

PUBLIC PROSECUTOR VS- JAMES KASSO

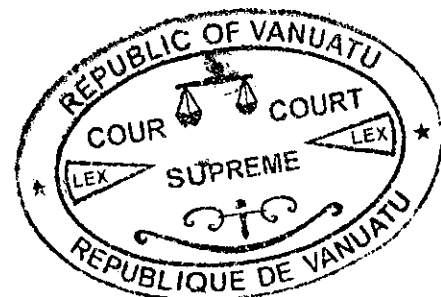
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Losana Matariki for the State*
Gregory Takau for the Accused

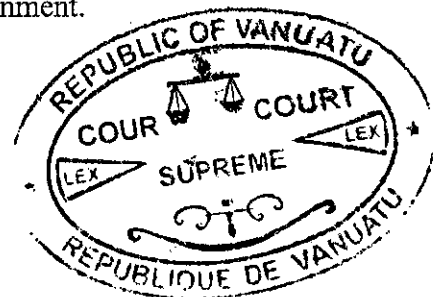
Date: *22nd March 2016*

SENTENCE

1. James Kasso you are for sentence today after having pleaded guilty to two counts of threats to kill contrary to section 115 of the Penal Code Act CAP 135.
2. The maximum penalty for this offence is 15 years imprisonment. This high punishment is clear indication that Parliament has seen this offence as a serious one.
3. The facts of your offending are simple. On the evening of 7th January 2016 the complainant was with her family at Etas area. You were both living in a defacto relationship. You were drunk. And you were obviously angry with her at the time. You approached her with a knife in your hand and threatened to cut her to death. You also held a bottle in your hand at the time. You held the bottle to her neck and threatened to kill her with it. You caused her great fear for her life so that she had to report the incident to the police the next day being 8th January 2016.
4. A knife and likewise a bottle can become dangerous weapons if and when they are used inappropriately in the manner that you threatened to use them. In your case you stopped short of using the knife and the bottle from executing your threats. But you caused great fear and distress to your victim. It is however immaterial that you did not execute your threats.




5. In assessing appropriate sentence I am guided by the case of Walker .v. Public Prosecutor [2007] VUCA 12 and Public Prosecutor .v. Philip Enaus [2008] VUSC 04. The facts of Enaus' case is almost similar to your case. The only difference is that there was no bottle used by the defendant in that case. The defendant in that case was sentenced to 18 months imprisonment suspended for 2 years but with supervision and community work.
6. Your offending is placed on a slightly higher scale than Enaus' case because both a knife and a bottle were mentioned in your threats. The cases of Public Prosecutor.v. Batick [2015] VUSC 174, Public Prosecutor.v.Natuman [2011] VUSC 236 and PP.v. Bongwelan [2010] VUSC 127 are distinguished on their facts but the same principle in Walker's case were adopted and applied in all those cases.
7. Your offending therefore warrants an imprisonment sentence to act as:-
- a) a deterrence to you and others,
 - b) marking the seriousness of your offending,
 - c) marking public condemnation of your actions
 - d) a protection to the weak and vulnerable members of the community in particular, girls and women, and
 - e) an adequate punishment for you.
8. Given the nature of your offending I consider that the starting point for you shall be 3 years imprisonment. I uplift this by 2 years for the aggravating features of serious death threats made with a knife and a bottle as weapons. That brings the total sentence of imprisonment to 5 years.
9. However I consider that you are entitled to mitigation of sentence in the following manner-
- a) For guilty plea- 1/3 reduction from 5 years equivalent to 1 year and 8 months, leaving the balance of 3 years and 4 months imprisonment.



- b) For remorse, custom reconciliation and clean past record, a further deduction of 6 months leaving the balance of 2 years and 6 months imprisonment for the offence in count 1. There will be no separate sentence for the charge in count 2. This is treated as an aggravation rather than as a separate offending.
10. Your end sentence of 2 years and 6 months imprisonment is suspended for a period of 3 years under section 57 of the Penal Code Act. If you should commit the same offence or any other criminal offence for which you would be charged and convicted, this suspended sentence will be activated and you will go to prison to serve your prison term.
11. Supervision and community service are not appropriate sentences to be imposed in your case.
12. That is the sentence of the Court. You have a right of appeal within 14 days if you are unhappy with the sentence.

DATED at Port Vila this 22nd day of March 2016

BY THE COURT


OLIVER A. SAKSAK
Judge

