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PUBLIC PROSECUTOR

- v -

LUI IARISAWA

Corum: V. Lunabek – CJ

Ms Betina Ngwele for Public Prosecutor

Ms Pauline Kalwatman and Mr Harrison Rantes for Public Solicitor

SENTENCE

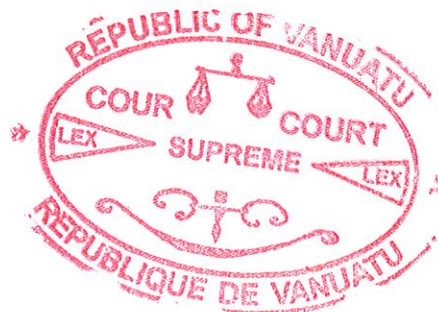
Lui Iarisawa, you are charged with two (2) counts of threats to kill a person, contrary to s.115 of the Penal Code Act [Cap. 135] and one (1) count of malicious damage to property, contrary to s.133 of Penal Code.

On or about June 2015, you entered not guilty pleas to the three counts you were charged with. A trial management was set for the week commencing 17 August 2015 but the trial could not eventuate. A 1 day trial was rescheduled at Isangel, Tanna on Tuesday 1 March 2016 at 9.00am. Before the trial began, the Prosecution amended the particulars of counts 2 and 3.

You asked to be re-arraigned. On your re-arraignment, you then change your initial pleas to each of the three (3) counts you were charged with and you enter guilty pleas to Counts 1, 2 and 3 of the Amended Information dated 27th May 2015.

You are then convicted of the three counts as charged.

The brief facts of your offending is this - On or about the end of January 2015, you were angry with your parents. You went to your parents' house and damaged their properties which include 3 dishes, 1 cooking pot, 1 table and flowers outside the house.



On 18 March, you returned again to your parents' house. You have in your possession 1 knife, a piece of wood, an axe and some stones. You were angry and at that time you threatened to kill your parents with the knife.

Again on the 23rd of March 2015, when your mother and your two sisters were at the beach, you came and threatened to kill them all including your father, You had in your possession at that time a knife and a hammer.

On 23rd March 2015, your mother lodged an official complaint at Isangel Police station against you for the offences of threats to kill a person and damage to property.

When questioned by the police, you admitted committing the alleged offences and you stated that you were very angry with your parents at that time.

This incident happened in Enparapen village on Tanna where your parents live. You lived in another village called Louetana with your wife.

Threats to Kill a person is a crime. It is prohibited by the law. Section 115 of Penal Code Act in the offending section. It reads –

“Threats to Kill person”

115.

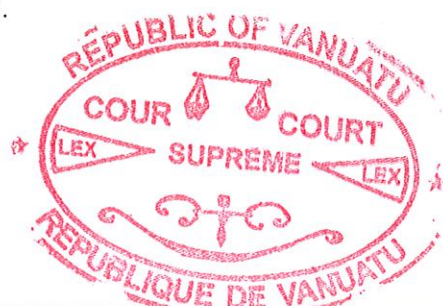
No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.”.

Penalty: Imprisonment for 15 years.

The offence of threats to kill a person is a serious offence as reflected by the maximum penalty imposed by law.

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

- The presence and use of weapons (knife, hammer, wood and stones) by you (the Defendant);
- You lifted up the knife intending to cut your mother but you were eventually stopped before you could do so.



- The fear you (Defendant) caused to your family, (parents and sisters) which shows lack of respect towards your own parents.
- The loss of kitchen utensils (although the values are not know).

The prosecution submitted that you will be sentenced to a term of 3 years imprisonment as a starting point for the offences of threats to kill a person in counts 1 and 2 and 6 months imprisonment for malicious damage to property, as appropriate starting point in respect to each of those offences.

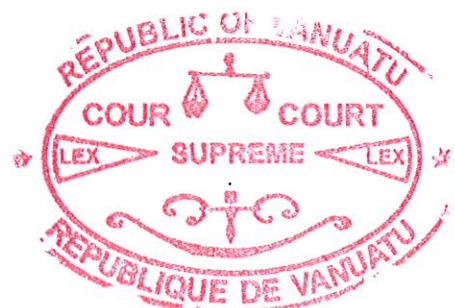
When I consider your sentencing, I bear in mind of the guideline judgment of the Court of Appeal in Walker –v- Public Prosecutor [2007] VUCA 712 where the court stated: “cases of this nature must always warrant imprisonment sentence to reflect the seriousness of the offence. For offence of threats to kill a person, by a defendant with presence of weapon and use of the weapon is on the higher scale of aggravation and seriousness. A suspended sentence of imprisonment must only be granted if the circumstance of the case is justified.”

I have also take into account of the other case authorities referred to the Court by both Counsel in their respectful submissions. I note that they are the same referred to in the earlier case of PP –v- Moses Robert, Criminal Case No.151 of 2014.

I sentence you to 3 years imprisonment concurrent on the two (2) Counts of Threats to Kill a peson in counts 1 and 2 and 6 months for Malicious damage to property as appropriate starting points respectively. The sentences to be concurrent to each others which mean a total of 3 years imprisonment as a starting point

You are 36 years old and a young father. You are a first time offender. You have reconciled with your family. You are remorseful for what you did. You are a substance farmer. You are also a resourceful person for your community.

In mitigation, you are a first time offender. You admitted your offending to the police. You pleaded guilty to your offending, despite the history of your pleas, I treat them as first opportunity. You will be entitled to one third 1/3 reduction. I give you another allowance of 6 months to reflect your other mitigating factors including your remorse and intention to perform custom reconciliation ceremony with your family.



You have an end sentence of 18 months imprisonment on balance.

I accept to suspend your 18 months terms of imprisonment for a period of 12 months as justified by the circumstances of your offending.

In addition, I order you to perform 200 hours community work and 6 months supervision.

The next question is whether I could suspend your 12 months terms imprisonment. I decline to do so.

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**

