

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(CRIMINAL JURISDICTION)

CRIMINAL CASE No. 67 OF 2014

PUBLIC PROSECUTOR

V

IAKEN WANA

JOSEPH TAPIS

IAMEL LIDJA

Coram: Justice Mary Sey

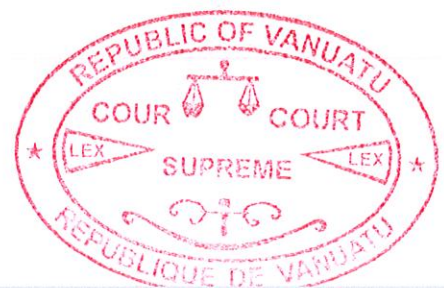
Counsel: Losana Matariki for the Public Prosecutor
Jacob Kausiama for the Defendants

Date of Decision: 19 December 2014

SENTENCE

1. **IAKEN WANA** and **JOSEPH TAPIS**, you were both convicted on your guilty plea on 17 December 2014 to an offence of Intentional Assault causing injuries of a permanent nature contrary to **Section 107 (c)** of the Penal Code Act [CAP135] which carries a maximum penalty of 5 years imprisonment.

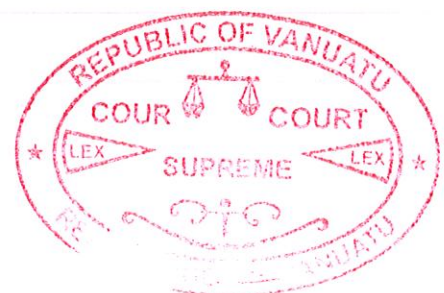
IAMEL LIDJA you were convicted on your guilty plea on 17 December 2014 to an offence of Aiding and Abetting Intentional Assault contrary to **section 30 and 107 (c)** of the Penal Code Act [CAP 135] which carries a maximum penalty of 5 years imprisonment.



2. The particulars of the admitted charges are that sometime during 29 May 2013 at Hidden Treasure Resort, West Tanna, you assaulted Weleiby Kamisak causing him permanent injuries.
3. The defence concedes to the facts summarized as follows:
The incident happened on the 29th of May 2013 around 8.30 pm at the Hidden Treasure Resort in Tanna. The complainant who is also the victim in the case is 44 years old and is from the village of Iva in West Tanna. He is a farmer and he also works as a debt collector.

On the morning of the 29th of May 2013 at 9.00 am, the complainant received a call and when he answered the call, he heard a woman's voice telling him that she has a case and that she wanted him to come and see her at Tanna Co-op. Around 7.00 pm while having kava, the complainant's mobile phone rang again and a woman's voice said that he should go and pick her up with some other men from Hidden Treasure Resort and that they will tell him about their case. The woman also told the complainant that he had to go by himself and not to pick up anyone on the road and that when he reached the bungalow he was to go and park his truck down at the Natapoa near the saltwater and walk towards the bungalow.

While walking towards the bungalow the complainant's phone rang again and the same woman asked where he was and he told her that he was walking up towards the bungalow. As soon as he mentioned where he was, three torches were shone into his face. The complainant could not see properly because of the harsh light from the torches, and he was shocked that he was being stoned with big stones which hit him on his shoulder, legs, head and face. The stones continued to hit him causing him to fall down onto the ground. The complainant called out begging for these men not to kill him but no one spoke or said anything until the complainant fell down onto the ground. This was when he saw a group of men coming for him. He recognized Iaken Wana who told him to admit that he



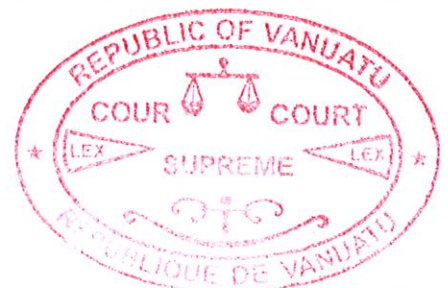
had burnt his house down. The complainant said that he did not know anything about the burning of the house. When the Defendants went looking for the keys to the truck the complainant crawled away from the scene and hid from the defendants. They came back searching for the complainant but could not find him. It was when the dogs around the bungalow area started barking that the Defendants left the area. The complainant crawled closer to the bungalow and lay down on the road leading to the bungalow. The owner of the bungalow and his wife found the complainant lying on the road and so they contacted the complainant's son and they used their truck to take the complainant to the hospital.

As a result of the assault the complainant sustained very serious injuries:

- Hematoma – both eyes
- Multiple abrasion on the face and head
- Deep laceration on the nasal bone – a deep wound to the nose - deformed due to injury
- Multiple bushknife wound x 6 over the Achilles tender
- Lower limbs grossly swollen and tender
- Leg - open fracture

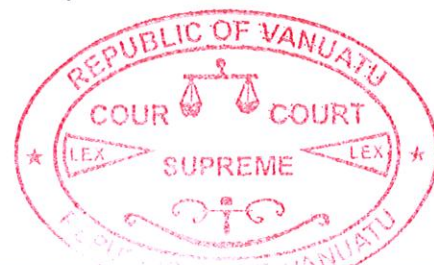
The matter was reported to the police and the Defendants were arrested and in their statement to the police the Defendants admitted assaulting the complainant.

4. The Court had ordered pre-sentence reports to be prepared on the Defendants and this Order was complied with promptly. I am grateful to the correctional services for its assistance in this regard. I have also found the detailed sentencing submissions filed by both the prosecutor and defence counsel very useful.
5. **IAKEN WANA, JOSEPH TAPIS, and IAMEL LIDJA**, you took the law into your own hands and your actions were calculated and well planned thereby causing injuries of a permanent nature to the complainant. You are for sentence today



and, in my considered view, your offending is serious enough to warrant custodial sentences which would not only mark the gravity of your offending but will also publicly denounce your actions as well as punish you adequately.

6. In determining the appropriate sentence to impose in this case, I have carefully considered the sentencing submissions of both counsel as well as the Defendants' pre-sentence reports. Prosecuting counsel has urged me to impose a sentence that would reflect the seriousness of the offence and one which would show that such actions will not be tolerated by the public. Counsel has also submitted that the Court should impose a sentence that would appropriately serve as a punishment to the Defendants as well as act as a deterrence to likeminded people who may decide to take the law into their own hands. Counsel has referred me to sentencing authorities such as **Moli v Public Prosecutor** [2014] VUCA 37 where the Court of Appeal regarded a similar offending as serious and as warranting a starting point of at least 4 years imprisonment.
7. In this present case, I adopt a starting point of 3 years imprisonment for each Defendant.
8. I consider that there are aggravating features in respect of this offence in that there was pre-meditation and weapons such as knives and stones were used to inflict serious injuries on the complainant. As such, some uplift is required to reflect the aggravating factors and I will therefore lift your sentences by 1 year. That brings me to an offending end point of 4 years (i.e. 48 months) imprisonment for each Defendant.
9. I have taken into consideration your mitigating factors as presented by defence counsel. I note that you **laken Wana** are 35 years old and you are married to **Iamel Lidja** and you have 6 children living with you. Two of your children attend secondary school at Tafea College and one will attend Tafea College next year whilst one currently is in primary school. You work as a gardener and earn money to pay for food and school fees of your children. You



are a first time offender and you are remorseful and you also co-operated well with the police.

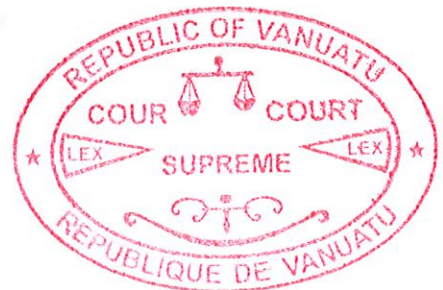
Joseph Tapis - you are 29 years old married with 3 children. You are the sole breadwinner by making income from gardening. You are a first time offender and you are remorseful and you also co-operated well with the police.

Iamel Lidja - you are 34 years old and married to Iaken Wana. You have 6 children and you are nine months pregnant at the moment. You are a first time offender and you are remorseful and you also co-operated well with the police.

10. I note that all three of you pleaded guilty at the first available opportunity. In this regard, defence counsel has referred me to the case of **PP v Gideon** [2002] VUCA 7 where the Court of Appeal said:

“As is always the case, having reached that conclusion, it is necessary to consider what reduction should be allowed for mitigating factors. The first and most obvious in this case was the plea of guilty. That always will attract a substantial reduction particularly when it occurs at the first available opportunity. It is also an indication of remorse and contrition.”

11. So, all three of you are entitled to full credit of one third each for an early guilty plea. That amounts to a 16-month reduction in the prison sentence of 48 months taking it down to 32 months or 2 years and 8 months.
12. There are some other matters that I have seen from the pre-sentence reports that have encouraged me to reduce your sentence further. I recognise that you have performed a Kastom ceremony to the victim by presenting three pigs, six stems of kava and some local root crops to him. In return, the victim also presented to you a cow and a pig with some root crops.



13. Rounding it off, I would deduct a further two months from the sentence bringing it down to 30 months or 2 years and 6 months imprisonment suspended for 2 years in respect of each Defendant. In addition, both **laken Wana** and **Joseph Tapis** are sentenced to 150 hours community work and 12 months supervision.
14. Finally, all three of you should note that even though you are not going to prison today, you now have a criminal record. If you re-offend and you are convicted before the 2 years' suspension period expires, your sentence of 2 years and 6 months imprisonment shall be re-activated and you may be required to serve this sentence of imprisonment in addition to any sentence that may be imposed on you for your re-offending.
15. You have 14 days within which to file a notice of appeal against this sentence if you do not like it.

Dated at Isangel, Tanna this 19th day of December, 2014.

BY THE COURT



M.M.SEY
Judge

