

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

Criminal Case No. 06 of 2012

**PUBLIC PROSECUTOR
V.
REMO KALOTAP**

Coram: D. V. FATIAKI

Counsel: Mr. S. Blessing for the State
Mr. A. Bal for the Defendant

Date of Decision: 6 September 2012

SENTENCE

1. The defendant was convicted after he pleaded guilty to an offence of **Malicious Damage** contrary to **Section 133** of the **Penal Code**. This is an offence that carries a maximum penalty of a fine of VT5,000 or imprisonment for 1 year or both. [*see*: **Section 36 (3)** of the **Interpretation Act [CAP. 132]**].
2. The brief facts of the case outlined in the prosecution's summary and admitted by the defendant is as follows:

"On the 21st of October 2011, the defendant (a bus driver) returned after work to the complainant's (Mark Kalotap) residence and went to bed.

The complainant was drinking kava and some boys were drinking alcohol at the house.

The complainant went to a shop nearby and upon his return he saw that the defendant was arguing with the boys.

After some heated exchanges, the defendant advanced towards the boys. A relative of the defendant and the complainant, a David Kalotap, intervened, grabbed hold of the defendant.

The defendant proceeded into the house damaged a laptop belonging to the complainant."

3. Unusually, for a charge of **Damaging Property**, there has been no evidence placed before the Court of either the value of the laptop or the damage caused to it, as there should have been. Nevertheless, I am grateful to both



counsels for the sentencing submissions provided to the Court which I have taken into account. Prosecuting counsel submits that an appropriate sentence is "40 hours community work and 3 months supervision with a special condition that he undertakes anger management counselling."

4. Defence counsel whilst generally agreeing with the prosecutor's assessment of the appropriate sentence, highlights the following matters in mitigation:
 - The defendant is 29 years of age and is originally from Lumbukuti village in Tongoa;
 - The defendant pleaded guilty at the first opportunity and cooperated with police investigations;
 - The defendant is a first offender and is remorseful and apologies to the complainant (his elder brother);
 - The defendant is gainfully employed as a bus driver and has a dependant wife and children.
5. Having considered counsels' submissions and the facts of the case I am satisfied that the offence was committed by the defendant in a fit of anger at being disturbed in his sleep after a days hard work driving his brother's bus.
6. I accept that the defendant's actions were both wilful and unlawful but, mainly, were misdirected, in that he took out his frustrations on the complainant's laptop after he was restrained from attacking the real cause of his anger.
7. In all the circumstances, I accept the recommendations of counsel for a community-based sentence and impose a sentence of 6 months Supervision with a special condition that the defendant undertakes anger management counselling as required by a probation officer. The defendant is also ordered to perform 40 hours of Community Service.
8. If you disagree with the sentence imposed on you, you have 14 days in which to lodge an appeal with the Court of Appeal.

DATED at Port Vila, this 6th day of September, 2012.

BY THE COURT


D. V. FATIAKI
Judge.

