

IN THE SUPREME COURT
REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 201 of 2014

PUBLIC PROSECUTOR

-v-

HAYWEN RORY
BENNIE MALSUS SOCKLEN

Mr Boe for Prosecution
Ms Nari for the Defendant

Hearing 21st May 2015 at Lakatoro

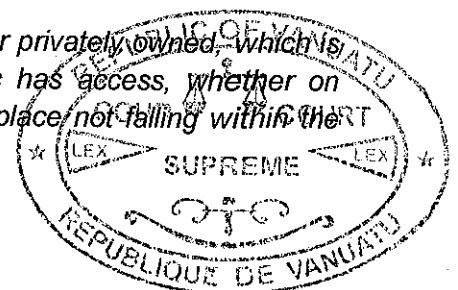
Judgment

1. I have at 8 versions of events on 15th April 2014 which gave rise to the charges against the two defendants. There is very little common ground in these different versions. If I were to try and sift through all the evidence I have heard or been presented with it might well be impossible to say exactly what happened, it would certainly take some considerable time. However, I do not need to do that, I can dispose of this case by reference to what is admitted and what has been put forward as evidence by the two defendants.

2. Dealing with Mr Haywen Rory first, he has been charged with possession of a firearm in a public place. The offence is created by the Firearms Act [Cap 198] section 29. The section actually seems to create two offences, section 29(1) having in your possession a firearm (loaded or not) *and* ammunition in a public place or section 29(2) carrying an *uncovered* firearm (loaded or not) in a public place. The defendant is charged under the first sub section. The defendant does not deny he had his .22 rifle with him that day. He even admits in his written statement that he fired two rounds from it (in the air) earlier in the day. He denies the area where he was carrying the rifle was a "public place".

3. There is no definition of "Public Place" in the Firearms Act. In fact the only statutory definition I have found is in the Public Order Act [Cap 84]. That Act defines a public place as:

"Public Place" means any place whatever, whether publicly or privately owned, which is habitually frequented by the public or to which the public has access, whether on payment or otherwise and shall be deemed to include any place not falling within the



foregoing definition at which the has been invited, whether by individual or general notices, radio announcements or any other public medium of information whatever, to attend a meeting

Whilst I may not lift that definition from the Public Order Act and insert it in the Firearms legislation it is guidance as to what might be a public place. The defendant argues that this was customary land and therefore only members of the custom group or owners could be on that land so no where within the customary boundaries could there be a public place. I do not accept that. I do not think customary land is that different from other land. There are areas in both which would not be considered a public place, for example someone's private home. Areas where people gather together, at a church or a market for example, would be public places. These areas which are habitually frequented by the public or to which the public have access are public places. It does not matter that the "public" consists mainly or solely of members from the same customary group or owners. I have no doubt that on the defendant's evidence alone the prosecution would be able to establish, beyond reasonable doubt, all the elements of the offence charged.

4. The defendant is also charged with threats to kill contrary to section 115 of the Penal Code [Cap 135]. In the case of Brookman ¹ Fatiaki J considered what might be meant by threats to kill. He said:

*"The instances in this country where an offence of **Threats to Kill** has been charged successfully may be divided into one of 4 categories:*

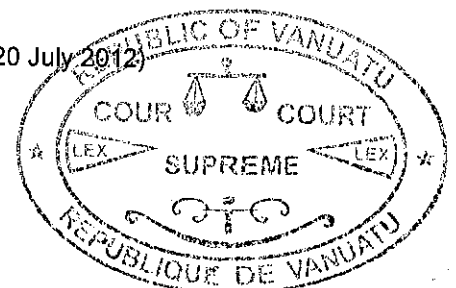
(a) the charge is laid with a more serious charge where the victim is threatened before, during, or after the more serious offence has been committed as commonly occurs in cases of sexual offences;

(b) the charge is laid where there is an immediate actual attempt by the defendant to carry out the threat, such as, swinging a knife or discharging a firearm;

(c) the charge is laid where the threat is made whilst the defendant is armed with an offensive or lethal weapon; and

(d) the charge is laid where the threat is made directly between strangers or unequal parties in a "face-to-face" situation accompanied with vulgar abuse and delivered in a menacing manner. "

¹ Public Prosecutor v Brookman [2012] VUSC 171; Criminal Case 124-11 (20 July 2012)



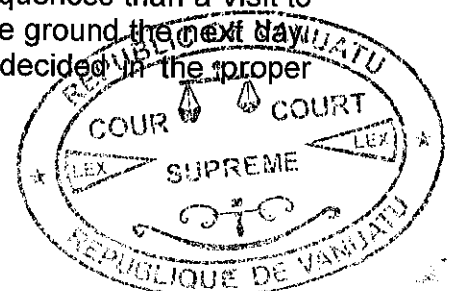
5. Looking at the evidence of the defendant he says in his statement that he told a (small) group of people, "spos wan I killem bae me sutum ol man olsem faol". Clearly this was in linguistic terms, a threat to kill. Although it might seem to be conditional, the defendant explains that he meant if you hit Bennie Socklen then I'll shoot you like chickens, he was still threatening to kill people. This was both a *face-to-face* situation as set out by Fatiak J (because the defendant had earlier fired his rifle and that would easily be seen by people as an aggressive act), and one where the defendant was armed with an offensive or lethal weapon, i.e. the rifle. It is not necessary to show he pointed it at any one, all that was necessary is that he had the rifle with him. Again, I have no doubt the prosecution could establish, beyond all reasonable doubt, all the required ingredients of the offence.

6. Looking at the second named defendant Bennie Socklen, the first charge he faces is also one under section 115. Even if I accepted 100% the evidence of the prosecution witnesses I am off the view that the necessary elements of the offence could not be established or proved by the prosecution to the required standard.

7. Bennie Socklen also faces a charge of making threatening gestures contrary to section 121 of the Penal Code. The charge relates to the time when the defendant admits he was slashing at the ground and the grass when he was confronting, he says talking to, Nono Rosi. He admits he was angry. Given those circumstances anyone seeing the defendant waving the bush knife around would have been concerned and the closer they were to the defendant the more concerned and frightened they would have been. The incident led to a fight between this defendant and Rosi. I am sure the prosecution would be able to prove beyond reasonable doubt that the defendant had made threatening gestures.

8. As I have just mentioned, there was a fight. Both defendants confirm that Bennie Socklen punched Nono Rosi. Haywen Rory describes them as two good blows. Both defendants also describe how Bennie Socklen threw a piece of bamboo at Rosi which hit him on the back. It matters little that shortly before that Rosi was trying to hit Socklen with it. Socklen threw the bamboo when Rosi was running away. Given the threatening gestures made by Socklen mentioned earlier I do not see how he can say he was provoked. Neither can he say this was pure self defence. There is no evidence of any injuries suffered by Rosi. I am sure that the prosecution could prove this offence beyond reasonable doubt.

9. Having said all that I have, as requested by Ms Nari, looked at the context, all the circumstances surrounding these offences. I expressed concern in the court that these respected men, these leaders in custom were acting like children in a playground. I remember as a young boy in school how I was urged to join this or that gang and then go and fight another gang. Both gangs would usually end up before the headmaster and be told to behave in future. This incident had more serious consequences than a visit to the headmaster. The second defendant had his house burnt to the ground the next day. This is a dispute about custom chieftainship and it should be decided in the proper custom manner not like a school boy squabble in the playground.



10. I have no doubt that there should be more than these two defendants before the court. There was a lot of stupid behavior on both sides. Nothing would be served by convicting and sentencing these two defendants. It might even be seen as justification for the later incidents which it clearly is not. I am sorry for the people of Atchin if they feel they have to resort to such behavior. In all the circumstances, taking into account the context in which this occurred I am going to take the unusual step of saying that I shall not convict and sentence these two men. I shall discharge both without conviction and sentence pursuant to section 55 of the Penal Code. I shall however make an order that the rifle and the bush knife used in the incident shall be forfeit and destroyed.

11. The defendants are free to leave the court.

Dated 20th May 2015

