

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

Criminal Case No. 1993 of 2017

PUBLIC PROSECUTOR vs TAO IARISPIS

Coram: *Justice Chetwynd*

Counsel: *Mr Garae for Public Prosecutor
Mr Bal for Defendant*

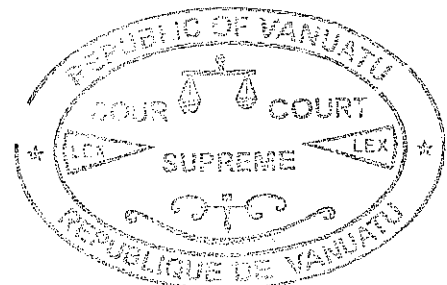
Date : *17th October 2017 at 9:00am*

JUDGMENT

1. The defendant is charged with an offence under section 26 of the Firearms Act [Cap 198]. The offence is punishable by 15 years imprisonment or a fine of VT 750,000 or both. The section says that it is an offence for any person to have in their possession a firearm with the intention of endangering human life (or causing serious injury to property).

2. The particulars of the offence state that on the night of 14th April 2017 the defendant had with him a Remington pump action shotgun. The defendant admits that fact but the admission goes no further. As a result the Public Prosecutor has produced evidence about the defendant's intent that night. It is a difficult task to prove, beyond any reasonable doubt, what was or is in a person's mind but that is what the prosecution have to do. Intention can, of course, be inferred from behaviour.

3. The first witness I heard from was the defendant's wife Nalau Luake. Her evidence was a bit contradictory. I put that down to language difficulties (she spoke little Bislama) and her inability to read or write. As a result I cannot accept her evidence at face value but I do not believe she deliberately lied to the Court.



4. Emile Kawas was the driver of the bus that the prosecution witnesses were travelling in. I did have some difficulty following what he was saying because he was imprecise as to what actually went on. His estimations of the distances involved were also somewhat loose. I believe his evidence does corroborate the generality of what Mrs Luake told me rather than the detail.

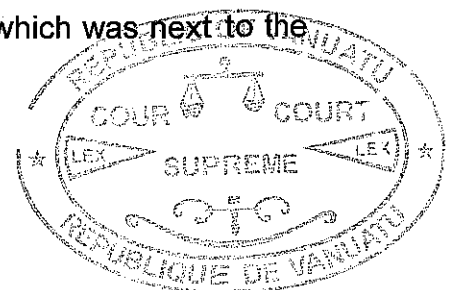
5. Natika Tavo is the young son of the defendant. He was the most believable of the evidence I heard. He did not see his father take the gun out of his truck but he does clearly remember hearing the distinctive sound of the forend of a pump action shotgun being pushed forward and pulled back.

6. Iesua Kieth was another relative of the defendant she was in the bus with Mrs Luake, Natika Tavo of the driver Mr Kawas. She may not have actually seen the defendant with a shotgun that night but she knew he owned one. She had seen it at home. She heard someone shout to run because the defendant was taking a shotgun out of his truck and that is what she did.

7. Taking all the evidence together and having regard to the defendant's admissions, I can reach some certain conclusions.

8. On the night of 14th April the defendant had with him in his truck a Remington pump action shotgun. He had been drinking. His wife went to look for him and his mistress. She was in a bus being driven by Emile Kawas and was accompanied by her young son Natika Tavo and by Iesua Kieth. At some point the bus and the truck driven by the defendant approached each other from opposite directions. Both vehicles stopped. Nalau Luake and her son got out of the bus and approached the defendant who remained in his truck.

9. Words were spoken and in plain terms they rowed. Natika demanded his father hand over the keys to the truck. This was because Natika was under the impression his father was affected by alcohol. The father refused and drove off. He had only travelled a short distance when Natika threw a stone at the truck. It stopped and the defendant reversed the vehicle backwards towards the bus and got out. As he did so he reached into the truck and took out the shotgun which was next to the



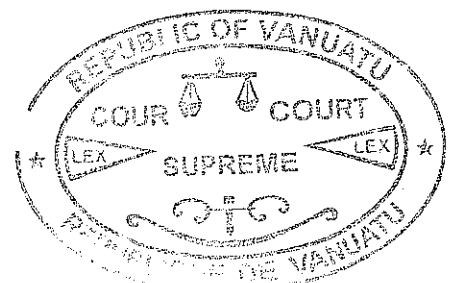
driver's seat. He activated the forend of the weapon. The others all panicked and ran and hid.

10. I can take judicial note that a pump action shotgun has a particular kind of mechanism. It usually has a wooden forend underneath the barrel. The forend is free to move backwards and forwards. Pushing the forend forwards causes any shell in the breech of the weapon to be ejected. Pulling it backwards causes a shell to be retrieved from the magazine and inserted into the breech and at the same time cocks the weapon, that is prepares the firing mechanism for firing. All that needs to happen for the weapon to be fired is for someone to pull the trigger.

11. Given the evidence so far found, has the Prosecution made out the elements of the offence charged? The Prosecution must prove, beyond any reasonable doubt, that the defendant was in possession of a shotgun. They can do that, indeed the defendant does not deny that. They must also prove, beyond any reasonable doubt, that the defendant intended to endanger human life. I do not believe they can do that. It is quite possible the defendant may have intended to scare his wife and son but is that sufficient to show he intended to endanger human life? There is no evidence the weapon was loaded. There is no evidence the defendant aimed the weapon at anyone. There is no evidence the defendant made any attempt to actually fire the weapon.

12. There is no doubt the defendant was extremely stupid to mix firearms and alcohol. There is no doubt that any sensible person would think twice about taking a shotgun out of a vehicle and waving it about. There is no doubt that if the weapon was loaded it was unbelievably dangerous for the defendant to have done what he did that night. However, the Prosecution have not proved to the necessary standard that the defendant had in his possession a shotgun with the intention of endangering human life. In all the circumstances the defendant is not guilty of an offence under section 26.

13. However, the prosecution have proved beyond all reasonable doubt that the defendant has committed an offence under the Firearms Act. Section 25 of the Act says:



"No person shall be drunk, or behave in a disorderly manner, while carrying a Firearm"

Although the defendant admits he had been drinking there is no real evidence he was drunk. The evidence does support a finding he was behaving in a disorderly manner.

14. Section 29 of the Act says (at subsection (1)):

"No person shall, without lawful authority or reasonable excuse (the proof whereof lies on him) have with him in a public place any firearm (whether loaded or not) together with ammunition suitable for use in that firearm"

There is no suggestion that the defendant had the shotgun in his possession for a lawful reason that night but there is also no evidence he had ammunition with him.

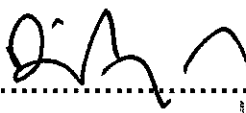
15. Section 29(2) of the Act states:

"No person shall have with him in a public place any firearm (whether loaded or not) unless it is covered with a security fastened gun cover so that it cannot be fired."

The undisputed evidence is the defendant had the shotgun with him. The evidence of the witnesses shows, beyond reasonable doubt, that the weapon was not in a security fastened gun cover. The shows the defendant activated the forend of the weapon after taking it out of the truck which he could not have done if the shotgun had been in a security fastened gun cover. All the elements of an offence under section 29(2) have been made out. In accordance with section 109 of the Criminal Procedure Code [Cap 136] I convict the defendant of the lesser offence of carrying an uncovered firearm contrary to section 29(2) of the Firearms Act.

DATED at Isangel this 17th day of October 2017

BY THE COURT


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D. CHETWYND
Judge

