

PUBLIC PROSECUTOR
-v-
JACK KANAS

Coram: Justice D. Fatiaki

Counsel: Mr. Malantugun for the State
Mr. Bennett for the Defence

Date of Sentence: 19th February 2010

SENTENCE

1. On the 23rd of October 2009 the defendant Jack Kanas appeared before Judge Clapham and pleaded "guilty" to two driving offences under the Traffic Control Act [cap 29]. The first count charged the defendant with an offence of Driving Under the Influence of Alcohol Contrary to Section 16 and the second, with Reckless Driving Causing Death Contrary to Section 12. The defendant admitted the brief facts outline in support of the charges and signed a written document to that effect.
2. The defendant was convicted on his guilty pleas and the case was adjourned for several reports to be prepared and submitted to the Court. The defendant was remanded on bail to await sentence. Justice Clapham has since then returned to New-Zealand and sentencing in this case has fallen upon me to undertake.
3. On the 11th of November 2009 I received the pre-sentence report and compensation claim prepared by the probation service. Written submissions have also been received from the Public Solicitor's Office on behalf of the defendant and from the Public Prosecutors Office. I am grateful for the assistance provided to me in the written reports and counsels submissions.
4. The facts of this case are undisputed and may be briefly summarized. The defendant was a serving police officer at the time of the fateful incident. He was rostered to work the late shift on the night of 18th July 2009 commencing at 11 pm.
5. On the 18th of July 2009, instead of resting and preparing himself for his duties that evening as would be expected of a conscientious and diligent

police officer, the defendant began drinking 2 full cartons of Tusker beer (containing 48 bottles) with 2 others from about 11.30 in the morning. The drinking continued all day until about 8.00 pm when one member of the drinking party asked to be dropped off at the Coconut Palms Resort leaving the defendant and the authorized driver of the Toyota Hiace bus registration n° 10308.

6. From Coconut Palms Resort the bus was driven to Tebakor area where 2 female friends of the defendant boarded the bus. They all went to the Erakor Island Resort ferry landing where the last 4 bottles of Tusker beer were finished. The driver of the bus who had consumed about 15 bottles of Tusker by then, fell asleep in the back of the bus. It was about 10pm in the evening.
7. On seeing this, the defendant who had also consumed about 15 bottles of Tusker, got into the driver's seat and took over the driving of the bus. He drove the bus to the Vila Central Hospital where he succeeded in obtaining a "sick sheet" which excused him from attending his rostered shift which was due to commence in an hours time. The defendant delivered the sick sheet to the Central Police Station and as he was about to drive off, William Garae (the deceased) who was also a serving police constable and who had just commenced his rostered duties that evening, was persuaded by one of the female passengers to board the bus being driven by the defendant.
8. From the Police Station the defendant drove the bus towards Mele Village. On the way beside the Mele Golf Course, the defendant lost control of the bus It careened across the road onto its incorrect side, struck an earth embankment and returned to its correct side where it capsized and finally came to a rest with its passenger side on the road surface. All the passengers in the bus were rushed to Vila Hospital in a passing airport security truck. The deceased was not so fortunate however. He died instantly at the scene from the very severe head injuries that he suffered during the accident.
9. A subsequent mechanical inspection of the bus revealed that all of the bus tyres were inflated well beyond their recommended level which could have adversely affected the traction of the bus tyres on the road surface. To your counsel's credit there has been no attempt to raise a technical defence of mechanical defect and that factor can be put to one side.
10. Jack Kanas it is a difficult task for this Court to sentence you for the offences of which you have been convicted. The first offence which you freely admitted is Reckless Driving Causing Death which might be considered the most serious driving offence in the Road Traffic (Control) Act. It carries a maximum penalty of 5 years imprisonment and/or a fine of VT500.000. The second offence is Driving Under the influence of Alcohol and it too is a serious driving offence with a maximum penalty of 1 years imprisonment. In respect of both driving offences the Court is empowered to disqualify you from driving for a term of up to 5 years.

11. In your case Jack Kanas the Court's duty to pass sentence is made all the more difficult because you are a relatively young man with good career prospects. You have been a member of the Vanuatu Police Force since November 2006 and you received the top student award as the outstanding recruit during your 6 months recruit training course. You are currently interdicted from duty on half pay since the incident and your future in the Police Force remains to be determined after this Court has sentenced you.
12. You were raised in stable and supportive family and you have a young daughter of your own. You are relatively well educated and have a certificate in Mechanical Engineering from the Vanuatu Institute of Technology. You also attended the USP both in Fiji and in Port Vila and have successfully completed several 100 level degree courses.
13. You are a valuable member of your community and have contributed to the development of your village youth through your involvement in the management of the Siviri Football Club.
14. I also understand that soon after the incident your family and village community performed a custom reconciliation ceremony to the relatives of the deceased William Garae at the Vila Central Hospital mortuary before his body was taken to its final resting place at the Port Vila cemetery. Although the deceased's relatives consider that the ceremony was only a "*clinim fes*" to allow for further discussions to take place between your families, nevertheless the Court is obliged to take it into account in determining the appropriate sentence to be imposed.
15. Jack Kanas nothing I say or do today will bringing back the life of William Garae a young man tragically taken in the prime of his life. No sentence I pass will reverse the sense of personal loss of William Garae's parents and family members. That is a burden you must carry for the rest of your life Knowing that you were responsible for his death. Your burden is also made heavier in that, I understand, the deceased was engaged to be married to a cousin of yours. The loss of William Garae's life has clearly affected a large number of people in varying degrees.
16. I have noted all that has been urged on your behalf in your counsel's written submissions to the Court. Your early guilty pleas are also an important mitigating factor in your favour showing an acceptance of responsibility and remorse for your actions. The deceased William Garae must also bear some responsibility for his own death in voluntarily boarding the bus on that fateful night, to go on an unauthorized "*joy-ride*" whilst on active duty as a Police officer. Your hitherto unblemished service record and the fact that this is your first conviction have also been noted.
17. Having said that this Court has a duty to impose a sentence which not only reflects the seriousness of the offences you have committed but one which will deter others from committing similar offences. As the volume of traffic

grows unchecked on our roads so too must the concern for public safety increase.

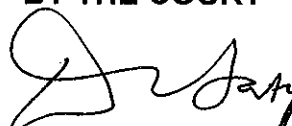
18. The fact that you are a serving police officer considered to be "*on duty at all times*" and charged with responsibility for preventing crimes is an aggravating feature of this case that cannot be ignored. This is a case where the Court should also consider an order of compensation in favour of the parents for the untimely death of William Garae. In this regard I have noted the contents of the compensation report prepared by a Probation Officer and the fact that the deceased met his death whilst on active police duty.
19. Jack Kanas I have also considered several relevant decisions of the Supreme Court and the Court of Appeal including Public Prosecutor v. Kaltang [2002] VUSC 9; Public Prosecutor v. John Warsal [1996] VUSC 19; Public Prosecutor v. Jack Joseph [2009] VUSC 22; and Jenkinson v. Public Prosecutor [2000] VUCA 5. All these decision are consistent in calling for deterrent prison terms for reckless drivers that cause death whilst under the influence of alcohol.
20. Jack Kanas driving a motor vehicle is a hazardous activity at the best of times and requires a high degree of skill, alertness, and concentration. Drivers are also often required to anticipate danger and to drive defensively. The impairment of a driver's alertness and driving ability is therefore viewed as a serious matter by the Court and where the impairment arises from the driver's voluntary consumption of alcohol the Court can show very little sympathy to the driver if an accident occurs and death results. That is what happened in this case where the accident occurred on a relatively straight stretch of sealed road albeit late at night.
21. In view of all the circumstances the starting point for your sentence Jack Kanas is 2 years imprisonment. I reduce it by 8 month for mitigating factors including your early guilty pleas and customary reconciliation making a sentence of 16 months imprisonment which is increased to 18 months imprisonment owing to the aggravating features of the case earlier identified in this judgment.
22. I turn next to consider whether this is an appropriate case for suspension under section 57 of the Penal Code. That section requires me to consider several matters including the circumstances of the case; the nature of the crime; the character of the offender; and the appropriateness of a sentence of immediate imprisonment.
23. In this regard I note that you pleaded guilty to the charges and are a first offender with an unblemished driving history and a good employment record. You also have a record of involvement in community youth activities. As to the nature of the crime committed, you took over driving the bus when you saw that the driver was not in a fit state to drive after he gave you permission and you safely and successfully drove the bus to various places including the Vila Central Hospital and the central Police

Station before the accident occurred. There is also no suggestion that you fell asleep at the wheel or were speeding at the time of the accident. What is known is that all 4 tyres of the bus were found to be greatly over-inflated after the accident. The deceased was also a voluntary passenger on the bus at the time of the accident and a prison sentence is likely to have a greater impact on you in view of the nature of your present employment. In all the circumstances I am reluctantly persuaded that this is not an appropriate case for a sentence of immediate imprisonment.

24. The sentence of 18 months imprisonment is accordingly suspended for a term of 2 years and I must warn you that if you reoffend and are convicted within the next 2 years you will be required to serve this sentence of 18 months imprisonment in addition to any sentence you may receive for your re-offending. Needless to say should you re-offend and be convicted the sentencing Court is unlikely to be as lenient on you as this Court has been.
25. I should emphasize for the better understanding of all persons that this sentence is in every sense a custodial prison sentence with all the stigma that entails although its execution has been deferred or put off for the duration of its suspension. But for so long as the sentence remains the offender is under constant risk of going to prison should he re-offend.
26. In addition you Jack Kanas are disqualified from driving a motor vehicle for a period of 3 years and your driving license is ordered to be endorsed accordingly.
27. For the offence of Driving Under the Influence of Alcohol I impose a sentence of 6 months imprisonment also suspended for a period of 2 years. This sentence is to be served concurrently with the sentence imposed on the Count of Reckless Driving Causing Death.
28. In addition I order compensation in the sum of VT500, 000 for the benefit of the parents of William Garae. The compensation is to be paid by way of an initial lump sum payment of VT 60, 000 within 14 days and thereafter, by equal monthly installments of VT40.000 until the total sum is paid.
29. You have 14 days to appeal against this sentence to the Court of Appeal if you do not agree with it.

DATED at Port Vila, this 19th day of February, 2010.

BY THE COURT


D. FATIAKI
Judge.

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