

PUBLIC PROSECUTOR

-v-

SAM ENAUNG

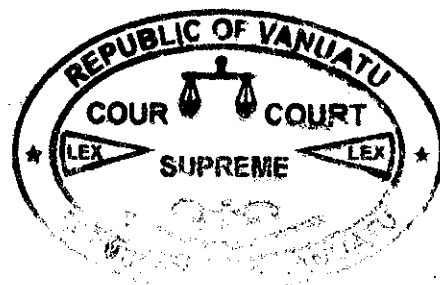
Coram: V. Lunabek- CJ

Counsels: Mr Tristan Karae for Public Prosecutor
Mr Willie Kapalu for the Defendant

Date of Delivery: 9 February 2017

SENTENCE

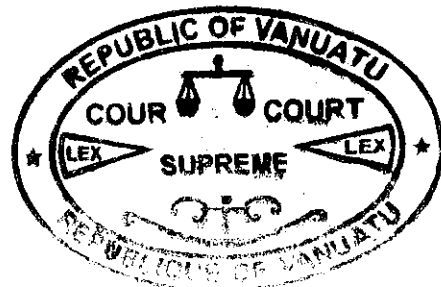
1. Mr Sam Enaung, you appear today for sentence for one count of Threats to Kill a person, contrary to section 115 of Penal Code Act [Cap. 135].
2. On 23rd May 2016 you were charged with two counts of threats to kill a person and you entered not guilty pleas in respect to both counts on the 24th May 2016.
3. On 6 February 2017, you maintained your not guilty plea on count 1 but you changed your initial "not guilty plea" on count 2 to "a guilty plea".
4. The prosecution applies for a nolle prosequi in respect to the offence in count 1.



5. The nolle prosequi is granted and the Court explains to you the effect of the nolle prosequi in your favour as it appears in section 29 of the Criminal Procedure Code Act [Cap. 136].
6. You are now sentenced on the offence in Count 2 only. You admitted that on 2nd day of April 2016 at Lounpakel village, Tanna, you intentionally threaten to kill one Etau Billy when you told him "you ia now mi stap lukaotem you, mi mas kilim ded you nao."
7. As a result of your threats to kill Etau Billy, he was afraid for his life.

The brief facts of this case are these-

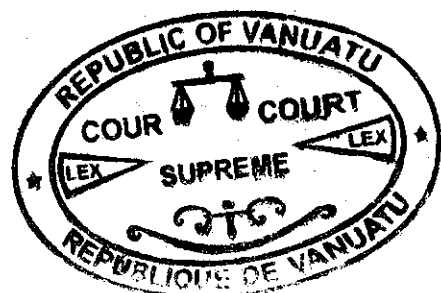
8. You committed this offence on the 2nd of April 2016 around 3.00PM in the afternoon.
9. On that date the complainant went to the gardens to get food for his children and wife.
10. On his way to the gardens, the complainant met you. You then threatened to kill him when you told the complaint: "you are the one I am looking for, I must kill you now."
11. You then threw a stone at the complainant but you missed him.
12. You then took another stone and threw it at the complainant but the complainant run off.



13. You then took a knife and an axe and chased after the complainant.
14. Because of your threats to kill the complainant and actions toward the complainant and his family, they had to leave their home and find refuge in other family member's house in another village.
15. The complainant was very scared and concerned about his safety and the life of his family.
16. You were arrested on the 7th of April 2016.
17. On the 8th of April 2016, you were cautioned and interviewed. As the records show, you made no admissions to the police. You entered not guilty pleas on this count initially. You change your plea into "a guilty plea" after fresh instructions by your new lawyer.
18. I treat the change of plea of "not guilty" to "guilty plea" in respect to count 2 as a first time opportunity you are given and I consider no substantial difference existed.

The relevant law is this-

19. Threats to Kill a person is prohibited by law and is also punished by law.
20. The relevant law is section 115 of the Penal Code Act [Cap.135]; It says:



"115. THREATS TO KILL A PERSON

No Person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.

Penalty: Imprisonment for 15 years"

21. The offence of threats to kill a person is a serious offence. It carries a maximum penalty of 15 years imprisonment.

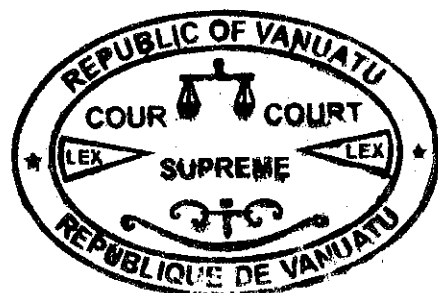
22. In their submissions the prosecution referred to the Guideline Judgment of the *Court of Appeal in Walker –v- Public Prosecutor [2007] VUCA 12* when the Court held that:

"Cases of this nature must always warrant imprisonment to reflect the seriousness of the offence. For offence of threats to kill a person, by a defendant with presence of weapon and the use of the weapon is on the higher scale of aggravation and seriousness. A suspended sentence of imprisonment must only be granted if circumstance of the case is justified."

3. The prosecution also referred to following cases.

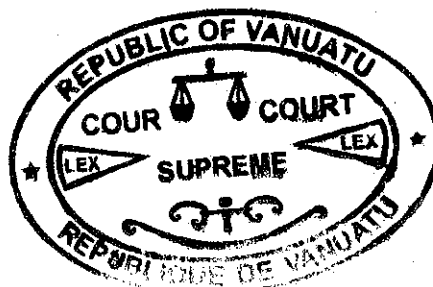
Public Prosecutor –v- Kalatai [2013] VUSC 118; Public Prosecutor –v- Kaloran [2014] VUSC 14 and Public Prosecutor –v- Batick [2015] VUSC 14.

24. The prosecution submitted that in considering the culpability of the offending a number of aggravating factors stand out:-



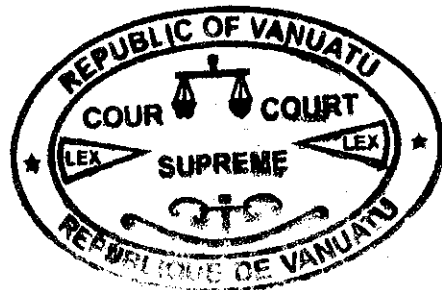
- Stones, knife and axe were used to threaten to kill the complainant;
- You threw the stones at the complainant but you missed him;
- You chased the complainant with a knife and axe;
- Land dispute

25. The prosecution submitted that a starting point of 3-4 years imprisonment should be appropriate and that there should be no deduction for early guilty pleas. The prosecution submitted finally that the Court should impose an end sentence of 2-3 years imprisonment and that it should be suspended with additional orders of 100 hours community work and 12 months supervision to address your offending.
26. In mitigation, your lawyer submitted that you are 47 years old. You are a first time offender. You have pleaded guilty to the charge on the first opportunity on fresh instructions. You have seven (7) children who attending school. You pay the school fees of your children. You are also the sole bread winner of your own family. You are a chief of your community. You committed the offence at the material time because your houses were burned down by the complainant and his family and you and your family were forced to live in the bushes for two weeks. Yu have lodged a complaint for the burning of your houses against the complainant and his family. The matter is pending for prosecution.
27. Your lawyer refers the Court to some cases. The first case is that in *Public Prosecutor –v- Berry Kaloran, Supreme Court Criminal Case No.64 of 2016*. In this case, the defendant was charged with 3 counts of Threats to Kill a person, one count of Sexual Intercourse without consent, and one count of Threats to Kill a person were

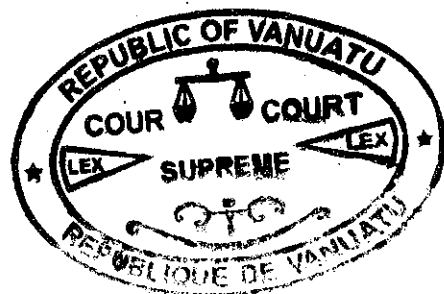


subject to nolle prosequi application under section 29 of the Criminal Procedure Code Act [Cap.136]. The defendant was sentenced for one count of threats to kill a person and one count of intentional assault. The defendant was sentenced to 15 months imprisonment suspended for 2 years, 40 hours of community work and 6 months probation on standard conditions.

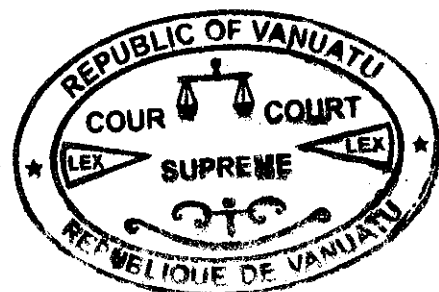
28. Your lawyer submitted that the circumstance of your case is different from the case of PP –v- Berry Kaloran as the Defendant made the threats and actually used weapons to threaten to kill the complainant. Your lawyer said in your case, you had only used words to threaten to kill the complainant.
29. Your lawyer also referred the Court to the case of *Kell Walker –v- Public Prosecutor [2007]* when the Court of Appeal set guideline principle in respect to the offence of threats to kill a person, contrary to s.115 of Penal Code to the effect that it was a serious offence and custodial sentence must be imposed to reflect the seriousness of this offence and that a suspension of imprisonment sentence is only justified by the circumstance of the case.
30. Your lawyer referred finally to the case of *PP –v- Kalatai, Supreme Court Criminal Case No.46 of 2013*. The Defendant was charged with 3 counts of threats to kill a person and other charges. The defendant threatened to kill one of the chief of his village and swore at one of them. The Defendant used weapons including axe, knife and pinch bar. He was sentenced to 16 months imprisonment.
31. Your lawyer submitted that your case is different to that case because in your case you did not use any weapon but you only uttered threatening words.



32. Your lawyer finally submitted that you shall receive an end sentence of 6 months imprisonment to be suspended for a period of 1 year. In the alternative you should be sentenced to 100 hours community work.
33. When I consider your sentencing, I take into account of the law, the circumstance of your offending, the guideline judgments of the Court of Appeal, judgments of the Supreme Court on similar fact circumstances of offending, the submissions of the prosecution and the submissions of your lawyer on your behalf.
34. I take also into account of what is in the pre-sentence report when it is relevant.
35. In the present case, the circumstance of your offending is aggravated by the following factors:
- You used two stones, a knife and an axe to threaten to kill the complainant apart from the uttering of the threatening words toward the complainant on 2nd April 2016.
 - You threw stones at the complainant
 - You chased the complainant with a knife and axe
 - You took the law into your own hands when you suspected the complainant and his family to be responsible for the burning down of your houses, causing you and your family to sleep in the bush for two weeks but that is suspicion without proof. It is called revenge and it is against the law.
 - You lodged complaints against the complainant and his family for the destruction of your houses. They are yet to be dealt with according to law. Again you took the law into your hands and it is against the law.



- By your actions, you caused fear to the complainant, his wife and children to vacate their home and live in a different village for their safety.
36. On balancing between the aggravating and the mitigating factors, the aggravating clearly outweigh the mitigating ones. I sentence you to 4 years imprisonment as a starting point. You are entitled to 1/3 reduction for your early guilty plea. This means that the balance of your remaining sentence is 32 months i.e. 2 years and 8 months.
37. I note that you expressed remorse through the report. There is no any other mitigating factor apart from being a first time offender. I give an allowance of 2 months for being remorseful and as a first time offender. Your end sentence is 2 years and 6 months.
38. I consider whether the circumstance of your offending justify a suspension of your sentence of 2 years and 6 months imprisonment. I bear in mind that the prosecution and your lawyer submitted that I should suspend your imprisonment sentence. I have tried to find a justification for doing so but I am afraid I cannot find any. I sense you are remorseful and you are a first time offender but it cannot outweigh the seriousness and aggravating factors of your offending.
39. You have young children and you look after your family and pay for your children school fees but they are part of your responsibilities as a father and the head of your family. They do not justify a suspension of your imprisonment sentence in this case. I consider also that you have differences with the complainant and his family in respect to a land dispute. Again, this alone cannot justify a suspension of your imprisonment sentence.



40. I order that your end sentence of 30 months imprisonment shall be partly suspended in this way:-

You shall serve the first 15 months imprisonment immediately and the remaining balance of 15 months imprisonment shall be suspended.

41. You have 14 days to appeal against this sentence if you are unsatisfied with it. The 14 days starts today.

DATED at Isangel, Tanna, this 9th day of February, 2017

BY THE COURT



**V. LUNABEK
Chief Justice**

