of the deceased (child of 5 years of age); the excessiveness of speed of the vehicle and the body of the child was projected to a distance of 22.6 meters from the point of impact to where the body laid.

The case of Public Prosecutor –v- Joe Kaltang [2003] VUSC 9; Criminal case No. 034 of 2001 (20 February 2002), where the defendant was also charged with unintentional harm resulting in death, contrary to section 108 (c) of Penal Code Act, illustrates the position taken by the courts in such type of cases. In that case, the defendant who was a bus driver was driving his bus away from town with passengers in his bus. The bus went past a stationary truck. The middle front of the bus hit the boy and carried him some way before he fell. He sustained several injuries and was dead before arrival at the hospital. The court in sentencing the Defendant stated the following:

"There are more pedestrian using the roads, particularly children. It is the duty of every driver to drive carefully and particularly look out for children. It is the duty of the driver to look out for people crossing roads. Where there are pedestrians the driver must go slowly and be able to stop in a short distance. If someone is crossing the road, it is not the driver's right to continue regardless and expect pedestrians to get out of the way".

The appropriate sentence is one of 24 months imprisonment. On balance, it is reduced to an end sentence of 8 months imprisonment to take account of the substantial mitigating factors and the delays taken before the conviction.

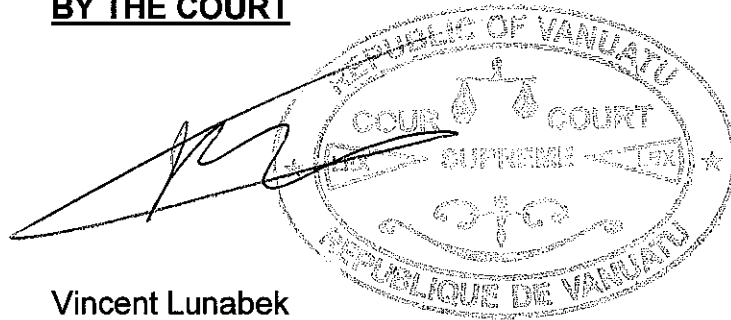


The Defendant's sentence of 8 months imprisonment is suspended for a period of 2 years in the circumstance of this case. During such period of suspension, the defendant Adams Tari must not re-offend. If he re-offends during the suspension period, his sentence of 8 months imprisonment will be re-activated.

Defendant Adams Tari Vuti has 14 days to appeal this sentence if he is unsatisfied with it.

Dated at Port Vila, this 24th day of September 2013.

BY THE COURT



**Vincent Lunabek
Chief Justice**