

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

**Criminal
Case No. 19/959 C/CRML**

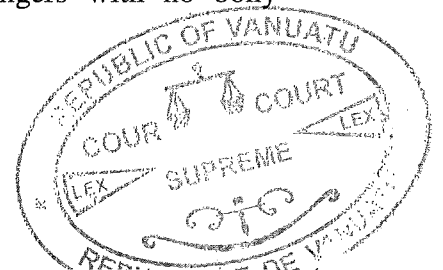
BETWEEN: Public Prosecutor

AND: ANDERSON TOR
Defendant

Date of Sentence: 14th October 2019
Before: Justice Oliver Saksak
In Attendance: Josephine Tete for Public Prosecutor
Brian Livo for the Defendant

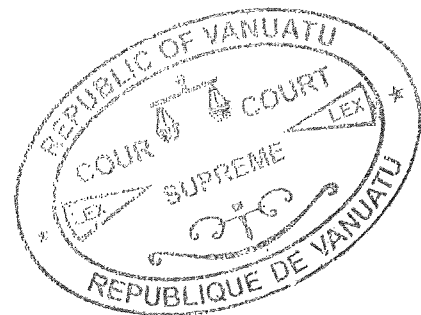
SENTENCE

1. Anderson Tor, you are for sentence today for a charge of intentional assault under section 107 (c) of the Penal Code Act. The Court found you guilty of the charge after a trial in its verdict dated 4th September 2019.
2. On 16th March 2019 at Fresh Water 1 Area, you held a chainsaw in your hands and intended to use it against Jean Marc Buleban, your neighbour. When the complainant and victim approached you to explain to you the contents of a letter, you swung the chainsaw towards him and partially injured three of his fingers. Subsequently you caused injuries to Mr Buleban's left lateral and forearm causing him serious injuries and pain.
3. This took place after Mr Buleban had instructed 2 boys to erect a fence on his property. You were obviously unhappy with the idea. You got angry and took the chainsaw to cut down the fence. In the process when Mr Buleban came on the scene you used the chainsaw against him causing him serious injuries.
4. Mr Buleban attended to medical treatment. His medical report shows-
 - a) Left lateral arm oblique linear laceration and abrasions of about 12cm with no muscle involved.
 - b) Left forearm extensor laceration about 25cm long with segmental loss involving most extensor muscles o the wrist and fingers with no bony involvement.



- c) Right extensor thumb laceration over and exposing distal inter phalangeal joint with severed extensor tendon.
 - d) Right distal phalanx traumatic amputation of index, finger, and
 - e) Right middle finger proximal phalange joint open fracture-dislocation with severe extensor tendon.
5. The only explanation you provided for your action was that Mr Buleban had encroached onto your lease by putting up the fence. And you relied on two letters by Mr John Terry dated 25th February 2014 and of 25 September 2014, and a further letter by Mr Martin Sokomanu dated 27 June 2016.
 6. However in Mr Sokomanu's letter of 27 June 2016 in paragraph 2 he says that the rectified plans needed to be inserted into the existing lease replacing the present plans. Until that was done, you had no cause for complaints. Therefore your actions on 16 March 2019 were clearly unlawful. Instead of going to the Lands Department to remind them to act on their letter of 27 June 2016, you took the law into your own hands by trying to sort the matter out yourself. But you broke the law.
 7. And this is your second conviction for a criminal offence although your first conviction was in August 2000, some 19 years ago and related to a traffic offence.
 8. In assessing appropriate punishment for you, I have seen the cases referred to by the Prosecution which are PP.v. Iawafil[2018] VUSC 90, Tari.v. PP [2011] VUCA 26, PP.v. Qon [2018] VUSC 140 and PP.v. Quaga [2018] VUSC 163.
 9. By comparison your offending is more serious than those cases because it involves a chainsaw, a very very serious injuries and even instant death. But I note the Court of Appeal said in Tari's that-

“ where an assault involves unprovoked violence and causes permanent serious injury, an immediate custodial sentence is appropriate”.
- My Court is bound by this ruling.



10. Further in Quaga's case where the victim was cut with a knife on her right arm and on the tip of her index finger,

The judge said-

" a custodial sentence is warranted to denounce the defendant's behaviour and conduct and to serve as a deterrent to the defendant and members of the public at large from similar offending."

I endorse the judge's ruling and adopt same in sentencing you today.

11. The maximum penalty for an offence under section 107(c) of the Act is 10 years imprisonment. That indicates this is a serious offence. Considering this in light of the aggravating features of your offending which are (a) a chainsaw as a lethal weapon used, (b) the unprovoked attack, (c) injuries inflicted, and (d) the hatred and lack of remorse, I agree with the Prosecution that your punishment should be a custodial sentence.

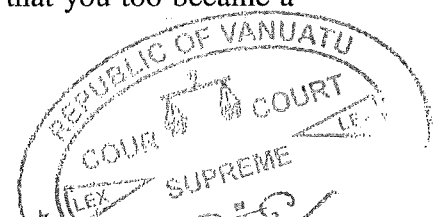
12. I therefore convict and sentence you for one charge of intentional assault causing injuries of a permanent nature, to a term of 5 years imprisonment as the starting sentence.

13. Your sentence will not be suspended.

14. I have not seen any pre-sentence report from Probation services. But I have seen submissions from defence counsel Mr Livo filed on 3rd October 2019. The Court issued clear directions on 4th September 2019 giving the Probation office 14 days to 17 September and defence 7 days to 2 October. It is indeed unfortunate that these directions have not been complied with by Probation. These will be dispensed within.

15. I have seen the Table of cases prepared by Mr Livo making references to 18 cases. By comparison, none of those cases was as serious as yours. Most of them were section 107 (b) offences, which are less serious. I reject those submissions.

16. In mitigation I consider first that you have kept a clean past except for your traffic offending which is totally unrelated to this. Second I consider that you too became a



victim yourself after an object was thrown at you during the attack causing you to lose consciousness and recuperating only in hospital some hours later. I consider you are family man and may not necessarily be in good health yourself. I am allowing a deduction of 1 year out of your 5 years sentence for these two factors.

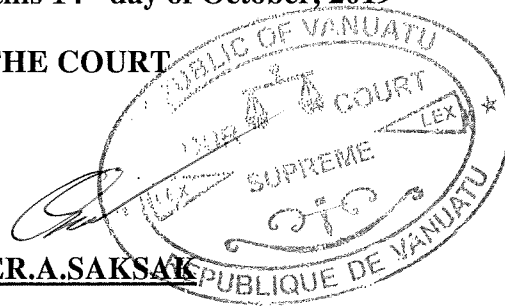
17. Your end sentence therefore is 4 years imprisonment. You do not deserve any further deductions.

18. You are therefore sentenced to imprisonment for a term of 4 years beginning today.

19. You have a right of appeal against this sentence within 14 days if you do not accept it. But you must begin to serve your sentence today.

DATED at Port Vila this 14th day of October, 2019

BY THE COURT



OLIVER.A.SAKSAK

Judge