

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

Criminal Case No. 23 of 2015

PUBLIC PROSECUTOR – VS – **LENETH ISAAC**
SIMON ISAAC
RENOLD PETER
NEBIL SAMSON
SAM PHILIMON
KEVIN MALIU
TIEN MORRIS

Sentence: 8th September 2015 at 3.00pm at Wunpuko, West Coast Santo
Before: Justice SM Harrop
Counsel: Mr Ken Massing for the Public Prosecutor
Mr Tom Joe Botteng for the Defendants

SENTENCE

1. Each of you has this morning pleaded guilty to Counts 1, 2 and 3 in the information; they are Counts of Unlawful Assembly, Kidnapping and False Imprisonment against Sections 69, 105(b) and 118 of the Penal Code. You had all pleaded not-guilty to those charges before Judge Aru at Luganville on 17 April 2015 and so I cannot give you the maximum one-third credit for pleading guilty but I will still give you substantial credit for doing so even at this stage.
2. These are all serious charges, they carry maximum penalties of 3 years imprisonment, 10 years imprisonment and 10 years imprisonment respectively.
3. There is another count which is only faced now by one of you, Leneth Isaac, and it is Intentional Assault under Section 107(b) of the Penal Code. He pleaded guilty to that charge on 17 April. The other three of you also faced that charge but this morning the Prosecution entered a nolle prosequi and the Court has discharged you on the three of you on that charge, so we are now only dealing with the one defendant. The maximum penalty for that charge is 1 year imprisonment and that is because the injury suffered



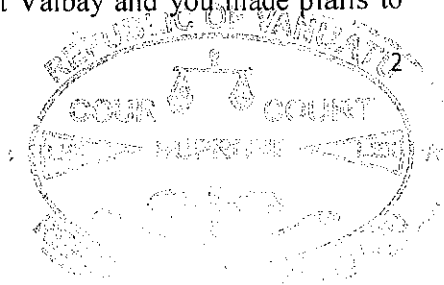
injuries suffered were temporary; if there had been permanent injuries the maximum penalty would have been 5 years.

4. Before I go further, I mention the special situation that Sam Philimon is in, I understand that on 10 March this year (and I believe I might have being the Judge) he was sentenced to imprisonment at Luganville but that was suspended so he is now liable to be required to serve that sentence under Section 57(c) of the Penal Code and, unless it is unjust for him to do so, that is what will happen. So the appropriate course is to remand him in custody to appear at the Supreme Court in Luganville on Friday morning this week at 9.00am assuming that counsel and I have been able to return to Luganville by then. It is appropriate that his sentencing on these charges be deferred until then so that it can be informed by the decision made on the implementation of the suspended sentence.

5. As in every case, it is important to go through the particular facts of the case because they indicate the way in which these offences were committed and their gravity. The three victims were Silas Saksak who is I understand around 70 years old, Kalo Andrew who is 34 and Berry Maliu who is 24. They all lived at the time in the North-West area of Santo as you do. Lenneth and Simon Isaac, you had a brother who had died and you believed that he died because of witchcraft and sorcery and a knife wound associated with that. You suspected that the three people I have mentioned, the victims of your offending, were responsible for his death.

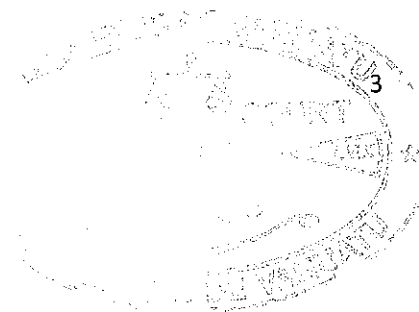
6. Instead of taking the matter to the Police, who if there was a good case would have prosecuted them before the Courts, you decided to investigate and effectively to prosecute these alleged crimes yourself. You took the law into your hands and undertook what we call vigilante action.

7. You two went about establishing an unlawful plan to investigate your brother's death. Your idea was to capture the suspects, detain them and torture them, in order to find out if indeed they did have any involvement. So that suggests you did not know yourself at that time, you suspected they had been involved but you were not sure. On 19 February you went to look for two of the victims, and on your way you met up with the other five defendants for sentence today. You gathered together at Valbay and you made plans to

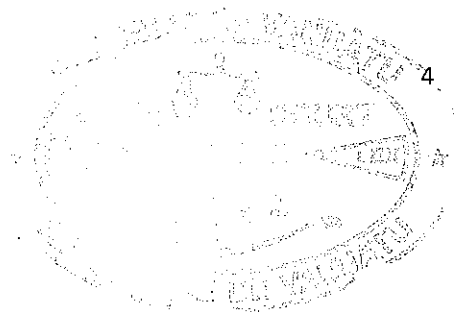


capture them and take them back to Bwar village, to detain them and question them about the death.

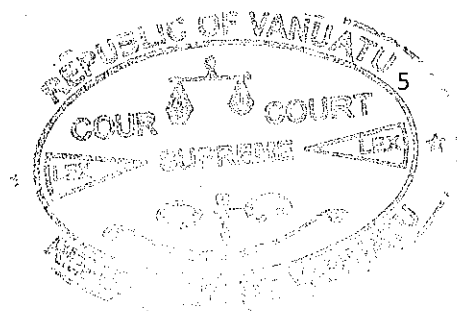
8. When you got to Tarakana plantation you entered the yard belonging to Kalo Andrew, his wife and children were there, and the elderly man Silas was with others working on copra I think. You got together and entered the yard and ask for Silas and once you were inside you threatened and forced the victims Silas and Kalo to follow you to Bwar village, and while on the way there, Lenneth Isaac you assaulted Silas with fists, stones, pieces of wood and the knife. The victim Silas said that he could hardly see or recognize who was assaulting him because his face was covered with blood and I have seen his head injury which supports that.
9. I emphasize however that the only person who is convicted of the assault is you Lenneth Isaac and that no permanent injury resulted. At Bwar village, there were more assaults by way of torture to try and get Silas and Kalo to admit who was involved. They mentioned as a result the name of the third victim Berry Maliu. You Simon Isaac locked up the two victims that you had with you and went off to look for the third one. You had knives and pieces of wood to assist you in arresting him. You took the victim Kalo with you to assist you and when you got to Berry's place you called out to him and threatened him and made him follow. Again there was an assault and threats made. When you got them all back to Simon's house, you kept them imprisoned for 6 days, you did shade them but they were restricted from going to the toilet and bathroom. They had to eat and sleep and go to the toilet inside the house. So you subjected them to degrading and inhumane behaviour.
10. The medical report show that they suffered various injuries, there is a nasty stubbing wound to Silas' hand, he is 70 years old, and also a head wound but there are other bruising and internal injuries that they all suffered, fortunately for them and indeed for you those injuries have not been permanent and they have all recovered. That is why the sentence that you face for assault, Lenneth Isaac, is only one year's imprisonment.



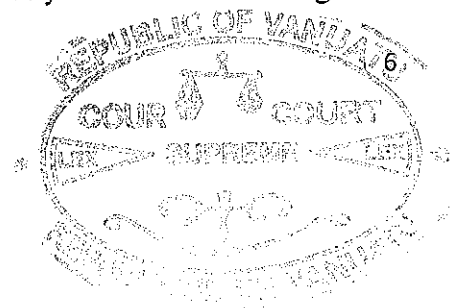
11. When you were spoken to by the Police you admitted the offending and it is somewhat surprising that you did not plead guilty when you first had the opportunity. But that is what happened.
12. Now I need to record the aggravating factors of that prolonged incident. First of all, there is the fact that there were three victims, there was a lot of planning, there were threats, there were weapons, there were injuries. All of that makes it serious enough. But what makes it really serious is the taking of the law into your own hands. I understand that the Isaac brothers will have been very upset about the death of their brother and they may will have believed, although at seems they were not sure, that those three victims had caused the death through sorcery or witchcraft or in some other related way.
13. But it was entirely wrong of you to act as if you were police and judges, as you did. You took the law into your hands, you did the job of the police by arresting the people you thought were responsible, you tortured and assaulted them, you kidnapped them and imprisoned them, while you were supposedly trying to find out whether they were in fact responsible.
14. That kind of behaviour is totally unacceptable in a country like Vanuatu, where the Constitution ensures that people who are alleged to have committed crimes are treated fairly and with human rights, including the right to legal advice and treatment with dignity by the police and then by the court. Torture, kidnapping and detention by victims, or people who think they are victims, of criminal offending have no place in the law of Vanuatu.
15. If people believe there has been criminal conduct, there is a system in place for investigations to be carried out and if a prosecution is warranted then they can be dealt with by the Court fairly as well, respecting the rights of the defendants as well as the rights of the witnesses and the victims. If people are able to set up their own police and justice systems, there is an obvious risk that people maybe wrongly accused and punished; the result means that there is a parallel "justice" system which results in anarchy.



16. What if the truth is that these three victims had nothing to do with the death, and any admissions they made were just false confessions beaten out of them? That is why we have protections in our system to make sure that only the people who really are guilty are punished. I wonder how each of you would feel of a group of men with sticks, stones and a knife turned up on your door, and accused you of doing something that you had not done, decided to beat you up and hold you in custody for a few days until you admitted it? I don't think you would be very happy and these three victims no doubt felt the same.
17. So whatever the Court does today by sentence has to include a strong message to all of you and anybody else in Vanuatu inclined to behave in this way that it is totally unacceptable and it must not happen.
18. Undoubtedly a prison sentence must be imposed on all of you; the issue is whether it should be suspended or not. A prison sentence must be imposed to send a strong message.
19. The way in which the victims must have felt needs to be taken into account. It is very easy for us sitting here now to say well after six days they were released and although it was unpleasant and they suffered some short-term injuries, they have recovered so it really was not too bad. Well at that time they did not know how it was going to end and when it was going to end. They may well have thought that because the brother had died , they are likely to kill us as well. They would have been very frightened of what you were doing. It must have been terrifying for them.
20. Mr Botleng says if I send you to prison, it will be very unfair on your families because you are the breadwinners and you have to look after them. Well, before you got involved in this sort of thing, you should have thought about your families, and thought that you might go to prison if you get caught and that your family would have nobody to pay school fees, nobody to plant gardens. It is you that have put your families in that potential difficulty and nobody else. They have become victims as well of what you did.



21. The submissions that I have received this morning this afternoon have been very helpful, Mr Massing has referred me to the case of *Urinmal v. Public Prosecutor* [2013] VUCA 23 and to the Supreme Court Judgment of the Chief Justice. I understand that the Court of Appeal did not interfere with this sentence that the Chief Justice imposed but rather set aside the convictions of two of the eleven defendants. I do not propose to go through the details of that case because the facts vary between cases. However Mr Massing's overall starting points are based on that authority and I will adopt those because I did not understand Mr Botleng to disagree with them.
22. What he does disagree with this suggestion that you should actually serve sentences of imprisonment, rather he says they should be suspended. Mr Massing has highlighted the aggravating features and I have already gone over those. He submits that the starting point for the two Isaac brothers including the aggravating feature should be 3 years and 3 months imprisonment and for the other four of you, not including Sam Philimon for reasons I have mentioned, it should be 2 years and 3 months.
23. He submits that a credit for pleading guilty of 20 to 25% should be applied and an end sentence should be imposed of 2 to 2 and a half years for the two ringleaders, the two Isaac brothers, and for the other four a sentence of between 1 and a ½ and 2 years. He accepts that for the other four a suspended sentence could be justified. He submits that for Lenneth and Simon Isaac there should be an unsuspended prison sentence.
24. Mr Botleng has emphasized that you despite not pleading guilty at the first opportunity you have otherwise been entirely cooperative with the law officers, you have complied with your bail conditions when you were in Luganville for about six or seven months. He emphasizes quite rightly that that in itself has been a form of punishment because you have been living away from your families and your home villages for a long period and there were no breaches of bail. He makes the point that you came voluntarily to the Court today, you did not to be summoned by the prosecution and you live in remote villages so it just taken some effort for you to get here. It would have been very easy for you to avoid the Court when it is here this week, just to "go bush". I give you credit for not doing that.



25. Mr Botleng also mentions that although it does not excuse your conduct you did have a reason for what you did, and you did believe that these three people had been involved in causing the death of the brother. He says you did not recognize as serious what you were doing. He has gone through your personal circumstances. I do not propose to go through each of you because none of you have previous convictions, apart from Sam Philimon, so you were previously have a good character, most of you have got dependent children and other responsibilities, such as looking after an elderly parent.
26. The Isaac brothers, you have responsibility for looking after your mother who is in her 60's. That is not too different an age from Silas who is 70. How would you feel if somebody had done this to your mother, stab her and kept her in a hut for 6 days because somebody thought she had committed acriminal offence. I think you would want the Judge to send those people to prison for a very long time.
27. Mr Botleng submits that as well as suspending the sentences of imprisonment, I should impose community work because that would assist with your rehabilitation, it would give something back to the community. He says that if you go to jail it would not really help the community at all, but it will harm your wives and children.
28. Mr Botleng has emphasized in response to a question from me that there has been a custom reconciliation ceremony. You were not personally involved in this because you were on bail down in Luganville but it was carried out through Chiefs representing you at Bethany village where the prosecution witnesses are from. And I understand there were two pigs given and mats and VT4,500 money. This was given to one the victims Berry Maliu; I understand one of the others did not want to be involved and the other is the Mr Silas who was in Luganville at the time. Mr Botleng mentions that while you were in Luganville the costs of having you there was met by a local MP for this area Alfred Mao, I understand he is from Wunpuko, so Mr Botleng says if community work is done and it is carried out at least in part in this village, it is way of returning something to the community and indirectly to Mr Mao for the contribution that he made.



29. Having reflected on all of this, I will first calculate the prison sentences and then consider possible suspension after all of this are as follows:-

Lenneth Isaac, I'm going to adopt the starting point for you of 3 and ½ years or 42 months imprisonment. That is slightly higher than Mr Massing suggested but the physical aspects of this incident were carried out by you and there were nasty injuries. They would have added weight to the threats made by you and some of the others at the time. So that is the starting point including all of the aggravating features. I want to emphasize that, that that could be seen as lenient for vigilante offending; I think I could justify a 4 or 4 and ½ years starting point. I would reduce the sentence by 20% for your guilty plea, that is about 9 months which brings it down to 33 months. I take into account that you are a first offender and reduce to sentence by another 3 months to 30 months or 2 and ½ years imprisonment. I have not overlooked the fact that you did plead guilty on the 17 April to the assault. So you deserve credit for that and doing that on the first opportunity.

Simon Isaac, the starting point for you, three years and three months, is slightly less because you were not involved in the assaults. But you were clearly a ringleader along with your brother and it was the two of you that organized everything; it simply would not have happened without your initiative and you were two who had the reason for revenge, if I can put it that way, because it was your brother who you thought had been killed by these other three. I take 20 % off for your guilty plea which brings it down by 8 months to 31 months, and again I give you 3 months credit for being a first offender bringing down the sentence to 28 months or 2 years and 4 months imprisonment.

As to the four others I adopt the starting point of 2 years and 3 months, that is 27 months. I take 20% credit off for guilty plea, that is 6 months and brings it down to 21 months; you are also first offenders and so that brings it down by further 3 months to 18 months. I accept Mr Massing's submission that those sentences can properly be suspended.

30. I come now to a difficult decision of whether or not to suspend the two Isaac brothers' prison sentences. I can find good reasons both to justify suspending and not suspending



your sentences. I can justify not suspending them because of all the things that I have mentioned, the aggravating features and the need to impose a strong deterrent sentence. But I can also justify not suspending them because you spent 6-7 months in Luganville on bail away from your family. That is a form of detention, deprivation from your family, and while you were not in prison you were on strict bail conditions and you complied with them.

31. If you had been in prison for 6-7 months, that would have equated to a 12-14 month prison sentence. While you were not in prison, your time in Luganville was a substantial period of deprivation of your liberty, or your full liberty.
32. After careful consideration I have decided that I can properly suspend your prison sentences for that reason particularly. It seems to me that where there are good arguments for and against suspension I have an obligation to impose the least restrictive sentence which is appropriate to meet the purposes and principles of the Penal Code. In those circumstances, by a small margin I should say, I have decided to suspend the present sentences that I have imposed on you.
33. So in your case Lenneth Isaac, your sentence of 2 years and ½ years imprisonment is suspended for 2 years. Simon Isaac, your sentence of 2 years and 4 months is also suspended for 2 years. As to the other four defendants your 18 months' sentence is also suspended for 2 years. This means that, if you commit any offence of any kind during that 2 year period, you will be required except in exceptional circumstances to serve a prison sentence that I have imposed. So it is like a good behaviour bond; as long as you behave, and do not commit any criminal offences, you will not go to prison. But if you do commit any offence of any kind, you will go to prison for the periods that I have mentioned and of course you would also be sentenced for the offence you commit which puts you in that position.
34. So there are strong incentives for each of you to behave appropriately. I have some confidence that you will behave appropriately because none of you had ever committed any criminal offences and this incident, while it was serious, was clearly done for at least



a reason, even if it was not a justified reason. So I think the chances are that you will not commit offences in the future and I hope after what I have said today that if you are inclined to take the law into your own hands if somebody does wrong to you in the future, you will think twice about it and go to the Police instead as you should have this time.

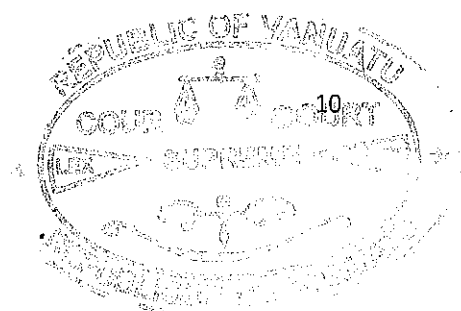
35. Because I have confidence that you will not actually be serving any prison time, it is appropriate that I impose community work and a significant sentence of community work to reflect all of the things that I have been saying about how serious this is.

36. So Lenneth Isaac I sentence you to 300 hours community work. It would be appropriate if some of that community work were carried out in this community of Wunpuko from where Alfred Mao has provided benefits for your bail when you were in Luganville.

37. Simon Isaac, I impose 250 hours community work on you because your role was slightly less.

38. On the other four defendants I impose 200 hours community work. While your role was certainly less, you helped the people who wanted to see this happen by your presence and your actions. If each of you had done the right thing and said you did not want to be involved, then it probably would not have happened. But you decided to lend your physical presence and it created a dominating presence for the victims. So even though you may not have been directly involved in the sense that it was your complaint you played a very real role which needs to be recognized That is why I have imposed both a suspended prison sentence and 200 hours community work on each of you.

39. Each of you has a right to appeal against the sentences that I have imposed, within the next 14 days. You should talk to Mr Botleng if you wish to consider an appeal and he will advise you and assist with what you need to do in order to appeal if you wish to do so.



BY THE COURT

