

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

Criminal Case No. 19 2014

**PUBLIC PROSECUTOR – VS – PAUL TUNAT**

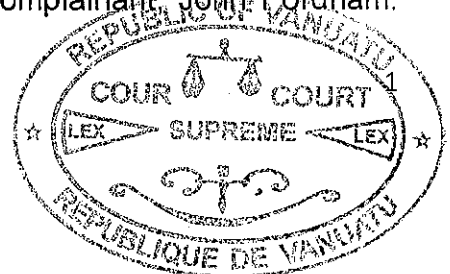
**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Mr. Ken Massing for the State*  
*Mr. Junior Garae as agent for Jacob Kausiama, for the Defendant*

**Date of Submissions and Sentence:** 5<sup>th</sup> September 2014

**SENTENCE**

1. Paul Tunat you are for Sentence today for two charges namely –
  - (a) Attempted Intentional Homicide, Section 106(1)(a) of the Penal Code Act Cap 135 (the Act), and
  - (b) Possession of Firearm Without Firearms License, Section 3(a) of the Firearms Act Cap 198.The Court returned verdicts of guilty against you on both charges on 2<sup>nd</sup> September 2014.
2. The maximum penalty for unpremeditated intentional homicide under Section 106(1)(a) is 20 years imprisonment. The high penalty indicates the seriousness of this offence. An attempted offence is punishable as the principal offender.
3. The maximum penalty for possessing a firearm without license is a fine not exceeding VT20.000 or imprisonment not exceeding 6 months or to both.
4. The relevant facts of your offendings are –
  - (a) In the early hours of 16<sup>th</sup> December 2014 (1.10am) you were captured on security cameras installed at the house of the complainant, John Fordham.



You held a .22 pistol in your hand and waited. When John Fordham came outside the second time to flick the light switch back on and was returning to the house, you approached him from behind and said: "Excuse me". When he turned, he was looking straight into the barrel of the pistol at about 4 metres. You moved closer to him to a distance of 2 metres and shot at him missing his head and causing smoke to stink his eyes. He lunged at you and you escaped. The bullet penetrated through a door and through a fly window screen.

- (b) Later during the date (of 16<sup>th</sup> December 2013) you telephoned a taxi driver to ask him to pick you up at Chapuis. Makikon Elton was in that same taxi and they picked you up at Chapuis and then travelled on to Banban. During that journey you gave the pistol to Makikon Elton.
- (c) Prior to 16<sup>th</sup> December 2013 you had taken the pistol from Jimmy Berg at the Daming Store.
- (d) On 8<sup>th</sup> January 2014 you were arrested at Fanafo Area in relation to the offences and kept in custody pending investigations.
- (e) On 11<sup>th</sup> January 2014 you made voluntary confession and apology to the complainant John Fordham at his office, at your request in the presence of Police Officers.

5. In assessing your appropriate penalty, I have read your pre-sentence report. I note your reason for carrying the gun that night was for security reasons only especially for the complainant's dog. But the reality is that you did not shoot at the dog which was barking furiously at you. You shot at the owner of the dog, who was unarmed and whom you disturbed twice from his sleep by switching off their power from the main power point. Your entry into the complainants' yard was unlawful and your possession of the pistol at the time was unauthorized, without a firearms license. You did not shoot therefore to frighten the complainant



in order to secure yourself, rather you shot to either injure or kill him. The only reason you missed were your inexperience to handle the pistol properly, and your shaking hands due to fright.

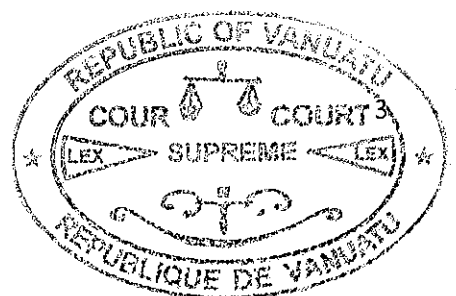
6. I have read the submissions by the Prosecution and the cases referred. The Court is assisted by the cases of PP v. Tamata [2010] VUCA 26 and Namuly v. PP [2011] VUCA 25. These are cases where the defendants were charged with offences under Section 106(1)(a) of the Act. And all defendants were sentenced to imprisonment, the lengths of which vary according to the facts and circumstances of each case. The facts and circumstances of your case differ from the facts and circumstances of those cases. The relevant principle is that in offences committed under Section 106(1)(a) of the Act the only appropriate penalty to be imposed is to be a custodial one. This is to serve the following purposes –

- (a) Mark the seriousness of the offence;
- (b) Mark public disapproval and condemnation of unlawful actions done by offenders;
- (c) Deter the offender and others from further committing such offences;
- (d) Protect innocent lives; and
- (e) Punish the offender adequately.

7. I consider that the circumstances of your offending warrant a custodial sentence. And the starting point shall be 6 years imprisonment.

8. There will be an uplift of 4 years for the following aggravating features:-

- (a) A lethal weapon (a gun or pistol) was used in the attempted offending.
- (b) Unlawful and unauthorized presence on the property of the complainant and disturbing or harassing the inhabitants by twice switching off power from the main power point.



- (c) Breach of the peace to the family of the complainant, their business and the community of Luganville at large.
- (d) The fear, mental and emotional stress and distress caused to the complainant, his wife and their children and their business.
- (e) The damage caused to their door and window screen by the bullet.
- (f) The unauthorized possession of the firearm without a license.
- (g) The unauthorized shooting at a human being (the complainant).
- (h) Blemished criminal record and past criminal convictions.

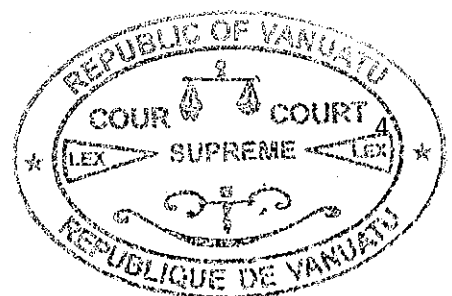
9. Your starting sentence of 6 years is therefore increased by 4 years to 10 years imprisonment.

10. I have seen the defence submissions and agree that you are entitled to some reduction of your sentence. The only mitigating factor for which the Court will allow a reduction will be for remorse and contrition contained in your apology made on 11<sup>th</sup> January 2014 and in your pre-sentence report. For that the Court reduces your sentence of 10 years by 2 years. The balance is 8 years imprisonment.

11. For the charge of possession of firearm without a license you are sentenced to 3 months imprisonment. This is however made concurrent with your 8 years imprisonment for the lead offence of attempted unpremeditated homicide in Count 1.

12. You are therefore sentenced to a total concurrent sentence of 8 years imprisonment commencing from 2<sup>nd</sup> September 2014.


13. You have a right to appeal against conviction and sentence within 14 days, if you so choose.



14. Under Section 39 of the Firearms Act Cap 198, I order that the Pistol Mustang Cal.22 LR Germany tendered as exhibit P2 be forfeited to the Police and be kept in safe custody by them.

**DATED at Luganville this 5<sup>th</sup> day of September 2014.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**  
Judge

