

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

**Criminal
Case No. 18/3347 SC/CRML**

PUBLIC PROSECUTOR

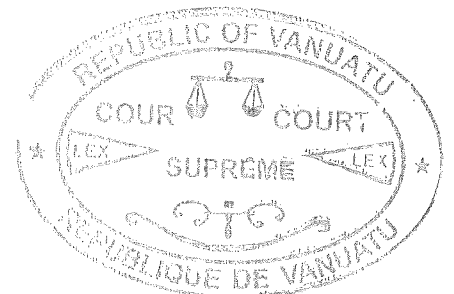
v

MICHAEL DANIEL

Before: Justice D. Fatiaki
Counsel: Micheline Tasso for the Public Prosecutor
Less Napuati for the Defendant
Date of Sentence: 08 March 2019

SENTENCE

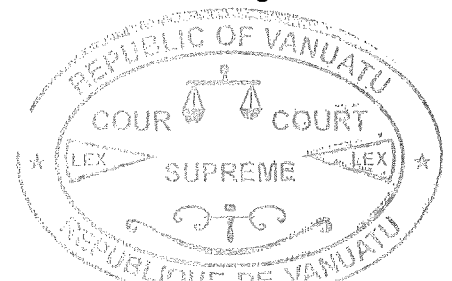
1. The defendant was originally charged with 3 offences: Causing Death By Reckless Driving (Count 1), Driving Motor Vehicle Without A Licence (Count 2) and (Count 3): Unintentional Harm (as an alternative to Count 1). On 11 December 2018 the defendant pleaded guilty to all 3 offences ("*i tru*") and after admitting facts outlined by the prosecutor ("*mi harem i tru*") he was convicted on Counts 1 and 2 only.
2. The brief facts may be summarised as follows: On 14 April 2017 the defendant was a front seat passenger sitting next to the driver of a bus that had dropped off some passengers at Erueti area. On the way back to Port Vila the defendant who was unlicensed asked to the drive the bus at Rentapau. The bus driver agreed and the defendant took over the driving of the bus while the bus driver sat beside him in the front passenger seat. Between Rentapau and Teouma the bus was driven by the defendant without any incident. In the absence of an contrary evidence I accept that the bus was empty while the defendant was driving it.



3. At Teouma Bush road near the Maumau Primary School the bus collided with the deceased who was standing on the side of the road near the Jehovah's Witness Church throwing her against the boundary fence and gate of the Church. The deceased was rushed to the Vila Central Hospital. Four days later she died on 18 April 2017 from her injuries which included five (5) fractured ribs with lung contusion, hemothorax and liver and spleen injury with intra-abdominal bleeding.
4. Police attended at the scene, took various measurement and produced a rough sketch plan which revealed an 8 metre skid mark after the estimated "*point of impact*" leading up to the gate of the church ground. The defendant was arrested and under caution, frankly admitted driving the bus and colliding with the deceased without being the holder of a valid driving licence at the time. He apologised for his "*stupid mistake*".
5. The offence of Causing Death by Reckless Driving is a serious offence not only because of its tragic consequences but also because of the maximum penalty of 5 years imprisonment and/or a fine not exceeding VT500,000 that may be imposed on an offender.
6. In this case although the defendant and his front seat passenger both claim that the defendant was driving "*....slow, slow nomo*" immediately before the accident, an independent observer who saw the collision from inside the church building said he saw the green bus coming at speed and without slowing down, struck the deceased then the boundary fence and lastly the entrance gate before coming to a stop. He ran out and helped pull the deceased out from under the bus. ("*Green bus ia I kam ia ino slow down nothing. Hemi speed nomo I kam bangem (the deceased) ia I karem I kam. Mi sek olsem mi ron I kam be mi nomo save se olsem wanem. Be bus ia I bangem fence or post mo gate blong church. Ol man I kamkam aot....mo I pullem aot woman ia antaneath long bus*").

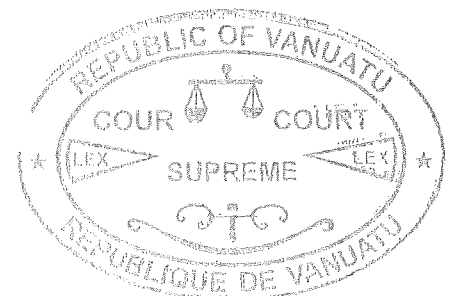
There is no suggestion that the bus was un-roadworthy at the time of the accident or had a defective foot brake or steering or that a tyre had punctured causing the bus to suddenly veer off the road and hit the deceased.

7. Indeed, both the defendant and his front seat passenger attribute the accident to the defendant mistakenly stepping on the accelerator instead of the foot brake causing the



bus to accelerate uncontrollably and hit the deceased. *“Mi wantemmo break (sic) be mestem nao truck i speed mo bangem (the deceased)”* or in the passenger’s words: *“.....(defendant) i wantem sidem bus from kamiong ia mo wantem break (sic) be i mestem nao i stanap long speed mekem nao hemi spearem/bangem gate blong church”*.

8. Upon the defendant's conviction a pre-sentence report was ordered with sentencing submissions to be filed by both counsels on 7 January 2019 as of the date of this sentence only the pre-sentence report was available.
9. The aggravating circumstances in this case are:
 - The defendant did not have a valid driver’s licence at the time and knew it was wrong to drive without a licence;
 - The defendant’s driving was reckless by his own plea and admission that he had mistakenly stepped on the accelerator when he meant to brake and slow down on seeing the approaching camion;
 - The defendant was driving at speed just prior to the collision as evidenced by the victim’s extensive internal injuries and by the defendant’s vehicle skidding a distance of 8 metres after hitting the deceased and only coming to rest after hitting the church fence and entrance gate.;
 - The deceased was completely blameless and suffered severe life threatening injuries in the collision with the defendant’s vehicle.
10. Bearing in mind the aggravating factors, I adopt a starting point of 3 years imprisonment before considering mitigating factors.
11. In this latter regard I extract the following personal details from the defendant’s pre-sentence report:
 - The defendant was born on 7 June 1999 and would have been almost 18 years of age at the time of the accident;
 - He originally comes from Lounou village on Tanna Island but resides with his parents and 2 younger siblings at Tebakor area in Port Vila;
 - He is helpful in the home caring for his siblings while his parents are away working and maintains good relations with his families and his community;

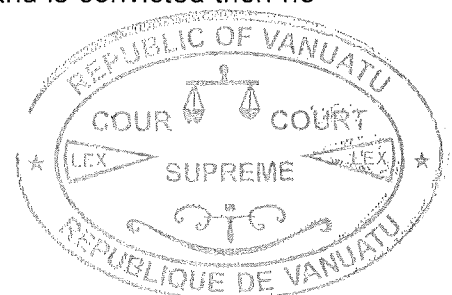


- He is a first offender and according to the probation officer's pre-sentence report, the defendant expressed remorse to the victim and her family and insight into his offendings. In particular, the defendant said: *".....he did not mean it and that he is really sorry for the mistake and will spend the rest of his life regretting for his careless driving that caused the life of (the deceased) whom he is related as his aunt (mother's sister)";*
- The defendant did not flee the scene after the accident but approached the badly injured victim despite being stoned by on-lookers, and took her to the hospital;
- The defendant's family are planning to perform a custom reconciliation ceremony to the deceased's husband and family once a date can be agreed and along with the usual gifts of food crops, a pig, kava and mats the defendant's family agrees to pay VT2 million as compensation for the deceased and will make an initial payment of VT300,000 towards the deceased's husband and, family at the reconciliation ceremony.

12. For the above mitigating factors I deduct 12 months from the starting point leaving a sentence of: $(36 - 12) = 24$ months imprisonment which is further reduced by one third (*ie.* 8 months) in recognition of the defendant's early guilty pleas, leaving an end sentence of: $(24 - 8) = 16$ months imprisonment. For the offence of Driving Without a Licence I impose a concurrent sentence of 1 month imprisonment.

13. I turn next to consider whether or not this is an appropriate case to suspend the sentence. I am mindful that the defendant had driven uneventfully for some distance prior to the accident which occurred as the result of an *"error of judgment"* by the inexperienced defendant in a panic mistakenly pressing the accelerator instead of the brake pedal while executing a swerving manoeuvre to avoid an approaching truck. I am also conscious of the defendant's relative youth as well as the protective provisions of section 54 of the Penal Code and the absence of separate facilities for holding young offenders within the existing prisons system. In all the circumstances, I do not consider it appropriate to make the defendant suffer an immediate imprisonment. Accordingly in exercise of my discretion under section 57 of the Penal Code, I order the defendant's sentence of 16 months imprisonment to be suspended for a term of 3 years.

14. What this sentence means is that the defendant will not have to go to prison today but if he is commits another offence within the next 3 years and is convicted then he



will be required to serve this sentence of 16 months imprisonment in addition to any other sentence he may receive for his reoffending. Whether that happens or not is entirely in the defendant's hands.

15. Additionally, in recognition of the standing offer to pay compensation to the victim's family who have lost a wife and a mother, I order the defendant to pay compensation in the sum of VT2 million to the deceased's husband Andrew Vano and their dependent children.
16. Compensation is to be paid by way of an initial lump sum payment of VT300,000 during a custom reconciliation ceremony which the defendant and his family are directed to perform to the deceased's family within 14 days in the presence of a probation officer. The balance of VT1,700,000 is to be paid in instalments of VT100,000 every 3 months thereafter commencing from 15 June 2019 until fully paid up in March 2024. All payments are directed to be paid to the probation service for record purposes and thereafter for onward transmission to Andrew Vano whose receipt will be a sufficient discharge for each payment received. In the event that there is a failure to pay any instalment, the balance will become due and payable in full. This compensation order is enforceable by the issuance of a warrant of execution.
17. Finally in exercise of the Court's power under section 55 of the Road Traffic (Control) Act [cap 29], the defendant is disqualified from driving a motor vehicle for a period of 3 years.
18. The defendant is advised of his right to appeal to the Court of Appeal against this sentence if he does not agree with it.

DATED at Port Vila this 8th day of March, 2019.

BY THE COURT



D. V. FATIAKI
Judge

