

PUBLIC PROSECUTOR
-V-
NALIN NAWIA

Mr. T. Karae for the State
Mr. A. Bal for the Defendant

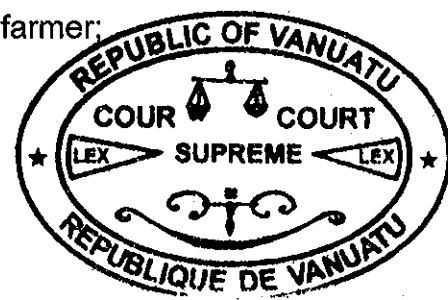
SENTENCE

Nalin Nawia, you stand convicted of 2 very serious driving offences. They are Causing Death by Reckless Driving contrary to Section 12 of the Road Traffic Act [CAP. 29] which carries a maximum penalty of 5 years imprisonment and/or a fine of up to VT500,000 The Second offence is Driving Under the Influence of Alcohol contrary to Section 16 of Road Traffic Act [CAP. 29]. The maximum penalty for this offence is 1 year imprisonment and/or a fine of up to VT100,000.

Your case has been called today for sentence to be imposed on you. You were given an opportunity to say something about the offences and you told the Court that you are sorry for what happened and I have taken that into account.

I have also received a pre-sentence report prepared by the Probation Officer and have noted your following personal circumstances:

- You are 47 years of age, married with 5 children;
- You did not attend school;
- Despite your lack of formal education you have achieved much in your life and are a self-made man;
- You are a well-known and successful businessman and farmer;
- You support your family, relatives and wider community.



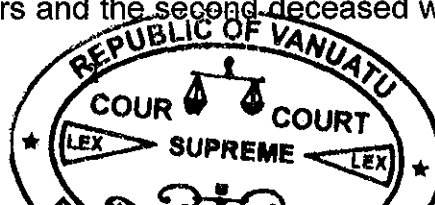
The facts outlined by the Prosecutor which you accepted as correct tells of how you began drinking in your truck in the evening of the 20th November 2009 and continued throughout that night and into the next day 21st November 2009 and until just before the tragic accident early that morning.

By your own admission to the police in your caution interview you and one other had consumed 2 cartons of tusker beer and a bottle of whisky by the time you left Lamtavakel with Henry Iaru heading towards Lenakel. Even at that time you still had beer in your truck because you offered Henry a bottle of Tusker beer but he refused.

Perhaps the most telling indicators of your level of drunkenness and consciousness at the time are your own recorded admissions in your caution interview when you said (after picking Henry): *"MI LUK OL FAMILY IA MI NOMO SAVE SE STRET LONG WEA FROM MI DRONG TUMAS BE MI SAVE SE SAMPLES LONG IWENMIT SCHOOL"* and later, in describing your driving just before the accident occurred, you said : *"MI SLO NOMO KASEM BRIDGE TAEM MI BITEM BRIDGE BE MI NO SAVE SE EMI OLSEM WANEM BE MI SEK NOMO BE OL MAN KRAE AOTSAED LONG TRAK ..."*

The police sketch plan of the scene of the accident clearly shows that you lost control of your truck as you were coming around the bend beside the Lamenu Stadium compound heading towards the Lamenu roundabout. The truck skid marks show that the truck tyres veered off the road as you came out of the corner and to avoid running-off the road completely you over-compensated by steering the truck onto its incorrect side where it eventually ran off the road down a small embankment where the truck capsized once before finally coming to a rest against the stadium compound fence posts. The truck was now facing in the opposite direction to where it was heading before the accident occurred. Speed appears also to have been a contributing factor.

At the time of the accident there were 5 passengers in the open rear tray of the truck including the 2 deceaseds, Bettina Jerry a married woman in her mid-thirties with 3 sons and 3 adopted daughters and the second deceased was an 11 year old



boy Tawate Kauh. Both deceased were pinned under the truck after it capsized and both sustained severe internal and head injuries which proved fatal. The other passengers who had either jumped or been thrown from the truck were treated at the Lenakel Hospital for minor injuries and released.

It was sheer good fortune that there were not more fatalities in this tragic accident and the defendant can count himself lucky that he is not facing a more serious charge.

Recklessness is defined by section 6 of the Penal Code as including the following circumstances:-

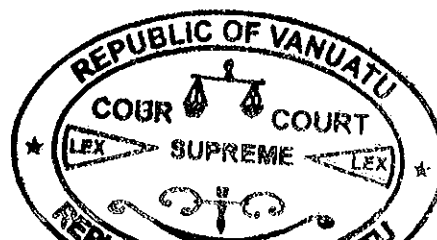
“(a) Finding that there is a risk that an event may result from his conduct or that a circumstance may exist, he takes that risk; and

(b) it is unreasonable for him to take it having regard to the degree and nature of the risk which he knows to be present.”

Any driver of a motor vehicle knows that drinking alcohol adversely affects his ability to control a vehicle safely. If you drink don't drive is not just a catchy phrase used in promoting safe driving, it is based on scientifically proven fact and human experience. Alcohol affects co-ordination, reaction times and even ones perception of speed and events. And, the more alcohol one consumes the greater is the degree of impairment.

In this case the defendant, knowing of the risks involved in consuming alcohol and driving, unreasonably took that risk with tragic consequences. A family is now without a wife and mother and another has lost a young son.

Nothing I say or do, no compensation that I may order and no sentence I impose can bring back the lives of the late Betina Jerry or Tawate Kauh. That is a terrible burden you Nalin Nawia must bear for the rest of your life knowing that by your reckless driving you have caused the death of two innocent family members.



In *John Jenkinson v. PP Criminal Appeal Case no. 1 of 2000* the Court of Appeal said:

"Where it is alleged that alcohol contributed to the happening of an accident, and there is evidence which supports the allegation, that will be a serious matter of aggravation, and one which if coupled with a poor lookout could well render the piece of driving reckless not negligent."

and later, the Court indicated that:

"Serious driving offences causing personally injury or death will necessarily attract penalties that reflects a component of general deterrence."

I have noted your early admission of your wrong doing in your caution interview to the police and in your guilty pleas in this Court. These are matters to your credit and indicates an acceptance of responsibility for your actions as well as indicating remorse on your part.

Against that must be weighed the fact that you disappeared after the accident and hid in the remote long bush area for 2 days during which time the police were trying to locate you, before you were eventually apprehended from your home and taken to the police station.

I have also considered whether you should be given some credit for what might be seen as a generous gesture on your part in offering to transport the many passengers that you had invited on to the rear open tray of your truck but, given your advanced state of drunkenness at the time and the inevitable risks involved in riding in a truck being driven by you, my sympathies lie more with your innocent unwitting passengers.

Nalin Nawia the most lenient sentence that this Court can impose on you is a sentence of 2 years imprisonment on Count 1 of Causing Death by Reckless Driving and 6 months imprisonment on Count 2 of Driving Under the Influence of



Alcohol. Both sentences are ordered to be served concurrently making a total sentence of 2 years imprisonment.

I turn next to consider whether it is appropriate to suspend the execution of the sentences of imprisonment, either wholly or in part, and I am guided again by the observations of the Court of Appeal in Jenkinsons case, where the Court said:-

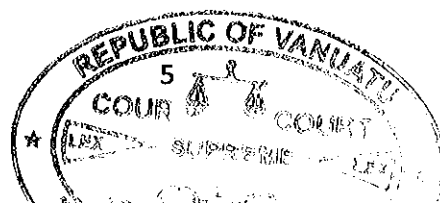
"In the case of a first offender with a long history of good driving, good character, good employment record and involvement in community affairs, it is a serious step to send that person to goal. Suspension of the sentence, which allows the best opportunity for rehabilitation, will after (sic) be the appropriate course."

Nalin Nawia, you are a first offender and have been driving for several years without blemish. You are a leading businessman in the community, well spoken of and held in high regard by your elders. Your involvement in community affairs is also well known and your personal generosity towards those less fortunate than you is noted. You have been forgiven by your chiefs and community and by the families of the deceased. You have also changed your ways since the accident.

Therefore in exercise of the Court's powers under section 57 of the Penal Code, I order that your sentence of 2 years imprisonment be wholly suspended for 2 years.

Lest it be thought that this is not a serious prison sentence, I should warn you Nalin Nawia that your suspended sentence of 2 years imprisonment will be activated if you are convicted of another offence during the 2 years in which the sentence is suspended. In other words if, in the next 2 years, you are convicted of another offence you will be required to serve this sentence of 2 years imprisonment in addition to any other penalty that may be imposed on you for your re-offending. Whether that occurs or not is a matter entirely in your hands but if you do re-offend you will not receive the same leniency that the Court has shown towards you today.

In addition Nalin Nawia given the general consensus that you have a drinking problem and given your ready access to alcoholic liquor which you sell in your

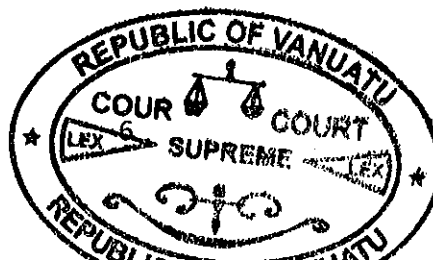


store, I impose on you a sentence of 2 years supervision with a special condition that you refrain from the consumption of all forms of alcoholic liquor. Your progress in this regard will be closely monitored by the Probation Service and any breach of that special condition is an offence under section 58L of the Penal Code and will receive a swift and immediate response from this Court likely to involve the loss of your liberty.

This Court is also required in the circumstances of this case to consider a sentence of compensation. In doing so I have taken into account the elaborate customary reconciliation ceremony that you have performed to the chiefs and relatives of the deceased persons (who have accepted it) and which included the presentation of:

1.	15 stampa kava	VT79,000
2.	17 bundle banana	VT4,400
3.	60 bundle taro	VT24,000
4.	3 basket kumala	VT1,300
5.	3 buluk	VT120,000
6.	5 pigs	VT62,000
7.	15 mats	VT11,500
8.	6 baskets	VT1,800
9.	216 yard calico	VT41,040
10.	1 linen bedsheet	VT510
11.	5 x 18kg rice	VT18,000
12.	2 x 25kg bag salt	VT6,000
13.	1 young girl	...?
14.	Cash money	VT2,000,000

I am informed that the cash money presented in an envelope during the customary reconciliation ceremony was given directly to and has been divided equally between the families of the deceased persons and accordingly I do not propose to order any further compensation to be paid.



Having said that, this Court can only view with the gravest concern what appears to have been the offer of a young girl (item 13) as part of the gifts presented during the reconciliation ceremony.

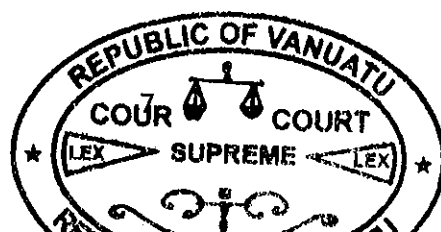
In February this year in *PP v. Andrew Kuao and Thérèse Sasia* Criminal Case No. 131 of 2009 the Chief Justice had occasion to comment on the Tannese custom of adopting or swapping a young girl to replace a female member taken from the family that the child has been given to. His Lordship after noting the custom practice said:-

"The time will come when the Courts will say something on the customary societal rational of such a practice of swapping female child and in particular in the light of the fundamental rights contained in Article 5 of the Constitution and the Convention on Rights of the Child (C.R.C) to which Vanuatu has ratified."

I endorse those remarks and would add my own concern that this is somewhat like child trafficking. In this instance, a young girl was offered as part of the presentation of gifts in a custom ceremony of reconciliation. Even accepting that there was the loss of two lives in the accident and that the presentation of a young girl might be seen as a form of reparation and replacement for the loss, such a practice in this day and age objectifies and devalues the women of Tanna and denies them their fundamental rights to humane and equal treatment, to life, liberty and security of the person.

Young girls must not be treated as mere objects or commodities that can be swapped or exchanged under any circumstances and for whatever reason, and a customary practice that treats them in that abject manner is inhuman and cannot be founded on Christian principles. Such practices should not be sanctioned by the law which exist for the protection of all.

For the sake of completeness, I direct that the girl involved in the custom reconciliation ceremony presentation be returned forthwith to her parents and family




if that has not already occurred. She should not have been offered in the first place and this must never be allowed to happen again.

Finally Nalin Nawia, you are disqualified from driving a motor vehicle for a period of 2 years with immediate effect and your driving licence is endorsed accordingly. You are warned that driving a motor vehicle whilst disqualified is an offence which carries a maximum fine of VT100,000 or imprisonment for 1 year or both.

You have a right to appeal within 14 days to the Court of Appeal if you do not agree with this sentence.

DATED at Isangel, Tanna, this 21st day of May, 2010.

BY THE COURT


D. FATIAKI
Judge.

