

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

**Criminal**  
**Case No. 18/2072 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Louisino Malapa**  
*Defendant*

**Before: Justice Aru**

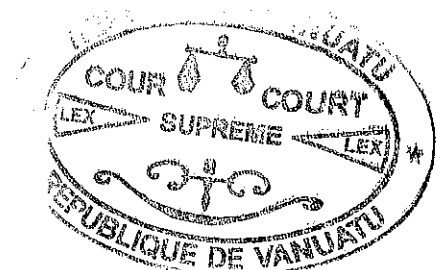
**Counsel: Mr. D. Boe for the Prosecutor**  
**Mrs. J. Aru for the Defendant**

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**SENTENCE**

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1. **LOUISINO MALAPA** you appear today for sentencing in this matter. You were charged with one count of unintentional harm causing death contrary to s 108 (c) of the Penal Code [CAP 135]. On the 7 August 2018 you entered a guilty plea to the charge and was convicted accordingly.
2. The defendant in this case is a livestock officer with the department of Livestock based at Lakatoro, Malekula. Although he drives around on a red G plated motorbike, he does not poses a driving licence. The deceased is a mature man married with a wife and children. Sometime on the 1 June 2018 at night the deceased and his wife were walking home on the main road when he was hit by the defendant on the motorbike. The deceased died as a result of the injuries received from the accident.
3. Before the accident occurred, the defendant had had some kava and beer. He then went to buy more beer and a bottle of wine at a trade store. On his way back to his home he was travelling at speed but the head lights on the motor bike were deem. The defendant did not see the deceased and his wife on the road and he hit the deceased breaking his left leg. The deceased was then taken to Norsup hospital and flown to Vila but died sometime later. The cause of death was determined by Dr Samuel Kenneth to be the serious injuries received from the accident.



4. When the defendant was arrested and cautioned by the Police he admitted committing the offence and that he was driving the motor bike under the influence of alcohol and that he was driving without a licence.
5. This is an offence which recognises that although loss of life was the end result, it was unintentional and resulted from recklessness or negligence hence the maximum penalty is 5 years imprisonment.
6. Mr Boe submits that a custodial sentence is warranted but in most of the cases he referred me to the sentences were suspended. He submits that aggravating features of the offending were that the defendant was drunk; he did not exercise reasonable care and drove on the wrong side of the road and hit the deceased at very high speed and he did not have a drivers licence. It was submitted that the starting point of sentence must be 4 years imprisonment.
7. Mrs Aru on the hand referred me to two cases of similar offending were the drivers were drunk: **Public Prosecutor v Wells** [2018] VUSC 88 and **Public Prosecutor v Moli** [2018] VUSC 89. She submits that the proper starting point should be 3 to 4 years imprisonment. In both cases the sentences were suspended.
8. I accept that the offending was aggravated by the following factors:
  - The defendant was driving without a licence
  - He was drunk;
  - He was reckless; and
  - He did not take reasonable care to see who was on the road.
9. I adopt a starting point of 4 years imprisonment.
10. From the Same Day Report which was kindly prepared the probation office the following is extracted: the defendant is 24 years old and comes from Malekula. He completed his education at the Agriculture College in Santo. He is single and lives with his parents. He has a good relationship with his parents and his elders. He is involved in community activities as well as church and youth activities. He joined the Livestock department in 2016 and intends to raise his own cattle farm.
11. The defendant's father told the probation officer that the defendant is a responsible person and this is his first time to be involved in an accident. The defendant also performed custom reconciliation with the victim's family by giving VT 60,000, a bag of rice and his family met the cost of the victim's travel to Vila to seek further medical attention.
12. Defence Counsel submitted a number of factors as mitigation. I accept that:



- The defendant is a first offender and cooperated with the Police;
  - He pleaded guilty at the first available opportunity;
  - He performed custom reconciliation to the deceased family; and
  - He spent two months on remand.
13. The early guilty entitles the defendant to a 1/3 discount on his sentence which is reduced to 2 years and 6 months imprisonment .As a first time offender I deduct 1 year which reduces the sentence to 1 year 6 months imprisonment. For the custom reconciliation 4 months is deducted and a further two months is deducted for time spent on remand further reducing the sentence to an end sentence of 1 year imprisonment.
14. Considering the circumstances of this case I suspend the sentence for a period of 2 years. In addition the defendant will do 100 hours community work under supervision for a period of 12 months.
15. You have 14 days to appeal the sentence if you are not happy with the decision.

**DATED at Luganville this 10<sup>th</sup> day of August, 2018**  
**BY THE COURT**

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**D. Aru**  
**Judge**

