

**PUBLIC PROSECUTOR**

- v -

**BERRY KALORAN**

*Mr Leon Malatugun for Public Prosecutor  
Mr Andrew Bal for Defendant*

**SENTENCE**

Accused Berry Kaloran, this is your Sentence. You are initially charged with the following offences against different provisions of the Penal Code Act:

- Count 1: Threats to Kill, contrary to s.115
- Count 2: Sexual Intercourse without consent, contrary to s.91
- Count 3: Intentional Assault, contrary to s.107 (b)
- Count 4: Threats to Kill, contrary to s.115
- Count 5: Threats to Kill, contrary to s.115

On 5 November 2013, you had entered guilty pleas on Counts 1 and 2 of threats to kill and intentional assault respectfully.

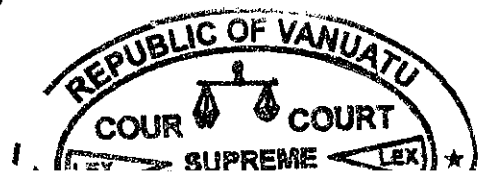
The court adjourned your sentence on the said 2 counts pending your trial on the other counts and listed the trial for 3 days starting on 11 February 2014 at 2.00PM o'clock.

Before the trial started, the prosecution entered nulli prosequi on counts 2, 4 and 5. You were then discharged of the offences of sexual intercourse without consent and two Counts of threats to kill as charged against you in Counts 2, 4 and 5.

You are now sentenced for one count of threats to kill [count 1] and one count of intentional assault [count 3].

The facts are as set out by the Prosecution in the Prosecution submissions on sentence dated 19 March 2014. The Defence counsel and the Defendant agree on these facts. They are as follows:

Sometime on 21<sup>st</sup> September 2013, a complaint was lodged by the complainant with police against you Berry Kaloran for threats to kill



and for sexual intercourse without consent. The complainant is an Australian National who was the defacto wife of your father.

The complainant and your father would travel to and from Australia and Vanuatu and on the 28<sup>th</sup> of March 2010, there was an incident which involved the complainant and your father and the complainant was seriously injured. At this time, you were the one who kept the complainant conscious and from then on the complainant felt grateful towards what you had done to save her life and she felt indebted to you.

When the complainant went back to Australia she would send money to you to help you get back in Vanuatu.

The complainant, in one of her visits to Vanuatu decided to build a project in Epi on your land, and when she visited Epi with you she could see a change in your attitude towards her.

She could see signs of jealousy from you towards any man that she would speak to and you started saying that the complainant was now your woman.

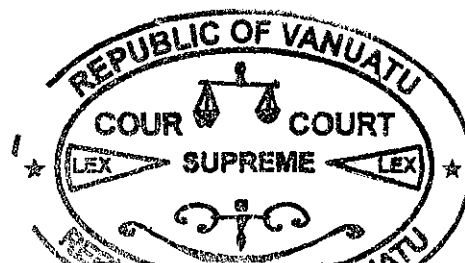
Sexual intercourse occurred around this time and the complainant could not do anything as she was frightened of you. You were continuously threatening her and would have violent outburst which made the complainant very frightened.

You refused any request by the complainant to come back to Vila and you used a kitchen knife to threaten her with and saying that you would destroy her if you are not going to get what you wanted. The complainant was also helping get a visa for you to go to Australia. This was also difficult which made you angry and started threatening to kill the complainant.

At one stage, you held onto an axe and threatened the complainant with it, swinging it around in her face and threatening to kill her first before killing yourself.

On another occasion, you bit the complainant's mouth causing the complainant serious injuries to her lips and around her mouth.

The time when you were to return to Vila, you held on two coconuts and threatened the complainant telling her that the coconuts were her bullets and that you would smash her head with it if she caused any problems.



A handwritten signature or mark, possibly a stylized letter 'K' or a similar symbol, located to the right of the court seal.

At the Vila Domestic airport, the complainant was not allowed to go anywhere without you.

The complainant through some help from a taxi driver and bystanders, was able to go to the Travellers Motel. You accompanied her there.

At the Motel, you continued to threaten to kill the complainant and the owners of the Motel, Janelle and Jack.

It was at this stage that Jack called the police and you were arrested.

In your statement to the police, you admitted having sexual intercourse with complainant, threatening her and assaulting her.

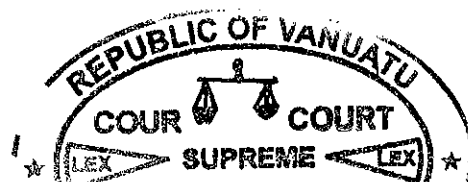
The offence of threats to kill a person carries a maximum penalty of 15 years imprisonment. A S.107 (b) offence carries a maximum penalty of 1 year. They are serious offences. The seriousness and circumstance of your offending are aggravated by the following aggravating factors:

- The offence of threats to kill was repeated.
- The offence of threats to kill was repeated with the presence of weapons.
- The complainant sustained injuries on her body.
- The defendant is a young man of 26 years while the complainant was an old woman (although her age was not specifically mentioned).

The appropriate starting point is a sentence of 3 years imprisonment for threats to kill and 11 months imprisonment for intentional assault.

The pre-sentence report shows that you are 29 years of age and you originate from Lumbukiti village, Tongoa Island. You stopped your primary education after grade 6. You have skills in gardening, singing, carving and fishing. Your ambition is to build a permanent church of the Seventh Day Adventist at Lumbukiti community on Tongoa Island. You grew up in a broken home environment where your parents got separated during your childhood but you pointed out that you have a good relationship with your family and community members and your chief.

In mitigation, you are a first time offender. You pleaded guilty at the first available opportunity given to you by the court. You are remorseful for what you did. You cooperated with the police. You have no previous convictions. You promised not to commit the same



offence or any other offences. You have spent four (4) months and twenty days on remand before you were released on bail.

On balance, you are sentenced to 15 months imprisonment for threats to kill and 7 months imprisonment for intentional assault. Both sentences to be concurrent.

I consider the circumstance of your offending and the circumstance personal to you, I decide to suspend your whole imprisonment term of 15 months for a period of 2 years. During such suspension period, you must keep peace.

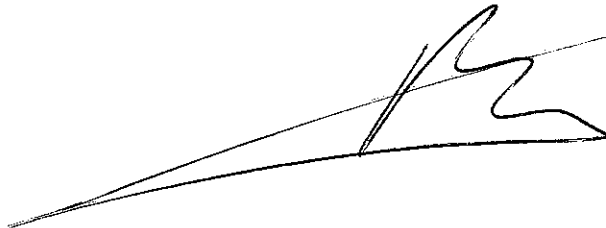
In addition, you are ordered to perform 20 hours of community work and 6 months supervision on the standard conditions to be given by the probation officer. The following are your sentence orders:

### **SENTENCE ORDERS**

1. 15 months imprisonment suspended for 2 years.
2. 20 Hours Community Work.
3. 6 months probation on standard conditions to be given by the probation officer.
4. You have 14 days to appeal your sentence if you are dissatisfied with it.

**DATED at Port Vila, this 2<sup>nd</sup> day of April 2014**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**

