

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

Criminal
Case No. 21/1071 SC/CRML

**BETWEEN: The Public Prosecutor
Prosecutor**

**AND: Benny Malapa
Defendant**

Coram: Justice Aru
Counsel Mr. C. Shem the Public Prosecution
Mrs. K. Karu for the Defendant

SENTENCE

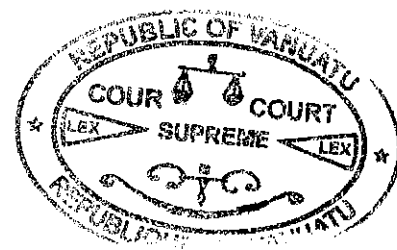
Introduction

1. Mr Benny Malapa was charged with one count of threats to kill and one count of domestic violence. He pleaded guilty to all the charges and is therefore convicted accordingly.

The facts

Count 1

2. The complainant is the defendant's father. In the early morning hours of 20 September 2020 at Mele village where they live, the defendant had consumed alcohol and was drunk. He got out of the house walked towards a shelter and punched the iron roofing swearing and throwing chairs and stools on the ground and causing a disturbance.
3. The complainant observed and heard the defendant repeatedly saying "*tudei bai mi karem knife mo kat katem yufalai pises mo kilim ded yufala*" (today I will get a knife and cut you all up into pieces and kill you). Whilst saying this the defendant was looking at a knife.
4. This caused the defendant's mother who was inside the house to fear for her life and that of her grandson and they ran outside. The complainant stated that they feared for their lives as the defendant was not a first time offender.



Count 2

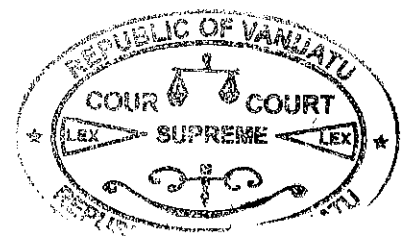
5. At the same time whilst uttering the threats the defendant swore at his mother in the presence of his son and his father the complainant. The complainant confronted the defendant and he stopped swearing and went to sleep.
6. Under caution by the Police the defendant said he could not recall anything except he made a lot of noise and kicked the door of his room.

Starting point

7. When considering the starting point of sentence, first I have to consider the maximum penalty available for the offence charged. The offence of threats to kill is punishable by a maximum penalty of 15 years imprisonment and domestic violence is punishable by a term of imprisonment not exceeding 5 years or a fine not exceeding VT 100,000 or both.
8. Next I need to consider whether there are any aggravating or mitigating factors of the offending. A number of aggravating factors are identified:-
 - The offending was repeated
 - Alcohol was involved
 - There was violence
 - The victims feared for their lives
 - The offence occurred in a home
 - There was a breach of trust
9. There are no mitigating factors.
10. The lead offence is threats to kill and I set the starting point of sentence at 3 years imprisonment.

Personal factors

11. The defendant entered a guilty plea. I am not satisfied that it was entered at the first available opportunity as he told the Police he could not recall the exact words used. The sentence will be reduced by 15 percent.
12. The defendant's pre-Sentence Report states that the defendant is from Mele village on Efate and is now 32 years of age. He is not a first time offender. He however maintains a good relationship with his community as he is a chief's assistant. He completed his education at secondary level and helps his father manage the family business of weaving natangura leaves for sale. He has additional skills in business management, construction and joinery and is the bread winner in his family.



13. He expressed remorse for his offending and has performed a custom reconciliation with his parents by exchanging 2 mats and VT 20,000. The victims have accepted the reconciliation.

14. Taking into account these factors the sentence is further reduced by 12 months.

End sentence

15. The end sentence is therefore 18 months imprisonment for the lead offence and 3 months imprisonment for domestic violence to be served concurrently. The sentence is effective from 26 January 2021 and there will be no suspension.

16. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Port Vila this 24th day of June, 2021

BY THE COURT

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D. Aru
Judge

