

PUBLIC PROSECUTOR

v

**KAI KASO
NAMAHA NIMISA
JAICK IALU
JIMMY CHARLIE
JACK WATO
JOHN IARPAT**

Date: 25 November 2022
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr S. Blessing and Mr G. Simeon
Defendant – Mr H. Rantes

SENTENCE

A. Introduction

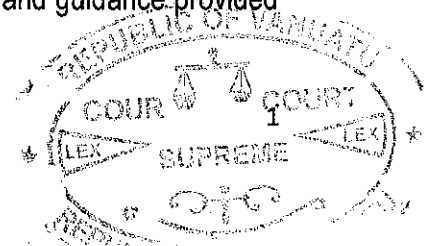
1. The Defendants Kai Kaso, Naham Nimisa, Jaick Ialu, Jimmy Charlie, Jack Wato and John Iarpat pleaded guilty to one charge each of kidnapping, intentional assault and unlawful assembly. They are convicted on their own pleas and the admitted facts.

B. Facts

2. In 2019, the Defendants assembled at Lenakel area on Tanna with intent to commit an offence (Charge 3). They went to the place in Lenakel town where the complainant Gideon lawilik was working as a security guard and demanded that he get into their public transport vehicle. He did. They drove him to lowiaruel area (Charge 1).
3. At lowiaruel, they got out of the vehicle, surrounded Mr lawilik and asked him where it was that he had said that they had killed a pig and cooked it. They punched and kicked Mr lawilik several times leaving him unconscious. They took Mr lawilik still unconscious and left him at Lownapkalualwal (Charge 2).
4. The Defendants made full admissions to the Police.

C. Sentence Start Point

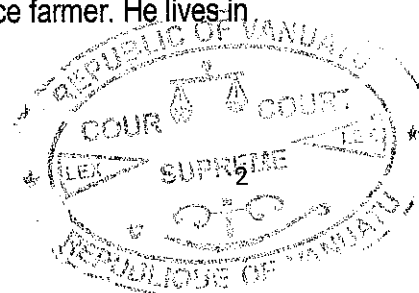
5. The sentence start point is assessed having regard to the offending, its aggravating and any mitigating features, the maximum sentence set by Parliament and guidance provided by earlier cases.



6. The maximum sentences are:
 - a. Kidnapping – 10 years imprisonment (para. 105(b), *Penal Code* [CAP. 135];
 - b. Intentional assault causing temporary injuries – 5 years imprisonment (para. 107(b), *Penal Code*); and
 - c. Unlawful assembly – 3 years imprisonment (subs. 68(1) and s. 69, *Penal Code*).
7. Mitigating aspects of this offending were that no weapons were used and the short period of time the complainant was confined for.
8. The aggravating factors included:
 - The number of defendants involved, placing the complainant in real danger of being seriously injured or killed;
 - The physical and psychological impact on the complainant; and
 - The Defendants discarded the complainant who was unconscious at a different location. They showed callous disregard for his safety and wellbeing.
9. The Prosecution submitted that a global sentence starting point of between 2-4 years imprisonment was appropriate, citing the comparable cases of *Urinmal v Public Prosecutor* [2013] VUCA 23 and *Noal v Public Prosecutor* [2016] VUCA 57.
10. I also considered the cases of *Public Prosecutor v Moses* [2011] VUSC 246 and *Public Prosecutor v George* [2016] VUSC 72.
11. Mr Rantes submitted that the facts were similar to those in *Public Prosecutor v Nako* [2019] VUSC 190 so that the Court should set similar sentence starting point of 2 years for kidnapping and 12 months for the intentional assault. He submitted that taking the mitigating and aggravating factors into account, the Court should adopt a global sentence start point of 2-3 years imprisonment.
12. Taking all matters into account, the global sentence start point adopted is 2 years 6 months imprisonment.

D. Mitigation

13. The Defendants entered prompt guilty pleas however the Prosecution case against them was strong. Twenty-five per cent (25%) is deducted from the sentence start point for the guilty pleas.
14. Mr Kaso is 49 years old married and has 9 children. He is a subsistence farmer. He volunteers a lot in custom activities.
15. Mr Nimisa is 59 years old. He lives with his wife and their 5 children. He is a custom person and involves himself in cultural activities. He is a subsistence farmer.
16. Mr lalu is 38 years old, married and has 6 children. He is a subsistence farmer. He lives in custom and his community look up to him for his cultural skills.



17. Mr Charlie is 29 years, married and has 6 children. He lives and practises custom and his community looks up to him for his cultural skills. He is a subsistence farmer.
18. Mr Wato is 35 years old. He lives with his wife and their 4 children. He is a custom person and his community looks up to him for his cultural skills. He is a subsistence farmer.
19. Mr Iarpat is 40 years old. He lives with his wife and their 6 children. He is a subsistence farmer. He has cultural skills and is a resourceful member of his community.
20. The Defendants have no previous convictions.
21. The Defendants together performed a custom reconciliation ceremony with the complainant involving a pig worth VT25,000, 26 stems of kava, a rooster, 15 pieces of sugar cane, 10 pots of cooked food and some local food crops which the complainant, their chief and other community members at Imarapu Nakamal accepted. The Defendants are remorseful. They have the support of their family and chief.
22. A further 6 months is deducted for the Defendants' personal factors.

E. End Sentences

23. The end sentences imposed concurrently are:

- i. Kidnapping (Charge 1) 1 year 4 months imprisonment;
- ii. Intentional assault causing temporary injuries (Charge 2) 1 year 4 months imprisonment; and
- iii. Unlawful assembly (Charge 3) 1 year imprisonment.

F. Suspension of Sentences

24. The offending was serious. That counts against suspension of the sentences. On the other hand, the lack of prior convictions, the mitigating aspects of the offending, their family circumstances and cultural skills relied on by their communities count in favour of suspension of the sentences. I am therefore prepared to suspend the sentences for 2 years. The Defendants are warned that if they are convicted of any offence during that 2-year period that they will be taken into custody and serve these sentences of imprisonment, as well as the penalty imposed for the further offending.
25. In addition, the Defendants are each sentenced to 60 hours community work.
26. The Defendants have 14 days to appeal against their sentences.

**DATED at Isangel, Tanna this 25th day of November 2022
BY THE COURT**

Justice Viran Molisa Trief

