

**PUBLIC PROSECUTOR -v- JACK NALAU**

**Coram:** *Chief Justice Vincent Lunabek*

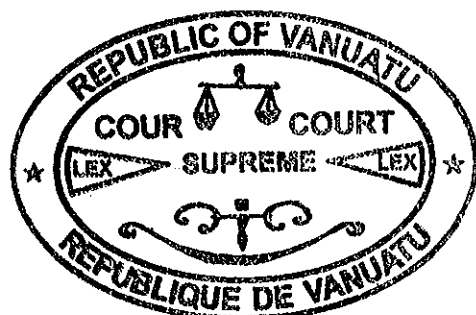
**Counsel:** *Mr Bernard Standish for the Public Prosecutor  
Mr Jacob Kausiama for the Defendant*

**SENTENCE**

Defendant, Jack Nalau, this is your sentence. On 18 October 2010, after a contested trial, you were convicted of two counts of Premeditated Intentional Homicide contrary to section 106(1)(b) of the Penal Code Act and one count of Unlawful Entry, contrary to section 143 (1) of the Penal Code Act [CAP.135].

The facts of the offending are contained in the Judgment on Verdict and I do not need to repeat them in great details again here. Suffice it to say that your offending in this case was particularly serious. You tortured the couple victims with a lit cigarette before killing them by striking them repeatedly with a hammer to their heads, causing fracture to their skulls. It was a brutal crime. In all likelihood, you did not act alone (there were unidentified fingerprints and DNA found at the crime scene). The motivation behind the crime is unknown as you have never given any explanation for your offending.

When I sentence you I have the benefit of perusing, the pre-sentence report filed by the Probation Services, the submissions filed by the Public Prosecutor and submissions filed by your own lawyer.



Your lawyer told the Court that the defence concedes to the facts which the Court relied upon to find you guilty of the charges laid against you.

The maximum penalty for premeditated Intentional Homicide is imprisonment for life. The maximum penalty for Unlawful Entry of premises used for human habitation is 20 years imprisonment. The offences that you have been convicted of are the most serious crimes known to the criminal law.

It is difficult to contemplate a more serious example of Premeditated Intentional Homicide. In the circumstances of these offences, the starting point for the offences of Premeditated Intentional Homicide should be the maximum penalty available, namely imprisonment for life.

In **Veen v. the Queen (No.2)** [1988] HCA 14, in the joint reasons of the majority of the High Court of Australia (Mason CJ; Brennan, Dawson and Toohey JJ) it was stated at paragraph [15]:

*"The second subsidiary principle material to this case is that the maximum penalty prescribed for an offence is intended for cases falling within the worst category of cases for which that penalty is prescribed: **Ibbs v. The Queen** (1987) 61 ALJR 525 at 527; 74 ALR 1 at 5. **That does not mean that a lesser penalty must be imposed if it be possible to envisage a worse case; ingenuity can always conjure up a case of greater heinousness. A sentence which imposes the maximum penalty offends this principle only if the case is recognizably outside the worst category.**" (Emphasis added).*

It is also important to note that when sentencing any offender, the Court must juggle various principles, purposes and considerations. In the majority judgment in **Veen (No.2)** referred to above, the dilemma was described as follows (at paragraph 13):

*"However, sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable*



*difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions."*

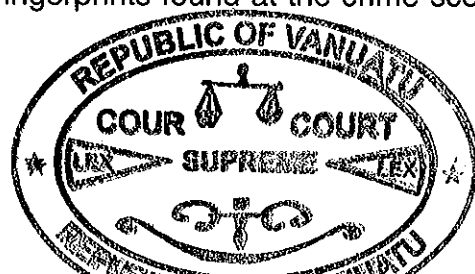
While the Court will balance a number of sentencing principles, it is appropriate in the present case, for the Court to impose a sentence which focuses on the protection of the Community as the paramount consideration.

This case is similar in many ways to that of **Public Prosecutor v. Ware**. Ware was convicted of killing in two separate incidents – the first in 2000 and the second in 2008. When sentencing Ware for the second killing, the Court took into account the principles outlined in the Australian case of **Veen (No.2)**. The Court accepted in Ware that the sentencing principle of protection of the community was the paramount consideration for someone who had killed victims in two separate incidents.

In the present case, you were convicted of four counts relating to serious offending in 2005 (see **Public Prosecutor v. Nalau and Jacob**: Criminal Case No. 46 of 2005; [2005] VUCA 104:

- Count 1: Unlawful Entry (section 143(1) Penal Code [CAP 135])
- Count 2: Intentional Assault causing death (section 107(d) Penal Code [CAP.135])
- Count 3: Intentional Assault causing permanent damage (section 107(c) Penal Code [CAP.135])
- Count 4: Intentional Assault causing temporary damage (section 107(b) Penal Code Act [CAP.135])

It is accepted that the offending in the 2005 case occurred after the offending in the present case. Indeed, it is as a result of your arrest for the 2005 offences that your fingerprints were taken and compared with the fingerprints found at the crime scene



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in the present case. Even though the 2005 offences occurred after these offences, the two sets of offences in combination show that you are extremely dangerous and a genuine threat to the community. You have now been convicted of unlawfully killing three people and of seriously injuring two others.

You were sentenced in 2005 to imprisonment for 8 years and 9 months to be served cumulatively to a sentence of 1 year and 10 months imprisonment imposed for another offence of unlawful entry and theft committed in 2005. Your claims of remorse expressed in 2005 must be viewed in light of the fact that you had already unlawfully killed the two victims in the present case, but you had not as yet been implicated in these crimes.

The principles espoused in **Veen** (No.2) were followed in the **Ware**. Also in **Morris Ben v. Public Prosecutor** [1993] VUCA 3, the Court of Appeal (Gibbs, Los and Downing JJA) held:

*“The Court is of the view that the learned Chief Justice has placed too much emphasis upon the removal of the Appellant from society in order to protect it from further attacks. The purpose of imposing a custodial sentence is not only to protect society from the prisoner, but also to punish the prisoner for his crime. Whilst it is clear that a judge may take into account the needs of society it is not appropriate to increase the sentence purely for the protection of society. **A judge should not imposed sentence longer than that which is appropriate in the circumstances of the case simply for the purpose of protecting society, although the protection of society is a matter to be considered in imposing the sentence: see Veen v. The Queen (No.2) (1988) 164 CLR 465.**”* (Emphasis added)

In New Zealand, the Court of Appeal (Robertson, Ronald Young and Venning JJ) held, in the **Queen v. Filo** [2007] NZCA 29 (at paragraph [21]):

“The appellant has two previous convictions for male assaults female and also two previous convictions for common assault. Previous convictions may properly be



considered in the determination of an appropriate sentence for a person with a background of offending in related ways: **R v. Howe** [1982] 1 NZLR 618 (CA). See also **Veen v. The Queen** (No.2) (1988) 164 CLR 465, 478 (HCA). As was noted by this Court in **R v. Casey** [1931] NZLR 594 at 597:

*...the previous convictions of a prisoner may indicate a predilection to commit the particular type of offence of which he is convicted, in which case it is the duty of the Court, for the protection of the public, to take them into consideration and lengthen the period of confinement accordingly."*

Your antecedent history, coupled with the objectively serious circumstances of the current offences, point to the need for protection of the community to be the paramount principle of sentencing in this case.

The only factor which could be legitimately raised in mitigation is your age. You did not plead guilty and therefore cannot expect any leniency for remorse. You were 18 years old when you committed these crimes and you are now aged 24 years. There is some prospect that you may develop some insight into your offending and may embrace rehabilitation at some stage when you mature.

The sentence to be imposed must reflect the seriousness of your offending and the need for the sentence to assist the protection of the community.

The only appropriate starting point for this offending is imprisonment for life. As you are still a young man, a fixed term of imprisonment may be more appropriate.

In *Ware*, the offender was given an effective sentence of 18 years imprisonment for his second offence of unlawful killing, but that sentence was imposed after he had pleaded guilty and shown some remorse.

Therefore, the sentence imposed on you for the offences of Premeditated Intentional Homicide is 23 years imprisonment concurrent to each other. You are also sentenced to 10 years imprisonment for Unlawful Entry which is to be served concurrently with



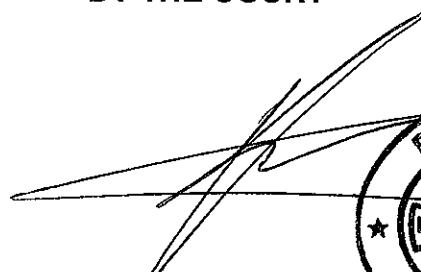
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your sentence of 23 years for the Premeditated Intentional Homicide. Your sentence of 23 years imprisonment shall be served consecutively to your current imprisonment sentence.

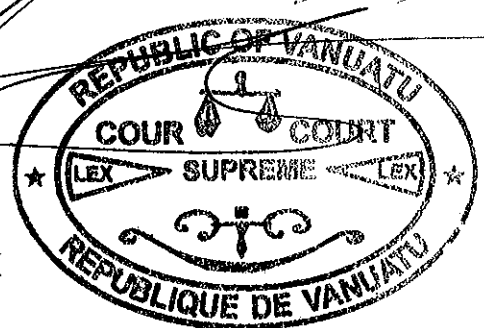
You have 14 days to appeal this sentence if you are not happy with it.

**DATED at Port-Vila this 8<sup>th</sup> day of December 2010**

**BY THE COURT**



Vincent LUNABEK  
Chief Justice



The seal of the Republic of Vanuatu Supreme Court is circular. It features a central scale of justice. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, "COUR" is on the left and "COURT" is on the right, with "SUPREME" written below them. Two small triangles containing the word "LEX" are positioned on either side of "SUPREME". The seal is flanked by two stars.