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

Criminal Case No. 41 of 2014

PUBLIC PROSECUTOR – VS – MENSLEY MOLI

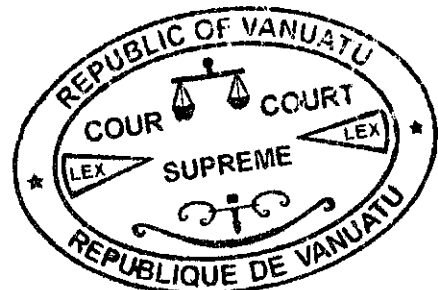
Coram: Mr. Justice Oliver A. Saksak

Counsel: Ken Massing for Public Prosecutor
Lent Tevi for Defendant

Date of Plea: 24th June 2014
Date of Sentence: 26th August 2014

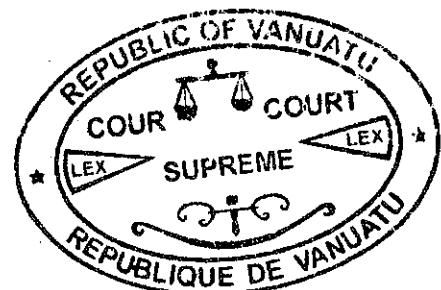
SENTENCE

1. Mensley Moli, you are for sentence today for having pleaded guilty to a single charge of Intentional Assault Causing Permanent Injuries contrary to section 107(c) of the Penal Code Act Cap. 135 (the Act).
2. This offence carries a maximum penalty of 5 years imprisonment.
3. On 26th June 2013 at about 2 o'clock pm you assaulted Glen Moli Vuti with a knife. He was in the kitchen with his wife and daughter when you approached and without saying a word, you swung your knife and cut the victim twice on his left hand and below the left elbow. You uttered some abusive language to the victim suggesting that you were agitated by the victim's actions on your land. The victim managed to escape from you and got help from his Uncle Wilson Kon who took him to the Amapelao Medical Center for primary medical attention. He was later taken to the Northern District Hospital and later transferred to the Vila Central Hospital for full medical treatment as his injuries were so serious. The medical report dated 1st July 2013 reveals... **"A large laceration to the left elbow caused by a sharp implement such as a knife"...** His injury was severe with potential injury to nerves and arteries. He was admitted to the Hospital for almost 2 months. The injury he suffered was severe enough to cause loss of a limb. A further medical report dated 3rd September 2013 was issued by the Chief Surgeon Dr Richard W.Leona who confirmed there was extensive damage to the muscles, ulnar nerve and tendons for which the victim received surgical treatment at the Vila Central Hospital.



4. You have accepted those facts technically upon your admission of guilt. Defence Counsel had not filed any written submissions in response to the Prosecution's Submissions filed on 4th August 2014.
5. In considering and assessing an appropriate penalty, I have noted from your pre-sentence report that you were very angry prior to the assault being committed. You apparently acted in the heat of anger. However it is also apparent that your actions were unprovoked by the victim. You may have had some land issues with the victim but you could have put that complaint with your chief to advise you or guide you to resort to lawful means to sort out the issues. When you approached the victim, in his own kitchen with his family, with a knife and assaulted him intentionally, you took the law into your own hands. Therefore you must face the legal consequences of your unlawful acts.
6. The Court of Appeal has laid down the clear sentencing principle for assaults involving unprovoked violence which cause permanent serious injuries in the case of **Tari v. Public Prosecutor** [2011] VUCA 26 that custodial sentence is the only appropriate penalty.
That case is distinguished on its facts in that-
 - a) The weapon used was a bottle
 - b) The assault was administered only once to the left eye.
 - c) The assault occurred after a drinking incident at a Hotel Bar.
7. In your case it appears you cut the victim twice, first on his left hand across, and then on the elbow. That places your offendings at a higher end of the scale than **Tari's** case.
8. I therefore consider that the appropriate penalty the Court will impose on you is to be a custodial one and the starting point is 3 years imprisonment.
9. There will be an uplift of 1 year and 6 months for the aggravating features such as-
 - a) The use of a sharp knife,
 - b) Assault was premeditated
 - c) The injuries sustained were serious and permanent for which he cannot possibly be adequately compensated.
 - d) The pain and suffering of the victim for which he cannot possibly be adequately compensated.

Your starting sentence is therefore increased to 4 years and 6 months.



10. I consider that you are entitled to some reductions for your early guilty plea and good cooperation with the police during investigations and interviews. I note also from your pre-sentence report that you do not have any previous convictions. For these there will be a reduction of 1 year and 10 months. The balance of your sentence is 3 years and 2 months.

11. You are therefore convicted and sentenced to an end sentence of 3 years and 2 months.

12. The purpose of this sentence is to-

- a) Mark the seriousness of your offendings.
- b) Mark public condemnation of your unlawful actions.
- c) Deter you and others from acting in like manner.
- d) Punish you adequately and appropriately

13. You have been on bail since you were committed at a preliminary inquiry hearing on 11th October 2013 as extended by this Court on 24th June 2014. Your remand on bail ends today. That means your sentence of 3 years and 2 months begins today and you will be taken to prison at the Correctional Centre in Luganville immediately.

14. You have a right to appeal against this sentence within 14 days if you so choose.

DATED at Luganville this 26th day of August 2014.

BY THE COURT


OLIVER.A.SAKSAK

Judge

