

PUBLIC PROSECUTOR

-V-

LOWA LAUTA GEORGE  
SAM NAMATAK  
SIKO NASE  
CHARLEY NUMAPEN  
IAUALKA SELSEL  
ANGELO IAMTIU  
(Defendants)

**Corum :** Vincent Lunabek CJ  
**Counsels:** Mr Tristan Karae for Public Prosecutor  
Mr Jacob Kausiama, Public Solicitor, for the Defendants

**Date of Sentence:** 27<sup>th</sup> May 2016  
**Venue:** Isangel, Tanna

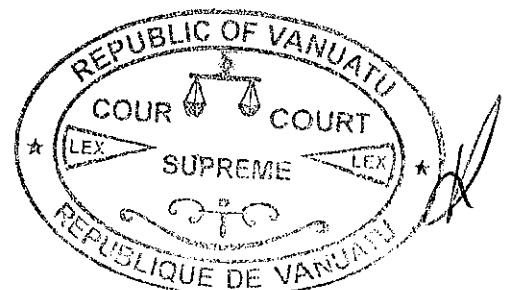
## SENTENCE

### INTRODUCTION

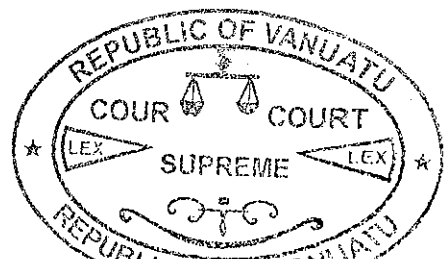
1. This is the sentence of the following above named convicted Defendants of offences of Unlawful Assembly and Kidnapping: Lowa Lauta George, Sam Namatak, Siko Nasse, Charley Numapen, Iaualka Selsel and Angelo Iamtiu.

### BACKGROUND FACTS

2. The Defendants are sentenced for offences which arose out of incidents of unlawful assembly of the Defendants and others at the entrance of Tanna Lodge Resort on 10 August 2015 and the kidnapping of two members of the staffs of Tanna Lodge Resort on the said date.

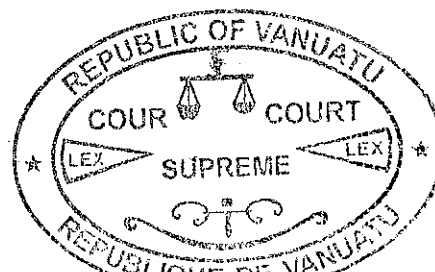


3. Before these incidents of 10 August 2015, a relative of the Defendants was found dead on 18 July 2015. The deceased name was Roger Namatak, ("the deceased"). The police authorities investigated the cause of the death of the deceased.
4. The next day after the death of the deceased, the Defendants and their Chief Iamtiu Wilson went mourning the death of the deceased at their chief's nakamal at Ivankula Nakamal. While mourning the death of the deceased the defendants and their chief discussed the death and the cause of the death and they formed the suspicions as to who might be involved in the cause of death of the deceased.
5. At Ivankula nakamal, other chiefs and people visited Chief Iamtiu Wilson and his people. At the nakamal one Charley Simil told chief Iamtiu Wilson and his people that if the police told them that the police did not find who was responsible or what was the cause of death of the deceased, the defendants may take Richard Iaruel and Alice Willie as these two persons have information as to who were responsible for the death of the deceased.
6. The Chiefs then set a date of a meeting of the chiefs with the police at Lapantan Nakamal, Lenakel, Tanna. The meeting was set and held on 10 August 2015 at Lapantan Nakamal. Chief Iamtiu Wilson and his people including the Defendants and others attended the meeting set by the chiefs with the police at Lapantan Nakamal.
7. At the meeting, the chiefs asked the police about the progress report on the investigation. The police informed the chiefs and other



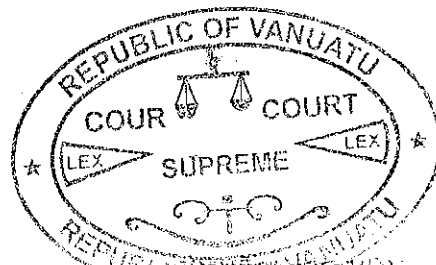
attendees that the investigation was still progressing. Chief Iamtiu Wilson and the defendants were unhappy, unsatisfied and sorry because the police investigation took so long and no one had admitted causing the death of the deceased. They did not reveal or mention to the police authorities of their suspicions. The meeting of the Chiefs with the police finished sometime at the lunch time.

8. The Defendants have in mind what Chief Charley Simil told them and their chief about two employees of Tanna Lodge Resort, namely Richard Iaruel and Alice Willie. So with the direction of their chief Iamtiu Wilson, the Defendants and others went straight to Tanna Lodge Resort to take away Richard Iaruel and Alice Willie on the said date of 10 August 2015.
9. Chief Iamtiu Wilson and all the Defendants walked from Lapatan nakamal and went straight to Tanna Lodge Resort. They had in mind that they must take away Richard Iaruel and Alice Willie. That was their common purpose to carry out. There were at least 100 people who assembled at the entrance of Tanna Lodge Resort on 10 August 2015. It was just after lunch time.
10. Defendant Siko Nasse and Sam Namatak and others went inside the premises of Tanna Lodge Resort. They called, shouted angrily on the staffs of the resort and told them to go to the entrance road of the Resort. Siko Nasse told them to go and see Chief Iamtiu Wilson at the entrance of the Resort. Many people who assembled at the entrance of the Resort armed themselves with stones, knives and axes. The above named defendants did not have any weapons with



them. Richard Iaruel and Alice Willie and other staffs of the Resort were frightened of the actions and conducts of the Defendants and others who directed them (staffs) to the entrance of the resort. At the entrance of the Resort, Defendant Lowa Lautu George and others told them to be on the other side of the entrance road facing the Defendants and others.

11. Defendant Lowa Lautu George told the staffs of the Resort that they will call their names and they must move and go inside the truck. When Defendant Lowa Lautu George called the names of Richard Iaruel and Alice Willie to go inside the truck, the white Toyota Double Cabins of Chief Iamtiu Wilson which was driven by the chief's son Defendant Angelo Iamtiu was there ready to take away the two staffs of the resort.
12. When Defendant Lowa Lautu George called the names of Richard Iaruel and Alice Willie and told them to go inside the truck, they did not go directly inside the truck. Defendant Siko Nasse approached both and placed himself on their side to ensure that they went inside the truck. Lowa Lautu George and Sam Namatak told Richard Iaruel and Alice Willie to go inside the truck. Richard Iaruel was frightened. He thought they were going to kill him. Alice Willie was afraid and she was just surrendered herself and went inside the truck driven by Defendant Angelo Iamtiu. When Richard Iaruel and Alice Willie got into the truck Angelo Iamtiu started the engine of the truck and took off. The following Defendants were in the truck with Richard Iaruel and Alice Willie: Angelo Iamtiu (the driver), Siko Nasse, Charley



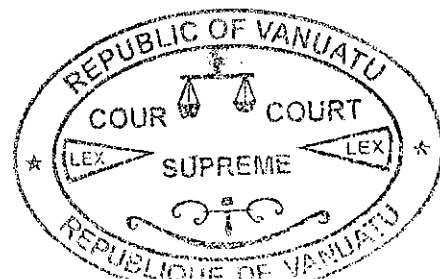
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Numapen and laualka Selsel. They took Richard Iaruel and Alice Willie away from Tanna Lodge Resort to Ianmarang village.

13. At Ianmarang village, the Defendants questioned the two staffs of the Resort separately. Siko Nasse questioned Richard Iaruel at a Nakamal in a small house. Charley Numapen and laualka Selsel questioned Alice Willie outside near Ianmarang nakamal. The Defendants took the two staffs of Tanna Lodge Resort away with the threats of use of force. Both staffs were not consenting to be removed from Tanna Lodge Resort to Ianmarang village. The Defendants did not have any lawful excuse to remove them. The other staffs of the Resort also were frightened by the actions and conducts of the Defendants and others on 10 August 2015.
14. These are the basic facts.

### CONVICTIONS

15. The Defendants were all charged together jointly and severely with the following offences:
  - Unlawful Assembly, contrary to s.69 of Penal Code Act. (Count 1); and
  - Kidnapping, contrary to s.105 (b) of Penal Code Act (Count 2).
16. All Defendants entered not guilty pleas on offences in Count 1 and Count 2. A trial of the Defendants was conducted from 25-28 April 2016 at Isangel, Tanna.



17. On 29 April, 2016, each and all abovenamed Defendants were convicted of the offences of unlawful Assembly and Kidnapping, contrary to ss.69 and 105 (b) of Penal Code respectively.
18. When the Court considers the sentencing of each and all Defendants, the Court takes into account the submissions of the Prosecution and those of the Defence. The Court also takes into account of the pre-sentence reports filed by the Probation Officer in respect to individual defendants.

**RELEVANT LAW:**

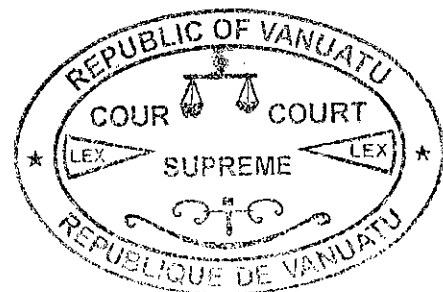
19. Section 68, 69 and 105 (b) are the relevant provisions of the law. They are set out below for ease of reference:

1. Sections 68 and 69 deal with unlawful assembly. They provide:

*“unlawful assembly... defined*

*68. (1) when three or more persons assembled with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause nearby persons reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.*

*(2) It is immaterial that the original assembly was lawful if, being assembled; they conduct themselves with common purpose in such a manner as aforesaid.*



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(3)...”

“69. No person shall take part in an unlawful assembly.

*Penalty: Imprisonment for 3 years”*

2. Section 105(b) deals with the offence of Kidnapping. It provides:

*“Kidnapping*

*105. No person shall-*

*(a)...*

*(b) By force compel, or by any fraudulent means induce, any person to go from any place to another place.*

*Penalty: Imprisonment for 10 years”*

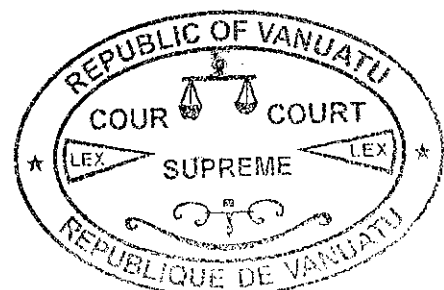
20. All Defendants are liable to the following penalties:

-3 years imprisonment for unlawful assembly;

-10 years imprisonment for Kidnapping.

21. These penalties are maximum penalties for the said offences. They are very serious offences as reflected by the heavy penalties imposed by law.

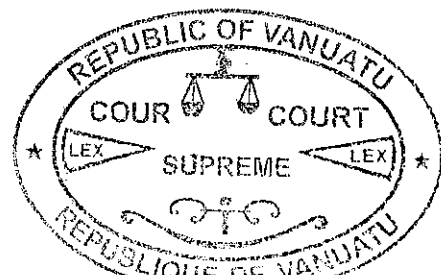
22. The defendants must now understand that their actions and conducts on 10 August 2015 were against the law. The defendants have broken the law when they unlawfully assembled at Tanna Lodge Resort entrance and kidnapped two employees of the Resort by taking them away from Tanna Lodge Resort to Ianmarang village without their consent and without lawful excuse.



23. The actions and conducts of the Defendants on 10 August 2015 were intolerable and unacceptable in any society, community, island or village and the village of Ianmarang and others on Tanna Island are no exception. The chief and the people of Ianmarang and Ivankula and other villages on Tanna Island must respect and obey the law. The Defendants must understand that all persons in Vanuatu including persons living and residing on Tanna Island have rights which are protected by the law. The Defendants cannot take the law into their own hands and do justice as they wish.

### **SUBMISSIONS BY PROSECUTION**

24. Mr. Tristen Karae referred to the following guideline judgments in his submissions on behalf of the Public Prosecutor.
25. The first case is that of Caird (1970) 54 CR App R499 which provides some guide on the gravity of public offence such as unlawful assemblies. In Caird, Sachs LJ said (at pp506 – 8):  
*“In the view of this Court, it is wholly wrong approached to take the acts of any individual participator in isolation. They were not committed in isolation and, as already indicated, it is that very fact that constitutes the gravity of the offence”.*
26. *In Pilgrim (1983) 5 CR. App R(S) 140, the Court of Appeal upheld the sentences, Lord Lan CJ saying that:*  
*“What the Court has to pay regard to is the level of violence used, the scale of the riot, or unlawful assemblies or affray as described by the*





*witnesses, the extent to which it is premeditated, or on the other hand spontaneously arises, and finally the number of people who are engaged in its execution.”*

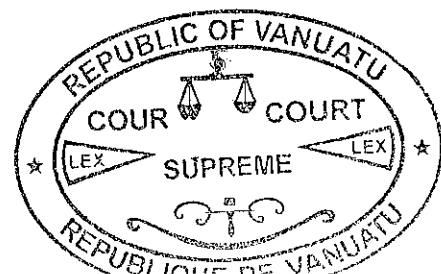
27. The Prosecution refers to the following cases in respect to the offence of kidnapping:-

First, the case of R –v- Spence and Thomas (1983) 5 CR. App. R. (5.) 413 where Lord Lane CJ said (at p.416):

“There is a wide possible variation in seriousness between one instance of kidnapping and another. At the top of the scale come the carefully planned abductions where the victim is used as a hostage or where ransom money is demanded. Such offences will seldom be met with less than 8 years’ imprisonment or thereabouts, where violence or firearms are used, there are other exacerbating features such as detention of the victim over a long period of time, and then the proper sentence will be very much longer than that. At the other end of the scale are those offences which can perhaps scarcely be classed as kidnapping at all. They very often rise as a sequel to family tiffs or lovers’ disputes, and seldom require anything more than 18 months imprisonments, and sometimes a great deal less.”

28. Second, the case of Kilman –v- Public Prosecutor [1997] VUCA 9, the Court of Appeal accepts that the Appellants were acting in pursuit of a common purpose.

29. Third, the case of Public Prosecutor –v- Simon [2003] VUCA 1, this was an appeal by the Public Prosecutor in relation to the sentence



imposed on the Respondents which were manifestly inadequate. The Respondents were charged with the offences of Inciting Mutiny (Count 1), Mutiny (Count 2), kidnapping (Count 3) and false imprisonment (Count 4). The trial Judge sentenced the Respondents to 2 years imprisonment for each offence and ordered the sentence to run concurrently. The trial Judge further suspended the sentence of 2 years imprisonment for a period of 2 years.

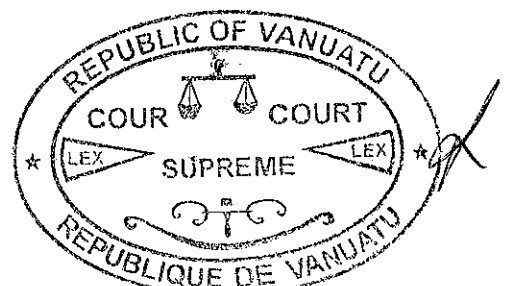
30. The Court of Appeal states:

*“Every citizen and particularly every police officer must understand that any dereliction of duty, or challenge to the disciplined command of their force or any taking into their own hands approaches to the enforcement of the law, will lead to actual time in prison. We are of the view that these men are equally culpable and we are not willing to differentiate between them.”*

The appeals against the sentence were granted and the orders of suspension were quashed.

31. Fourth, the case of *Urinmal –v- Public Prosecutor* [2013] VUCA 23 and *Public Prosecutor –v- Urinmal* [2013] VUSC 95, these were appeals by the Appellants against their convictions and sentences. The Supreme Court sentenced the Appellants to 2 years imprisonment for unlawful assembly and 3 years imprisonment for kidnapping and they were to run concurrently.

32. The Court of Appeal in its judgment said that: *“The sentences of imprisonment appear to us to reflect the culpability of the individual*



*offenders, and to be entirely within the available range. The decision not to suspend them was in our view the only outcome available.”*

33. Based on the above mentioned case authorities, the Prosecution submitted that in the present case, the following aggravating factors stand out:

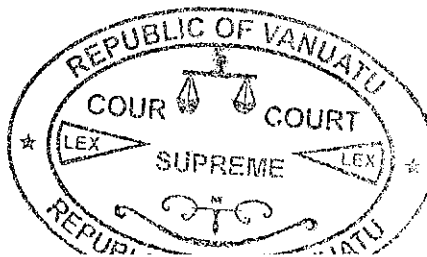
- The degree of planning or premeditation;
- The number of perpetrators including others that were not identified;
- Vulnerability of the victims
- Duration of loss of liberty
- Threatening with words and possession of weapons;
- Effect upon the victims; and
- Effect upon other persons.

34. The Prosecution finally submitted for a starting point of 2 years imprisonment for the offence of Unlawful Assembly and a starting point of 3 years imprisonment for the offence of Kidnapping and an end sentence of 24 months imprisonment for both offences to be run concurrently.

### **SUBMISSIONS BY DEFENCE**

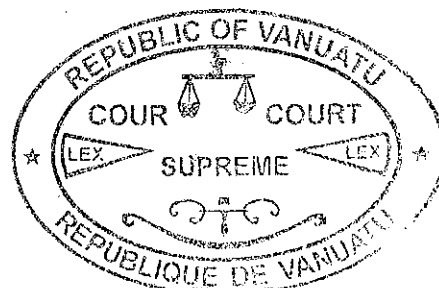
35. The Defence concedes that the Court can only properly impose a full time term of imprisonment in respect of the offences.

36. The Defence concedes to all the authorities that were submitted and concedes that this case as well as other cases mentioned by the



Prosecution is serious as reflected by Parliament as to their punishments. But the Court is invited to consider the circumstances of all cases differently.

37. Mr Jacob Kausiama, the Public Solicitor, submitted to the following effect on behalf of the Defence. The Defence makes distinctions between some of the relevant cases quoted in the Prosecution submissions and the present case. The Defence says that the cases of Public Prosecutor –v- Kilman and others [1997] VUCA 9 and the case of Public Prosecutor –v- Simon [2003] VUCA 1 must be clearly distinguished from this case. In these two above cases, the defendants were members of the law enforcement in the Republic. Their understanding of the law was much better than the defendants in this case. In these two cases, weapons were used such as guns in the carrying out of the offending, however, in the present case no weapons or violence was used.
38. The Defence says that in PP –v- Simon [2003] VUCA 1, the Defendants were charged with and sentenced for four counts against them. In the present case, only two counts against each of the defendants were charged and sentenced.
39. In this case of Public Prosecutor –v- Urinmal and others, the Defendants were charged with more counts than the Defendants in this case. The Defence submitted that in the above mentioned case there was violence used in so it could be argued that the culpability in their offending is more than in this case. The end sentence in respect to the above mentioned cases was 2-3 years imprisonment.



The Defence invites the Court to consider the end sentence of 2 years in this case to reflect the sentencing consistency.

40. The Defence submitted also that the Court would consider that there were aggravating factors in respect of the offences in this case.
41. In mitigation, the Defence submitted as follows in respect to each Defendant:

1. Lowa Lautu George

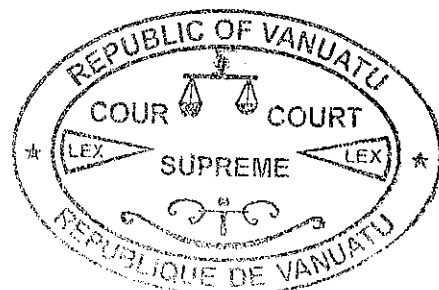
Lowa Lautu George is 52 years of age. He is married with three children. He is a first time offender. He is a gardener who relies on all the produces in the gardens to pay for his children school fees. He is uneducated and follows custom.

2. Sam Namatak

Sam Namatak is 47 years old. He is married with five children. He is a first time offender. He and his wife heavily rely on the gardener produces for their consumption and sale to earn money to pay for their children school fees particularly two who are currently at the Lycee LAB School.

3. Siko Nasse

Siko Nasse is from Inmarang village. He is 37 years of age. He is married and has six children. Like other defendants, gardening is used for subsistence and income earning for what is needed. He is a first time offender.



4. Charley Numapen

Charley Numapen is from lamksip village. He is 49 years of age. His is married and has five children. He is a first time offender who relies on subsistence gardening for their livelihood.

5. laualka Selsel

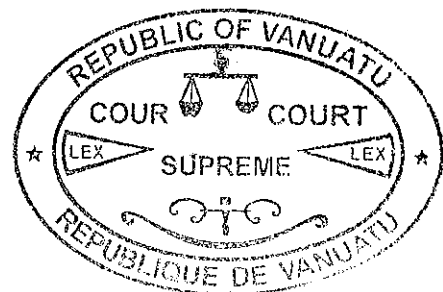
laualka Selsel is 42 years old. He is married and has six children. He is a first time offender and is uneducated. He also relies on subsistence gardening to feed his children and often sale produces to meet their other needs.

6. Angelo lamtiu

Angelo lamtiu is 35 years of age. He is married and has three children. He used to be the driver to his father's vehicle but is no longer does that. He now stays at home and does gardening to support his children.

42. The Defence submitted that the Defendants have no prior criminal record. They are entitled to a small reduction. The Defence also says that the Defendants and their families have offered custom reconciliation with the victims of their offending but that offer was not accepted by the victims.

43. The Defence finally submitted that the Court should impose an end sentence of 2 years imprisonment and the Court considers suspending the sentence and in addition impose community work on all the Defendants.



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## SENTENCE DECISION MAKING CONSIDERATIONS

44. The Prosecution refers the Court to the decision of the Court of Appeal in Public Prosecutor –v- Andy [2011] as a guide to sentence decision. I consider and use Andy decision as a guide for purposes of determining appropriate penalties in the present case.

45. The first question is what is the appropriate head sentence?

I set an appropriate head sentence in this way:

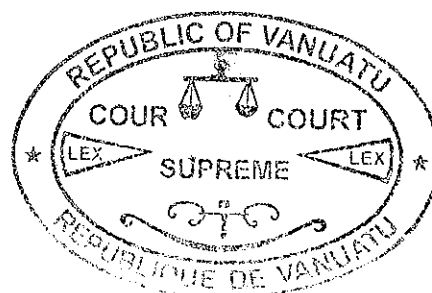
-I must first identify an appropriate starting point; and

-I must then set out the considerations that should be taken into account in deciding whether to impose a sentence equal to, lesser or greater than the starting point; and

-I finally apply those considerations to the facts of the present case.

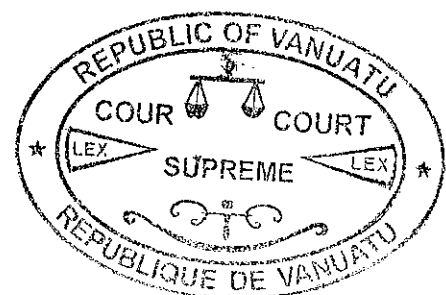
46. To identify an appropriate starting point, I consider and peruse cases of similar type nature contained in the Prosecution submissions or Defence Counsel submissions referred to the Court in the present case and other cases. I identify the following starting point:

- Offence of unlawful assembly (in Count 1) 2 years imprisonment for each and all Defendants convicted of this offence;
- Offence of Kidnapping (Count 2) – 3 years for each and all Defendants convicted of this offence.



47. In the present case, I consider the nature and seriousness of the offending. I consider and assess that the circumstances of the offending are aggravated by the following factors:

1. There was a degree of planning or premeditation in the commission of the offences or in the carrying out of the common purpose of removing the two employees of the Tanna Lodge Resort on 10 August 2015.
2. The number of perpetrators including others that were not identified. There were at least 100 people who assembled and conducted themselves in such manners so as to cause the employees of the resort to be frightened.
3. The victims of the crimes were vulnerable. They could not do anything as they were frightened. There were too many people who took part in the unlawful assembly of 10 August 2015 at the entrance of Tanna Lodge Resort.
4. Duration of loss of liberty.  
The two employees of the Resort were compelled by Force to go inside a double cabin truck. They were removed from the entrance of the resort to lanmarang village. It was some distance away in land. They were questioned and released. The estimated duration is at least 3 hours (2PM was when they were taken away at the entrance of the resort and 5PM was when Jeffery Tupas took Richard back home).





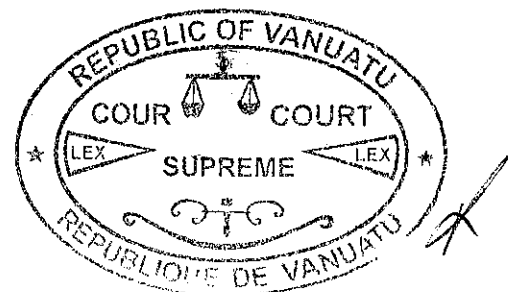
5. Threatening with words and possession of weapons. Although none of the Defendants carried weapons, others have with them stones, knives and axes. Some of the Defendants used threatening words. Their actions and conducts caused the employees of Tanna Lodge Resort to be frightened.
6. Effect upon the victims. The evidence of the two victims testified to this effect. Richard Iaruel thought they were going to kill him. Alice Willie was frightened and surrendered herself.
7. Effect upon others persons. The evidence of other prosecution witnesses testified to this aspect. Collin Iaruel was very frightened.
8. Each of the Defendants played a relatively active or major role in the offending.

48. Based on the above aggravating features the head sentences are increased as follows:

- Unlawful assembly – 2 years and 3 months for each and all defendants;
- Kidnapping – 3 years and 3 months for each and all Defendants

49. I consider and accept the following mitigating factors:

1. Each Defendant personal particulars;
2. Each Defendant is a first time offender;
3. The Defendants have no prior criminal record;
4. The Defendants and their families have offered custom reconciliation with the victims but that offer was not accepted by the victims;



50. In balancing between the aggravating and the mitigating factors, the following are the end sentences imposed on each and all defendants in respect to their convictions in this case:

1. Unlawful Assembly (Count 1)

2 years imprisonment for each and all abovenamed Defendants:

Lowia Lautu George, Sam Namatak, Siko Nasse, Charley Nemapen, Iaualka Selsel and Angelo Iamtiu.

2. Kidnapping (Count 2)

2 years imprisonment for each and all abovenamed Defendants:

Lowia Lautu George, Sam Namatak, Siko Nasse, Charley Nemapen, Iaualka Selsel and Angelo Iamtiu.

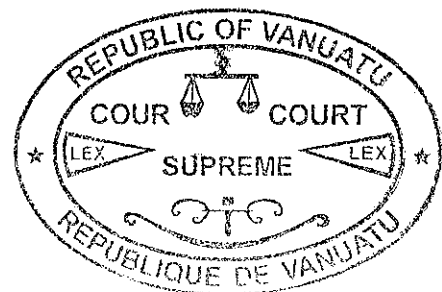
51. The sentences on these two offences shall run concurrently.

52. The second question is whether the end sentence should all or part be suspended?

I consider whether or not all sentence or part of it should be suspended.

53. I decline to suspend the end sentence on the basis of the seriousness of the offences and the gravity of the circumstances of the offending by at least 100 people some of whom were armed with stones, knives and axes; got inside the premises of the resort, called and shouted angrily on the employees of the resort; directed them to go to the entrance and removed two employees by the threats of use of force.

54. Although, the Defendants did not have weapons with them, were first time offenders and intended to performed custom reconciliation ceremony, it is my humble view, that immediate custodial sentence is necessary for the follow reasons:



1. To protect the society from the defendants who are constantly under the orders and directions of their chiefs in custom.
2. To punish the defendants from the seriousness and gravity of their offending.
3. To deter others not to commit similar type of offences in the future.

### **SENTENCE ORDER**

55. The Court makes the following order:

1. Defendants Lowa Lautu George, Sam Namatak, Siko Nasse, Charley Nemapen, Iaualka Selsel and Angelo Iamtiu shall each serve an imprisonment term of 2 years with immediate effect which shall run concurrently with the other sentence.
2. Each Defendant has 14 days to appeal against the sentence he receives today if he is unsatisfied with them. The 14 days of appeal starts at the date of the sentencing.

**DATED at Isangel, Tanna this 27<sup>th</sup> day of May, 2016**

**BY THE COURT**



.....

**Vincent Lunabek  
Chief Justice**

