



PUBLIC PROSECUTOR

- v -

MOSES ROBERT

Corum: V. Lunabek – CJ

*Ms Betina Ngwele for Public Prosecutor
Ms Pauline Kalwatman and Mr Harrison Rantes for Public Solicitor*

SENTENCE

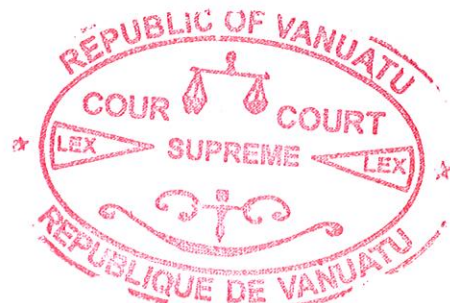
Mr Moses Robert, you appear today for Sentence. You are charged with one count of threats to kill a person, contrary to section 115 of Penal Code [Cap 135]. On 14 November 2014, you have entered a not guilty plea to the offence. A trial was scheduled on Tanna from 17th – 21st August 2015. The trial did not eventuate. Your trial was rescheduled and directed for 1 day at Isangel, Tanna on Monday 29 February 2016.

On Monday 29 February 2016, you have asked to be re-arraigned and when you were re-arraigned, you changed your not guilty plea to a guilty plea. I now note that you enter a guilty plea. You are convicted of the said offence accordingly. I direct both counsel to prepare for submissions on sentencing to assist the court.

The brief facts of your offending is provided by the Prosecution. You accept these facts.

Mr Moses Robert, you face a charge of threatening to kill your wife and children that allegedly having occurred on 16 August 2014. The incident happened around 11.30am in the morning at Larvana village, Tanna.

You have threatened to kill your wife and children and in doing so, you threw a bush knife that you were holding at a fowl and instantly killed it. Because of what you did, your wife (the complainant) ran away from your house and stayed with a Mr Joseph Noah at Loinio village. While your wife was sheltering at Mr Joseph Noah's house, you again indirectly threatened to burn down Mr Joseph Noah's house should your complainant wife did not return to your house.



Your actions against your wife had been an on-going issue which the Chiefs had, on several occasions attempted to resolve

Your wife decided to file a complaint to the police against you. She filed her complaint against you on 25 May 2014.

You are 33 years of age and you originate from Larwanu Village, Tanna Island. You grew up in your village under the care of your disable mother after the passing away of your father back in 1990. You are the third son of a family of six children (brothers and sisters).

You came out of a defacto relationship with three young children of 8 years, 2 years and 10 months respectfully. You maintain a good relationship with your Chief and the members of your community. You do not attend school. You do gardening to sustain a living with your family. You consume alcohol, kava and cigarettes, on a daily basis.

Your partner told the writer of the report that they like you as you work in gardens and at home. But they are afraid of you because of your threatening words and conducts when you were angry.

The offence of threatening to kill a person is prohibited by the law of the country. It is contrary to section 115 of the Penal Code Act [Cap. 135]. The section reads:-

"Threats to Kill Person.

115. No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person."

Penalty: Imprisonment for 15 years.

It is a serious offence. The prosecution counsel submitted to the following effect:

She referred to the guideline judgment of the Court of Appeal in *Walker v. Public Prosecutor [2007] VUCA 12* in which it was stated that these type of offending warrants a custodial sentence. It is submitted that in this case, the lives of the children and their mother were put into danger by your actions. The prosecution submitted that the circumstances of this case justify a starting point sentence of 4 years imprisonment. It is said you are not entitled to full utilitarian benefit of an early guilty plea as you did not plead guilty at the first time opportunity given to you but only after the prosecution was



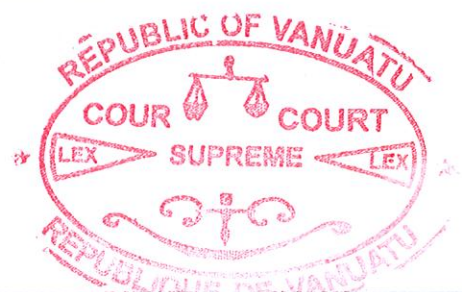
prepare to proceed with the trial and have prosecution witness summoned and ready to proceed with the trial when you changed your initial not guilty plea to a guilty plea. The Prosecution says, you are entitled only to a reduction of 10-15% of your guilty plea.

The prosecution also referred to three (3) other Supreme Court cases. The first case is *Public Prosecutor –v- Philip Enaus [2008] VUSC 04*, a case in which the Defendant threatened to kill the complainant with a knife like a pig; after the threat was made, there was no attempt by the Defendant to cut the complainant with the bush knife. The Defendant was sentenced to 18 months imprisonment suspended for a period of 2 years. In addition, the Court ordered the Defendant to perform 200 hours community work and 6 months supervision.

The Second case is *Public Prosecutor –v- Kauras Kalia [2008] VUSC 07*. In that case the Defendant threatened to kill his father's brother (uncle). The Defendant told the complainant that he would kill him while holding on to a knife and a natora (wood) when the Defendant made the threats, he attempted to whip the complainant with the natora (wood) and knife but the complainant was able to avoid the weapons without injuries. The Defendant was sentenced to 2 years and 6 months imprisonment suspended for a period of 2 years. In addition, he was ordered to perform 200 hours community work and 6 months supervision.

The third case is *Public Prosecutor –v- Batick [2015] VUSC 174* where the Defendant was charged with one count of intentional assault causing permanent injury, one count of intentional assault causing temporary injury and one count of threats to kill. For the offence of threats to kill, the defendant was sentenced to 4 years imprisonment as a starting point with an end sentence of 8 months imprisonment. The prosecution finally, submitted that in the present case, the court should sentence the Defendant with an imprisonment sentence which is appropriate to the circumstances of the offending in the case.

In their submissions, the Defence counsel referred to *Walker –v- Public Prosecutor [2007] VUCA*. They also refer to other Supreme Court judgments dealing with the offence of threats to kill a person. These cases include those referred to by the Prosecuting counsel in her submissions. *Public Prosecutor –v- Manses [2005]* is one of such cases. In that case, the Defendant went into the office of Peace Corp and threatened to cut the complainant with a bush knife. The Defendant had a bush knife on him. He pleaded guilty and he was sentenced to 3 years imprisonment suspended for 2 years. *Public Prosecutor –v- Enuma Nok [2014]*, Criminal case No.47 of 2014 is another of such cases. In this case, the Defendant threatened to cut



his aunty with an axe. The Defendant also threatened his aunty with threatening words that he will cut her into pieces and burn her. The Defendant initially pleaded not guilty. He later changed his plea to guilty pleas. He was sentenced to 12 months imprisonment suspended for 12 months. He was also sentenced for 250 hours of community work and 12 months supervision.

The defence submitted that sentencing of community work and supervision would be appropriate sentence in this case. The defence further submitted that if the court instead considers a sentence of imprisonment to be imposed, the circumstances of this case and the authorities referred to in the defence submissions require that such a sentence should be fully suspended.

I am grateful for the helpful submissions of both counsel to assist the court in this case.

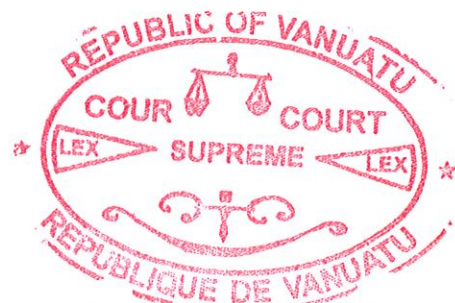
When I consider your sentencing, I take into account of the guideline judgment of the Court of Appeal in *Walker –v- Public Prosecutor [2007] VUCA 12; Criminal Appeal Case 06 of 2007 (24th August 2007)*. In *Walker*, the Appellant directly threatened to kill a Mr Glen Frazer at El Gecko Restaurant on or about 31st January 2007 by saying that “.... they would cut of his ...head “.

In Walker the court stated : “cases of this nature must always warrant imprisonment sentence to reflect the seriousness of the offence. For offence of threats to kill a person by a defendant with the presence of a weapon and the use of the weapon is on the higher scale of aggravation and seriousness. A suspended sentence of imprisonment must only be granted if the circumstances of the case is justified.”

The Appellant was convicted and sentenced to 2 years imprisonment but ordered that the Appellant serve only the first 12 months. The other 12 months was suspended on good behaviour.

In the present case, the circumstances of your offending is aggravated by the following factors:

- The presence of a weapon (bush knife) when the threats occurred;
- The use of the weapon concurrent with the threats;
- The threats directed at a mother and her children at their home;
- You are not a first time offender [You have been convicted and sentenced for offences of threats to kill and arson].



- The fear caused by you on your wife and children causing your wife to ran away from her home.

In assessing the circumstance of your offending, your personal situation, I sentence you to 3 years imprisonment as an appropriate starting point. I allow only 25 percent reduction allowance of the sentence for your guilty plea instead of the total allowance of one third (1/3). I treat the back ground history as a guilty plea not entered at the first opportunity given to you by the court.

I give a further deduction allowance of 6 months for the further delay taken in disposing of your case since August 2014 and the fact that you were remorseful.

I will also take into account your pre custody periods which is a total of 6 months. You have an end sentence of 11 months imprisonment. Should it be suspended?

In the circumstances of your case, I decide not to suspend it. As a recidivist of the offence of threats to kill a person the imprisonment is the appropriate sentence for the following reasons:

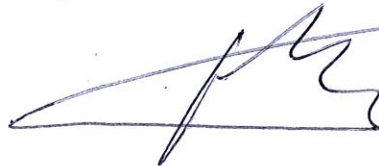
1. Mark the gravity of the offence;
2. Punish you;
3. Act as deterrence to you as well as others who might want to engage in that particular type of offences; and
4. Protect the community.

You shall serve your 11 months terms of imprisonment with immediate effect.

You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Isangel, Tanna this 3rd day of March 2016

BY THE COURT



**Vincent LUNABEK
Chief Justice**

