

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

**Criminal
Case No. 19/855 SC/CRML**

PUBLIC PROSECUTOR

V

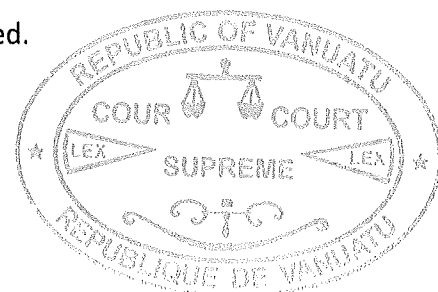
ARMSTRONG MASANGA

Coram: Chief Justice Vincent Lunabek
Counsel: Mr. Philip Toaliu for the Public Prosecutor
Mr. Henzler Vira for the Defendant

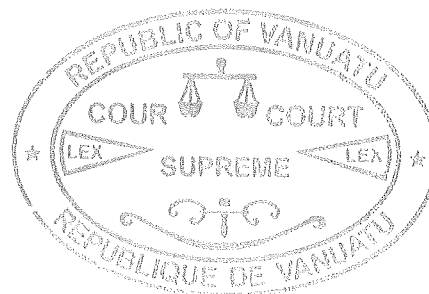
Date of Sentence: 2nd September 2019

SENTENCE

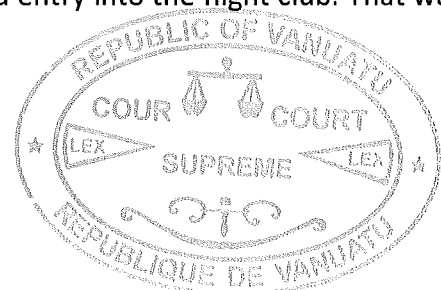
1. Mr. Armstrong Masanga, this is your sentence on one count of causing death by reckless driving, contrary to section 12 of the Road Traffic Act to which, you entered a guilty plea on 14 May 2019.
2. Reckless driving causing death carries a maximum penalty of 5 years imprisonment or 500, 000 vatu fine or both fine and imprisonment.
3. You are 45 years old this year. You are from a mixed parentage of Malo Island and Pentecost Island. You attended your primary and secondary school at Port Vila, Vanuatu where you completed year 13. You then moved to Australia and completed your University entrance (Foundation) at the New Castle University. You undertook a course on Mineral Science and completed a Bachelor in science. After your studies in Australia, you moved back to Vanuatu and started working with an Australian company on Geology and Mining, on Malo and Malekula Islands. From there, you were accepted at the Department of Policy Analyst and Strategist Planning and Aid Coordinator with the Vanuatu Government. You were recently transferred to work as Acting Secretary to the Council of Ministers until when you had committed this offence and resigned.



4. The facts revealed that the offence occurred on the 23rd of December 2018 in front of Club Lit Night Club in Port Vila. On that night you were intoxicated with alcohol liquor and one Damien Mobbs, the Club Manager, had to assist his security guards to speak to you to leave the premises. You were visibly angry with them. You were wearing only one shoe and even after being told to leave you kept insisting on being allowed to enter the club. Mr. Mobbs spoke to you calmly and told you the reason why you will not be let in. You kept swearing at them and kept saying words to the effect: *"you saveh se me who ya?"* (Did you know who am I?) You were not let into the night club.
5. Dominique Preparip was the security officer on duty that night and he had contact with you on the night of the offence. You came to the club entrance drunk and insisting on being let into the club. You were drunk and had only one slipper on. Dominique was the one who refused entry to you. You then reacted by wanting to punch Dominique because he kept pushing you away from the club entrance and the other securities helped push you away.
6. You then crossed the road and walked towards the car park opposite the night club. You got into your Hyundai bus registration number 15926 that was parked in the parking lot opposite the Club Lit area. You exited the parking area and onto the road driving towards Nambatu area. At this point, you decided to drive towards the security guards who were on the footpath and would not give you entry to the club.
7. At about the same time, the deceased came out of the club. He was looking at his phone and just standing calmly on the footpath in front of Club Lit. The Security footage shows your bus swerved suddenly from the main road, mounted the footpath and narrowly missed the security guards. The deceased had just walked out from the nightclub. He was standing in front of the entrance. Your bus narrowly missed the security guards and hit the deceased at exactly 00:32hrs on 23/12/18. After it missed the security guards and hit the deceased, it swerved back onto the road.



8. You then kept driving the bus into the road but you did not stop after the accident.
9. The deceased was pronounced dead on 23rd December 2018 at 1.29am. A medical report on him upon arrival at the Emergency Department revealed the following:
- Middle aged male,
 - Lying in Supine position (lying horizontally with the face and torso facing up, as opposed to the prone position, which is face down)
 - No movement noted
 - Was very cold
 - No pulse, no respiration nor breathing
 - Pupils dilated with no reaction to light
 - Bruises on the left side of his face
 - Bleeding from nose, mouth and ear
 - Bruises on right side of his face
10. The deceased was pronounced dead before arriving at the hospital.
11. Your lawyer accepted on your behalf the aggravating factors submitted by the prosecution.
12. In this case, the following aggravating factors exist:-
- (i) You were driving under the influence of alcohol. In the pre-sentence report, you stated that on a scale of 1-10 with 10 being extremely drunk, you rated yourself at 8 on the night of the offence;
 - (ii) You intentionally diverted from the main road and onto the footpath in front of the club lit entrance where the security guards and other customers were;
 - (iii) You were using the vehicle Bus Reg. # 15926 as a weapon and drove it towards the security guards who were on the footpath as they were not on the road or even at the side of the road which indicate a clear and deliberate intention to cause serious injuries or death
 - (iv) You were angry and aggressive towards the security guards. You were not happy because the security guards did not allow you entry into the night club. That was your motive.

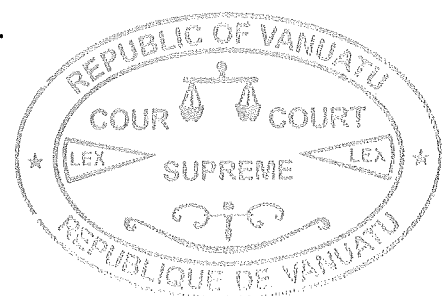


(v) You were driving at a high speed;

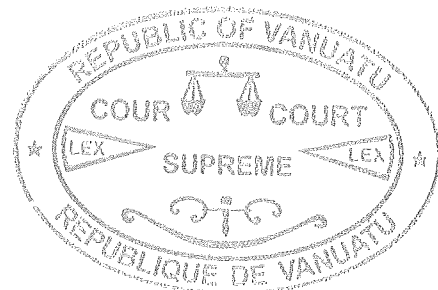
(vi) You knew and deliberately you were taking risks by driving and controlling your bus onto the footpath towards the security guards.

(vii) There was some degree of planning. You had planned to run into the security guards but narrowly missed and hit the deceased who had just exited the night club and standing outside in front of the entrance of the night club.

13. Both the Prosecution and your lawyer refer to the case of *Jenkinson v. Public Prosecutor* [2000] VUCA 5; Criminal Case 01 of 2000 (23 October 2000). There, the appellant hit the deceased when he was driving a truck in the same direction of the deceased while he was walking on the side of road. There was no street lighting. It was dark. The truck hit the deceased projecting him some 4-5 metres into the grass at the side of the road. He was found to be dead on arrival at hospital. The appellant pleaded guilty on the basis that he stopped immediately after the collision. He looked about but found nothing and assured he had hit a stick or some like object that had broken his head light. There was no evidence that the appellant consumed alcohol contributing to the accident. The appellant was charged with an offence contrary to section 108 of Penal Code with a maximum penalty of 5 years imprisonment. The disqualification is not available under section 108 of the Penal Code Act. The facts described in *Jenkinson's* case are distinguished from the facts of this case and also they are less serious than the facts in the present case. The appellant *Jenkinson* pleaded guilty on the basis of "negligence" and not "reckless....or failure to observe any law" as in the present case.
15. The appropriate starting point sentence in this case is 4 years imprisonment to reflect the circumstances of the commission of this offence which is intentional, deliberate, angry and aggressive knowing the risks and decided to take them by using the bus on the footpath where the security guards were but unfortunately you missed him/them and hit the deceased an innocent person who was at the wrong place at the wrong time. This is overall coupled with your status of heavy drunkenness.



16. There are no other personal circumstances that could further aggravate your starting point sentence.
17. In mitigation, you are a first time offender and you regret your actions. I take it you are remorseful. I give you an allowance reduction of 9 months. Your sentence of 4 years is reduced to 3 years and 3 months imprisonment. You pleaded guilty at the first time opportunity given to you by the courts. You are entitled to one third (1/3) reduction of the balance of your sentence. Your sentence is further reduced by 13 months. Your end sentence is 26 months imprisonment. You have already spent 22 days in pre-custody period from 24 December 2018 to 14 January 2019 and from 4 February 2019 to 11 February 2019 which are deducted from your term of 26 months imprisonment. You are sentenced to a term of 25 months and 8 days in custody.
18. I consider whether I should suspend this imprisonment term of 26 months. I note that the fact you are going to be sent into custody, does not going to give back the life of the deceased. However, in the circumstances of this case, I consider the serious nature of the offending, the aggravating circumstances of your offending and your character as the offender, I decline to suspend this imprisonment terms of 25 months and 8 days.
19. It is noted that, although you were initially charged with more serious offence of intentional homicide under section 106 (a) of the Penal Code as the detailed and precise analyses of the facts amply justify it, the prosecution abandoned it and charged you under section 12 of the Road Traffic Act instead. That is the prosecution's province as the prosecutor is the only judge at that stage of the prosecution. The security guard was your primary target but you just narrowly missed him and hit the deceased. The intention to cause serious injuries resulting in death is the same whether it was the security guard or an innocent pass by that was at the wrong place at the wrong time as in this case. That was not a case of driving a vehicle on the public road under the influence of alcohol liquor

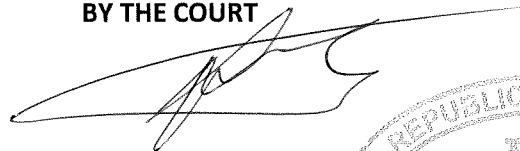


and losing control and direction of the vehicle which resulted in death of a person on the footpath. It is more than that as the facts illustrate.

19. In this case, the sentence of 25 months and 8 days imprisonment is to deter you and others from this type of offending and in particular, driving a vehicle while under the influence of alcohol liquor and deliberately driving and using that vehicle (as a weapon) under your control and direction on the footpath of the public road to cause the death of a person (Deceased) on the night of 14 May 2019. That sentence of imprisonment is to be served with immediate effect.
20. The circumstances of your offending also justify that you must be disqualified from driving. I order that pursuant to section 55 of the Road Traffic Act, you are disqualified to drive a vehicle for a period of 3 years from the date of this sentence.
21. You are entitled to appeal this sentence within 14 days from the date of this sentence if you are unsatisfied with it.

DATED at Port Vila, this 2nd day of September, 2019.

BY THE COURT



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Vincent Lunabek
Chief Justice

