

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Criminal
Case No. 18/2809 SC/CRML

BETWEEN: Public Prosecutor

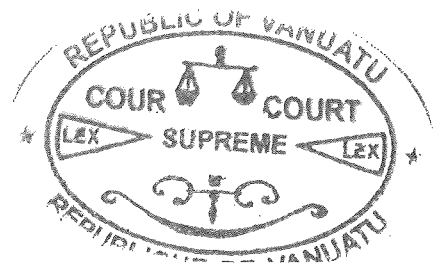
AND:

1. Kuvu Noel
2. Joe Johnny
3. Bebe Stanley
4. Ron Tamtam
6. James Wells
7. War Rukon
9. John Remen
11. Jack Noel
15. Peter Song Sapu (Noel)
16. Steve Nov
17. Tom Steward
18. Robert Nial

Defendants

Date: 8 August 2019
By: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mr E. Nalyal for Defendants 1, 2, 3, and 4
Ms J. Aru for the remaining Defendants

SENTENCE

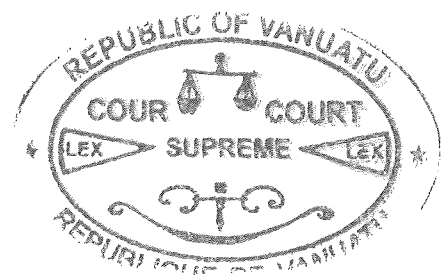


A. Introduction

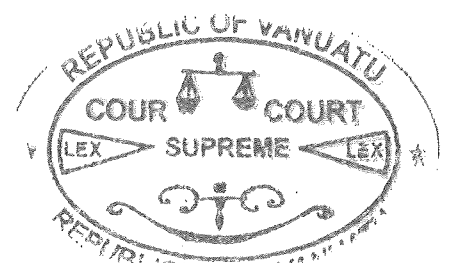
1. This was a criminal trial initially involving 28 defendants. The prosecution subsequently reduced the number of defendants to 18 for the trial, and after the first 2 witnesses for the prosecution had completed their evidence, counsel sought a short adjournment prior to asking for re-arraignment on charges 1 and 3. That led to a number of guilty pleas being entered and *nolle prosequi* being offered in respect of those defendants who had maintained their not guilty pleas.
2. James Wells, War Rukon, John Remen, Jack Noel, Peter Song Sapu (Noel), Steve Nov, Tom Steward and Robert Nial pleaded guilty to charge 1, namely unlawful assembly. The maximum sentence for that offence is a term of 3 years imprisonment.
3. Kuvu Noel, Joe Johnny, Bebe Stanley and Ron Tamtam pleaded guilty to charge 3, namely demanding money with menaces. The maximum penalty for that offence is a term of 15 years imprisonment.

B. Facts

4. At the heart of this matter is a dispute over the custom ownership of land. The complainant Mr Steven Remy has an agreement with a custom owner, Mr Jerome Natu to be able to quarry sand on some land at Teproma area, Santo. Mr Remy also has a permit to quarry from the Ministry of Geology and Mines. Mr Remy is satisfied he was dealing with a true custom owner as Mr Natu had showed him a Green Certificate in respect of the land concerned.
5. Mr Kuvu Noel and his relatives dispute Mr Natu's claim to the land. They were dissatisfied that Mr Remy paid annual rent to Mr Natu to be able to quarry, but that Mr Remy did not pay them. This has been the subject of several altercations over a number of years, with Mr Remy pointing out that he had a valid permit and was dealing with a legitimate landowner in Mr Natu – accordingly he did not agree to cease his quarrying operation.
6. The matter came to a head on 7 September 2018 when Mr Kuvu Noel and numerous of his relatives and supporters took matters into their own hands.
7. Firstly, after a short meeting at the Chief's nakamal, they went and placed Namele leaves at the site of the quarry at Teproma. While there they also took away the keys to all the machinery on site so that no further work could be undertaken.
8. The group then drove to Mr Kuvu Noel's wharf and assembled there. They agreed that they would go as a group and demand that Mr Remy pay quarrying royalties to them.



9. Then they went looking for Mr Remy at his home, but he wasn't there. They next went to his company site at Side River.
10. Mr Remy was warned that the group was coming, and he therefore called the police for assistance. He secured his 7-yr old son in a container by locking him inside for his safety, and he then saw 6 trucks laden with Mr Noel's relatives and supporters arrive – there were between 20 and 30 men. The leaders were Mr Kuvu Noel, Mr Joe Johnny, Mr Bebe Stanley and Mr Ron Tamtam – they stood in front of all the others and confronted Mr Remy with not paying rent to them. They insisted that he pay them, and that he pay immediately. The group was angry and hostile, swearing at Mr Remy and there were threats made that if he did not pay immediately he would be killed. He was called a thief, and told to go back to his home island of Malekula. Mr Kuvu Noel said that Mr Remy was fortunate that he was there as "...they are here for killing you and burn all your property because you stole their land".
11. Not surprisingly, Mr Remy was very scared, faced with a large volatile group making demands of him with menaces. The group wanted to see Mr Remy's records to see what 3 years of royalties amounted to. However, the employee asked by Mr Remy to produce this information was unable to locate the statements in the computer. The demand was then made that Mr Remy had to pay VT 1m – various unidentified members of the group said: "Give the money now". "We won't leave till we get the money". "If we don't get the money we'll kill you". Another person said he was willing to go to jail for killing. The group was very hostile – as established by both Mr Remy and his employee who gave evidence.
12. Mr Remy felt he had no other choice and so he asked the employee to write out a cash cheque for VT 1m, which Mr Remy signed and gave to Mr Kuvu Noel. Several of the group signed the cheque voucher to indicate receipt of the cheque. Mr Remy then asked for the keys to his quarrying machines to be returned, and Mr Kuvu Noel produced them from his pocket and gave them to Mr Remy.
13. When the police eventually arrived, the group left the scene and went away. Mr Remy was very shaken by the incident and it accordingly took him some time to calm down and discuss matters with the police officers attending the scene prior to telephoning the bank to place a stop on the cheque. He was too late – the cheque had already been cashed.
14. The group left Mr Remy's place of work and returned to Mr Kuvu Noel's wharf, where a distribution of the cash occurred.
15. Defendants Mr James Wells, Mr War Rukon, Mr John Remen, Mr Jack Noel, Mr Peter Noel, Mr Steve Nov, Mr Tom Steward, Mr Robert Nial and made full confessions to the police after their arrest.



16. Defendants Mr Joe Johnny, Mr Bebe Stanley and Mr Ron Tamtam made partial confession to the police when they were arrested.

17. Defendant Mr Kuvu Noel declined to comment when interviewed by the police after being arrested.

C. Aggravating Factors

18. There are a number of aggravating factors to the offending:

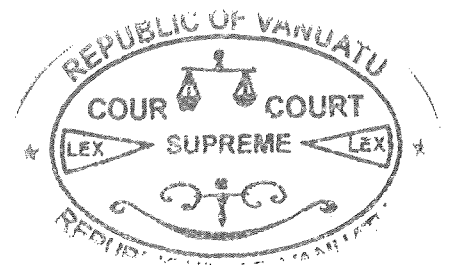
- There is a background to the offending – Mr Remy made it clear this was far from the first event of this type;
- There was an element of organisation and/or planning involved – this was a concerted plan involving the attendance by no less than 6 trucks and between 20 - 30 men at the quarry, Mr Remy's home and finally his yard;
- More than one threat was made, and they were made by a number of individuals, most notably by Mr Kuvu Noel;
- The nature of the threats – “pay now or be killed”. I note that there is no suggestion of any weapon being used. However, it is evident that a deterrent sentence is required so that the entire community understands this type of conduct will not be tolerated.

D. Start Point

19. Taking into account the authorities cited by counsel, the Charge 1 offending merits a start point for sentencing of 15 months imprisonment; the Charge 3 offending merits a start point for sentencing of 3 years 6 months imprisonment.

E. Mitigation

20. By way of explanation, counsel submitted that the land dispute is currently in limbo – with restraining orders in place to keep the peace. It is submitted that Mr Remy is in breach of those orders by continuing to quarry, and that the defendants therefore considered they were entitled to confront him – even if that is correct, they cannot have considered themselves entitled to demand money with menaces. Looking at the material provided it is, contrary to what was submitted, clear that only Mr Natu, Mr Joe Johnny (Joel Rak) and Mr Kuvu Noel are not permitted to quarry – and further that they are ordered to “...maintain peace at all times and restrained [sic] from doing any criminal activities”. So what occurred was done by Kuvu Noel and Joe Johnny in breach of the Court orders.



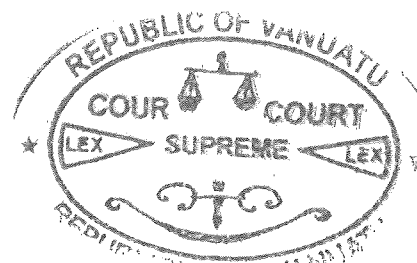
21. Defendants Mr James Wells, Mr War Rukon, Mr John Remen, Mr Jack Noel, Mr Peter Noel, Mr Steve Nov, Mr Tom Steward, Mr Robert Nial are indistinguishable, despite their different ages and family circumstances. Of relevance is the fact that each has no previous convictions, each is willing to undertake a custom reconciliation ceremony, and each is said to be of low risk of re-offending by the Pre-Sentence Report writer. They are all hard-working members of the community, and each has complied with bail conditions for over a year. For those personal factors each is entitled to a discount from the sentence start point of 5 months imprisonment.
22. Mr Joe Johnny, Mr Bebe Stanley Mr Ron Tamtam and Mr Kuvu Noel are in a different sentencing category, but the same personal factors apply to them save for their risks of re-offending. I ignore for the purposes of this sentencing Mr Kuvu Noel's previous driving conviction. These defendants are entitled to the same reduction from the sentence start point of 5 months imprisonment.

F. Pleas

23. All the defendants have had ample opportunity to plead prior to partway through a second scheduled trial, after the first 2 prosecution witnesses had completed their evidence. Apart from Mr Kuvu Noel, each has also made certain statements to the police which ought to have resulted in earlier pleas of guilty to at least some of the charges in view of the admissions made. In Vanuatu, the authorities have made it very plain that the maximum reduction for prompt pleas of guilty, plus co-operation with the authorities, is a one-third discount.
24. Given the timing of these pleas, plus the inevitability of adverse findings against them arising from the very strong evidence (given at trial by the complainant and his project manager) and their either full or partial individual admissions, the discount each of these defendants is now entitled to for their pleas and co-operation is reduced.
25. For those charged with Charge 1, the discount granted is 15%.
26. For those charged with Charge 3 the discount granted is 12.5%.

G. Suspension

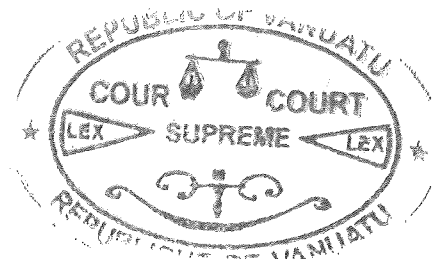
27. There seems to be an assumption by Vanuatu counsel that suspended sentences of imprisonment are universally available. That is not the position according to the law.
28. The law provides a discretion for this Court to suspend all or part of the sentence, pursuant to section 57 of the Penal Code, where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender".



29. Even taking into account the desirability of keeping offenders in the community, so far as practicable and consistent with the safety of the community, suspending sentences should only be done in exceptional cases – not in every case where the sentence is of a short term.
30. This case involves offending that was committed deliberately, in the knowledge that it was wrong. These defendants took the law into their own hands, and in the absence of any custom reconciliation ceremony, there is a real risk of further dispute between Mr Kuvu Noel, his family members and his supporters and Mr Natu and Mr Remy. In these circumstances, I do not think suspending all or part of any of the sentences is appropriate for those charged with Charge 3 – it is very serious offending, with a maximum sentence available for conduct of this type of 15 years imprisonment.
31. However, I am prepared to distinguish the cases of those charged with the significantly lesser offending. I suspect they were swept up by the general mood of the leaders to get money for what they regarded as their property being taken by an outsider. They undoubtedly should have reconsidered rather than continuing to be involved – they should simply have got off the trucks. Further, they may have a sense of grievance due to the fact that others who behaved exactly as they did are suffering no consequences as the prosecution discontinued against many others.
32. Accordingly, those convicted of Charge 1 shall have their sentences suspended for 18 months from today. They are therefore spared from immediate imprisonment today. However, they need to bear in mind that any further offending will result in them likely having to serve the terms of imprisonment imposed for this matter, irrespective of what other sentence they receive.

H. Compensation

33. Mr Remy is VT 1m out of pocket as a direct result of this offending. He is entitled to get that back, with interest from 7 September 2018. I note he has detailed an intention to pursue his civil rights in the Courts. However, I have the power to impose compensation as part of the sentencing exercise, and I consider that to be appropriate.
34. Mr Nalyal has submitted that the 4 main defendants, his clients, should be made to pay back the VT 1m to Mr Remy over time. On the basis of his submissions I order each of Mr Joe Johnny, Mr Bebe Stanley Mr Ron Tamtam and Mr Kuvu Noel to pay Mr Remy VT 250,00 by way of monthly installments of VT 50,000 every first working day of the 5 months following their release from prison.
35. It is apparent that the other defendants all shared some of the money derived from Mr Remy's cashed cheque. Each of Mr James Wells, Mr War Rukon, Mr John Remen, Mr Jack Noel, Mr Peter Noel, Mr Steve Nov, Mr Tom Steward, Mr Robert Nial cannot be permitted to gain from their



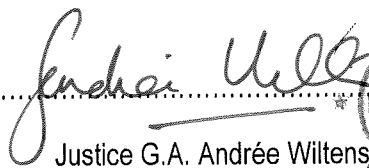
criminal involvement. Each must pay VT 15,000 to Mr Remy by 3 September 2019. That can be considered roughly equal to the interest Mr Remy has lost on the capital sum.

I. Sentences

36. Mr James Wells, Mr War Rukon, Mr John Remen, Mr Jack Noel, Mr Peter Noel, Mr Steve Nov, Mr Tom Steward, Mr Robert Nial are each sentenced to 8 months imprisonment, suspended for 18 months from today. Each is additionally ordered to serve 150 hours of Community Work and to pay the compensation ordered.
37. Mr Joe Johnny, Mr Bebe Stanley Mr Ron Tamtam and Mr Kuvu Noel are each sentenced to 2 years 9 months imprisonment commencing on 7 August 2019 and to pay the compensation ordered once released from prison. There is no suspension of those sentences.
38. I regard Mr Joe Johnny and Mr Kuvu Noel as the most culpable of the offenders, based on the evidence that I heard – although that is not reflected in the Summary of Facts. They should feel very fortunate that they are treated in the same fashion as their co-accused in respect of Charge 3.
39. Lastly, I have considered the relativity of the 2 lots of sentences. Given the difference in maximum penalties and the criminality involved, I am satisfied that the levels of sentences imposed are appropriate to reflect what actually occurred.
40. Each defendant has 14 days to appeal his sentence, if he so wishes.

DATED at Luganville this 8th day of August 2019

BY THE COURT


Justice G.A. Andrée Wiltens

