

BETWEEN: Public Prosecutor

AND: Seretangi Kalsakau and Albert Sablan
Defendants

Before: Justice Oliver A Saksak

Counsel: Mr Gregory Simeon for Public Prosecutor
Mr Kalo Shem Amos for Defendants

Date of Plea: 22nd October 2021

Date of Sentence: 30th November 2021

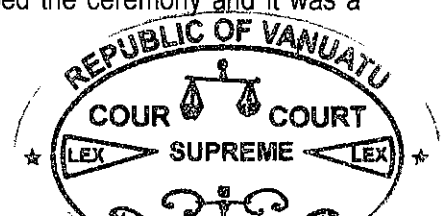
SENTENCE

Background

1. Both defendants pleaded guilty to the charge of threats to kill, section 115 of the Penal Code Act [Cap 135]. The charges were laid separately against Seretangi Kalsakau, Count 1 and against Albert Sablan, Count 2. Both defendants are for sentencing today.
2. The maximum penalty of the offence of threats to kill is 15 years imprisonment, indicating this is a serious offence.

Facts

3. On 13th October 2017 at around 15.15 hours on Ifira Island the complainant Mr Joshua Kalsakau accompanied a police man and another man to effect service of a letter on the chief of Ifira. Upon arrival Peter Tulangi swore at Mr Kalsakau who was a Member of Parliament at the time. He was sworn at and threatened by Nato Taiwia also. These men ran towards Mr Kalsakau and threatened to punch him. These men were not charged.
4. Seretangi Kalsakau took a big stone and threatened to throw it at Mr Kalsakau. He threatened orally to break his head with the stone.
5. Albert Sablan also swore at Mr Kalsakau and said he was going to kill him dead. The abuses and threats were uttered in Bislama. They were however stopped by the Chief's attendants.
6. The only explanations given by the defendants in their submissions is that they were unhappy with the service of the letter during an important ceremony when the Ifira Community Nakamal was being opened. They claimed the service of the letter disturbed the ceremony and it was a disrespect for the chief.



7. The defendant's verbal abuses and threats were made at a public ceremony. Many members of the Ifira Community saw and heard what were said and done. There was a breach of public order and peace. Their actions were unnecessary. Their actions and abuses in public indeed aggravated their offenses rather than mitigate them.
8. To mark the seriousness of their actions in the circumstances they were made, and to mark public disapproval of such behaviour, and to deter the defendants and other like-minded persons, and to punish them appropriately a custodial sentence with suspension is necessary.
9. The abuses and threats made were verbal and no actual acts followed.
10. I accept the defence submission that the starting sentence be 2 years imprisonment for both Mr Seretangi Kalsakau and Mr Albert Sablan. I therefore convict both defendants to a starting sentence of 2 years imprisonment.
11. I now consider the mitigating factors to reduce their sentences. First their guilty pleas at first opportunity. They are entitled to 1/3 reduction, which is 8 months.
12. Then there was the delay of over 4 years after the incident occurred in 2017. There was the good behaviour and characters of the defendants with clean record and no previous criminal convictions. Then there was the custom reconciliation ceremony performed by them showing remorse and contrition. Following the reconciliation Mr Kalsakau wrote to the Public Prosecutor in September 2021 withdrawing the case.
13. Both defendants are elderly men, Mr Kalsakau is 64 years old with children and grandchildren. Mr Sablan is 61 years old with 3 sons.
14. Taking all those factors together, I reduce the balance of their sentence of 16 months by a further 8 months, leaving their end sentences at 8 months imprisonment.
15. Considering the nature of their offenses and their characters, I order that their end sentences be suspended for a period of 1 year from the date of sentence on good behaviour. This suspension is made pursuant to section 57 of the Penal Code Act.
16. Both defendants have a right of appeal against their sentences within 14 days.

DATED at Port Vila this 30th day of November 2021

BY THE COURT

OLIVER A. SAKSAK

Judge

