

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

Criminal
Case No. 22/1556 SC/CRML

PUBLIC PROSECUTOR

v

JESSY BAKEO

Dates of Trial: 4, 15 & 18 November 2022
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Mr L. Young
Defendant – Mrs P. Malites
Date of Decision: 25 January 2023

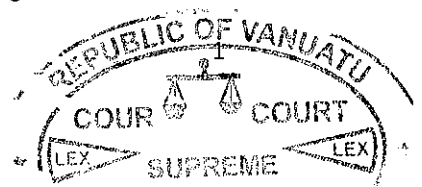
VERDICT

A. Introduction

1. The accused Jessy Bakeo was charged with attempted intentional homicide (Charge 1) and threat to kill (Charges 2-4).
2. At the conclusion of the evidence, counsel requested to file closing submissions. Having considered counsel's submissions, I now set out the verdicts.

B. Law

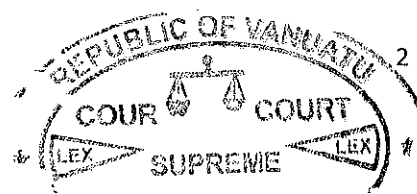
3. The charge of attempted intentional homicide has 2 legal ingredients which must be proved in order for a conviction to be entered, namely that on the occasion alleged:
 - a) Mr Bakeo attempted an act intended to cause the death of Heleno Silli that went beyond just thinking or talking about it; and
 - b) The act would have resulted in the death of Heleno except that someone prevented Mr Bakeo from killing the complainant.
4. The charge of threat to kill a person has 3 legal ingredients which must be proved in order for a conviction to be entered, namely that on the particular occasion alleged:



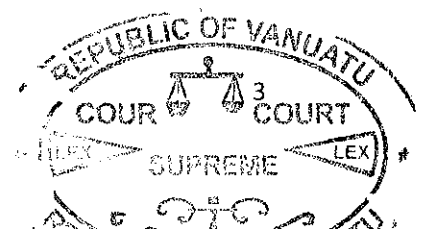
- a) Mr Bakeo directly caused the complainant to receive an oral threat to kill him or her;
 - b) Mr Bakeo intended the complainant to receive the threat; and
 - c) Mr Bakeo knew the content of the threat.
5. The Prosecution had the onus of proof and was required to establish the allegations beyond reasonable doubt before a finding of guilt could be made.
 6. Each charge was to be considered as a distinct exercise.
 7. Mr Bakeo was not required to establish anything.
 8. Only admissible relevant evidence should be taken into account in determining the outcome of the trial. The Prosecution and defence witnesses have equal value, and each witness is to be considered on his/her own merits.
 9. The Court is able to draw inferences which logically flow from other proven facts. Where there is no direct admission as to intention, the Prosecution must prove sufficient facts so that the requisite intention can be inferred.
 10. I remind myself that adverse inferences are to be drawn only if they are the only available inference to be drawn. Further, if there is more than one inference available, the inference most favourable to Mr Bakeo must be drawn.
 11. Witnesses' demeanour was a small part of my assessment of the witnesses. I also looked for consistency within that witness' account; consistency with other witnesses' accounts; and considered the inherent likelihood, or not, of the witness' account.
 12. These factors all impacted on my findings of facts.

C. The Evidence

13. I heard evidence from 3-year old **Heleno Siliaru** after I had determined that she had sufficient intelligence to justify the Court receiving her evidence and that she understood the duty of telling the truth. Heleno was not questioned as to her understanding of the nature of an oath so I concluded that she did not understand the nature of an oath and therefore received her evidence unsworn.
14. She knows Jessy. He said he would cut her neck. She cried. Jessy said he would cut her neck with a knife. He cut her dad with the knife.
15. In cross-examination, she confirmed knowing Jessy. She said he was a man, not a child. He stayed with them at home sometimes. Sometimes he gave her and her siblings Twisties or sweets. Sometimes he played with them. One time, Jessy hit her. When asked what he did to her, she answered, 'Jessy said he would cut my neck' ("*Jessy I kirap I se bae hemi katem neck blo mi*").

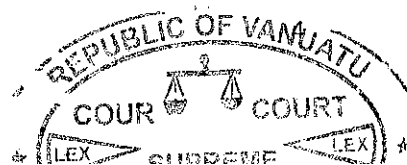


16. It was put to her that Jessy did not hold a knife to her neck, but only held her hair. She replied repeating her earlier answer, "*Jessy I kirap I se bae hemi katem neck blo mi*". It was put to her that Jessy said he did not hold a knife, she replied, 'Jessy held a knife!' ("*Jessy hemi holem wan knife!*"). She said Jiliana was also there. When asked if Jessy had put a knife to her neck or her dad had told her to say so, she replied, 'Jessy put a knife to my neck' ("*Jessy putum knife lo neck blo mi*").
17. Mr Young kept re-examination short as his questions did not elicit an answer. That was understandable as it was late in the day and Heleno had been in the witness box for some time.
18. I accepted Heleno as a truthful and accurate witness. She was clear in her evidence. She did not deviate from her original account in cross-examination.
19. As Heleno's evidence was admitted under subs. 83(2) of the *Criminal Procedure Code*, there must be other corroborating evidence before the defendant can be convicted.
20. The second Prosecution witness I heard from was Police Constable **Jacky Toa Lui**. He works as a C.I.D. investigator. He has been a Police officer for 4 years.
21. After work on 24 February 2022, he was dropped off at Namburu area and met Manaseh (Heleno's father) who told him what Jessy had done. His thought was that as a police officer, he had to speak with Jessy to move him out for the safety of Manaseh's children as Jessy had put a knife to Manaseh's daughter's neck.
22. He and Manaseh got into Manaseh's truck and they went after Jessy. From the truck, he called out at Jessy. Jessy was holding a black-handled bale knife (bush knife). Jessy responded with expletives. He got out of the truck and Jessy pointed the bale knife at his front right hand side shoulder and neck area (indicating with his hands). Jessy said, 'If you move, your neck will jump' ("*Spos yu muv, bae neck bae jump*"). He said so meaning Jacky's head. Jessy had an aggressive look on his face.
23. Jessy was not new to him as he knew him from their staying together at Namburu area. His feeling was that Jessy would injure him. Jessy was roughly 1 metre away from him when all this happened in less than a minute.
24. He had gotten out of the truck with the thought of grabbing the knife from Jessy or hitting his hand to dislodge the knife he was holding. When Jessy pointed the knife at him, he bent down and threw a punch at Jessy. Jessy ran a few metres away from him but then saw him (Jacky) holding something and returned towards him. He said he (Jessy) would cut him with the knife.
25. Jessy was chasing him around the truck when Manaseh got out of the driver's door and yelled at Jacky to run. He ran but Jessy chased him so Manaseh grabbed a piece of firewood from the front of the Peter Chan Chinese store to defend him. Jessy saw Manaseh lift the piece of firewood and cut with the knife, cutting Manaseh on his left arm. He also told



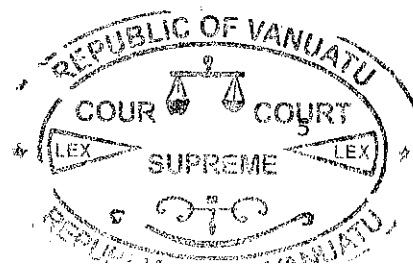
Manaseh that he would cut him with the knife and also swore at Manaseh. Jessy said "cunt face" to both Manaseh and him.

26. He then called for back-up from his work truck. Jessy went into the store and threw cans of tinfish out at them. Seconds later, he grabbed bale knives from inside the store. He threw one out which landed on its end point out on the tarsealed road. Manaseh was moving backwards but tripped over a pothole in the road and Jessy cut him again. He threw a piece of firewood at Jessy but he had already struck Manaseh, cutting him from behind the right shoulder to behind the left shoulder (indicating with his hands). Jessy wanted to chase him again but Manaseh got up. Jessy saw that they were holding the firewood so he ran back inside the store, holding on to knives in both his hands.
27. Jessy cut some things in the store and all the staff and the Chinese female shopkeeper ran out. He (Jacky) wanted to go after him into the store but Jessy threw a longer bale knife at him. He saw Jessy then take a beer and sit on top of a deep freezer inside the store, drinking the beer.
28. A group from the Vanuatu Mobile Force ('VMF') arrived. One of them went to enter the store but another knife flew outside. Then Police C.I.D. and uniformed officers arrived and spoke with Jessy while an officer entered the shop from the back and grabbed a hold of Jessy inside the store, bringing him outside.
29. In cross-examination, he said that Manaseh had already told him about Jessy threatening Manaseh's daughter when he saw Jessy pass by holding onto the knife he had used. It was put to him that he assumed that Jessy was a danger to the community because he was holding a knife even though he had not received detailed information from Manaseh. He replied that he thought he had to speak with Jessy but was taken aback by the way that Jessy reacted.
30. It was put to him that when they saw Jessy, he told him to get into the truck. He replied that no, he only called Jessy but Jessy responded with swearing. It was put to him that Jessy's instructions were that they parked the truck at Peter Chan store, Jacky got out of the truck and spoke with Jessy. He replied, "No." It was put to him that Jessy did not swear at him at all. He replied, 'He swore!' ("*Hemi swear!*").
31. It was put to him that Jessy only pointed at you with the knife and told you to get back in the truck. He replied, "No." It was put to him that he did not tell Jessy why he would take him. He replied, 'I called him only. I called out, "Jessy" ("*Mi singaotem hem nomo. Mi singaot, Jessy*"). It was put that then he told Jessy to get into the truck. He replied, 'No. I did not tell him to get into the truck!' ("*No. Mi no talem se go insaed lo truck!*").
32. It was put to him that after he got out of the truck and told Jessy to get into the truck, Jessy was confused and pointed the knife only at him but did not make the knife touch him. He replied, 'No! He touched me with the knife' ("*No! Knife I fas lo mi*").
33. He agreed that he did not get an injury on his neck. He said that Jessy did say threatening words to him. He denied that he and Manaseh went to hassle Jessy. He repeated that he only wanted to speak with Jessy and called out "Jessy" only. He denied that Jessy acted in self-defence. He said that Jessy threw more than 3 cans of food outside at them. He

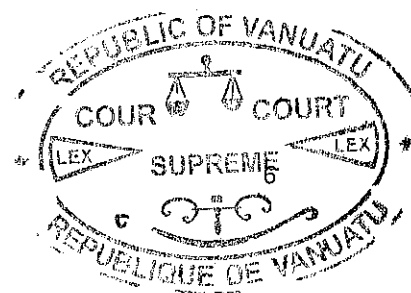


maintained that Jessy said threatening words against both him and Manaseh. He maintained that Jessy swore at them.

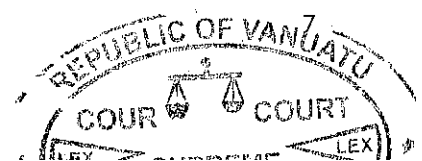
34. He denied visiting Jessy at Cell No. 6 the next day. He said that he and other officers only removed Jessy from the cell to go to Court. He denied that he and another officer went to the cell, that he stood on the bed and urinated on Jessy's chest and then they assaulted Jessy. He denied knowing or seeing the other officer hit Jessy's forehead and his right ribs. He denied doing so because he was angry with Jessy and that he was not telling the truth in Court because he was scared of losing his job.
35. In re-examination, he stated that he and other officers went to see Jessy in Cell No. 6 to take him to the Magistrates' Court. He said that he and Manaseh went to Jessy because he knows Jessy and to tell Jessy to leave for Manaseh's children's safety and the safety of Manaseh's kava bar customers.
36. I accepted that PC Lui was a truthful witness with one exception. I noted that no other witness was called to corroborate PC Lui's evidence as to what happened in Cell No. 6. Accordingly, I accepted PC Lui's evidence except as to the events at Cell No. 6.
37. The third Prosecution witness I heard from was **Jason Bulu**. He is a 21-year-old student from Maewo. He lives with Manaseh who is a father to him ('Daddy Manaseh').
38. In the afternoon of 24 February 2022, he was eating in Manaseh's kitchen. Jessy came to sell empty plastic bottles to Manaseh but Manaseh had already bought plastic bottles from someone else so told Jessy that he would not buy his bottles. Then Jessy came to the kitchen and said he would cut someone with a knife. Then he cut a chair with his knife and left.
39. Next thing they heard Heleno cry. They ran to see Heleno and saw Jessy holding her hair with his left hand and with his right hand, holding his bale knife to Heleno's neck. When Jessy saw them he let go of Heleno and ran out of the yard. He was a distance of the diagonal length of the Courtroom away from Jessy and Heleno.
40. He knows Jessy (pointing to him).
41. In cross-examination, he denied that Jessy had left his plastic bottles and bag beside a mango tree then looked for Jino. He said that Jessy continued holding onto his knife and brought it to the kitchen and cut the chair with it. He agreed that unlike in his statement to the Police, Jessy did not hold a hammer and stone too. He agreed that in his Police statement dated 25 February 2022, he did not name "Heleno", only doing so in his statement dated 27 April 2022. He stated that Jessy was cross because Manaseh did not buy his plastic bottles and then when he checked the pot in the kitchen and there was no food, he was even more cross. Benoit Ranson was also in the kitchen.
42. He maintained that Jessy was holding a knife. It was put to him that Jessy did not see Jino in his room next to the kitchen so had to go back around by the toilet where he saw Heleno and that Jessy was not holding a knife. He replied, "No! He was holding a knife in his hand" ('No! Hemi holem knife lo han blo hem').



43. It was put to him that Heleno's brother Jonas was the one who made her cry. He replied that no, Jessie was holding his knife to Heleno's neck so she cried; that they ran over and saw Jessie doing that. He maintained that when they ran over, Jessie was holding Heleno's hair tightly in his left hand and had the bale knife to Heleno's neck using his right hand. Then Jessie ran way, grabbing his bag and left the yard.
44. He denied that he and Manaseh made up a story against Jessie in revenge for Jessie cutting Manaseh later at the Chinese store. He repeated that he saw Jessie holding a knife to Heleno.
45. In re-examination, he stated that the "smol sista" (small sister) referred to in his 25 February 2022 Police statement was Heleno.
46. I accepted Mr Bulu as a truthful witness. He gave his evidence clearly and was consistent in his account, including in cross-examination. He readily agreed in cross-examination where his evidence in Court differed from his first Police statement and that he had only named Heleno in his second Police statement. I accepted his evidence.
47. The fourth Prosecution witness I heard from was **Benoit Ranson**. He is an 18-year-old mechanic school student from Maewo. He lives at Namburu with his uncle, Manaseh.
48. In the afternoon of 24 February 2022, they had squeezed the kava and were sitting around. Jessie arrived with plastic bottles to sell but they told him that Manaseh had already bought other plastic bottles. They continued to squeeze kava when they heard Manaseh's small daughter Heleno cry.
49. He, Jayson and Brandon ran over and saw Jessie holding Heleno's hair and putting his bale knife to her neck to cut it. He called out at Jessie because Jessie had his knife to Heleno's neck. Jessie let her go and ran out of the yard.
50. He knows Jessie (nodding towards him).
51. In cross-examination, he denied making a false Police statement. It was put to him that Jessie did not hold Heleno's hair or put a knife to her neck. He replied that no, they saw him. It was put to him that Jessie did not have any reason to act in such manner to Heleno. He replied that they heard Heleno cry. When they ran over, they saw Jessie holding her hair tightly and putting a knife to her neck.
52. It was put to him that Heleno was already crying when Jessie passed her. He replied that no, Jessie is lying – Heleno was playing then he went and put a knife to her neck causing her to cry. He maintained that Jessie walked into the yard holding his knife which he put to Heleno's neck.
53. It was put to him that Jessie only patted Heleno's hair then left without seeing anybody. He said, 'No! He was holding a knife with him that he put to Heleno's neck' ("*No! Hemi holem knife I kam mo putum lo neck blo Heleno*"). It was put to him that Jessie did not see anybody. He replied that no, they ran over and saw Jessie do that.
54. There was no re-examination.



55. I accepted Mr Ranson as a truthful witness and accepted his evidence. He gave his evidence clearly and was consistent in his account, including in cross-examination.
56. The fifth Prosecution witness I heard from was **Brandon Garae**. He is a 24-year old teachers college student. He is from Maewo. He lives at Namburu with Manaseh who is his uncle.
57. In the afternoon of 24 February 2022, he came back from school. He passed Manaseh and police officer Jacky who were sitting there and went to leave this bag in the house. Some boys were cleaning kava. There were 5 boys including him, Bulu and Ranson. He then went to the kitchen. Bulu and Ranson were at the kitchen. Jessy was there holding a bale knife and cutting at a chair with it. Jessy said that if he caught the person who had said something about him, he would cut and break his neck. Jessy had been saying the same thing since Monday 21 February 2022.
58. Jessy then left towards the place where they clean kava. Then he continued on to where Manaseh's children were playing. He said to the children, 'I will cut one of you with the knife' ("*Bae mi katem wan long yufala lo knife*"). When he heard Jessy say that, he looked over and saw the 2 bigger children run away to the kava cleaning place and heard the boys call out. He ran over and saw Jessy holding Heleno hair with his left hand and putting the knife to her saying, 'I will cut now, I will cut now' ("*Bae mi katem nao, mi katem nao*"). Heleno was just standing there, looking up at Jessy then crying because she was frightened. He called out strongly because he saw the knife and Jessy let her go and walked away to the kava cleaning place. Ranson too and Bulu called out at Jessy. He was the distance of the diagonal length of the Courtroom away from Jessy and Heleno.
59. Manaseh told us not to do anything or else Jessy might cut one of them or one of their customers with his knife.
60. He knows Jessy as he comes to sell empty plastic 1.5L and 600mL bottles to Manaseh.
61. In cross-examination, it was put to him that he made his Police statement on 25 April 2022 so his recollection was not as good over 2 months later. He replied that what he put in his statement was what he saw so it was always on his mind; what he saw was what he put in his statement. He confirmed that Manaseh was in the yard and witnessed what Jessy did.
62. It was put to him that Jessy entered the yard and left his knife inside his bag placed by the mango tree. He replied that no, Jessy held the knife with him inside the yard. It was put to him that Jessy came into the yard to look for Jino. He replied that Jino was one of the boys there making kava but Jessy did not approach him. It was put to him that Jino was not in his room so Jessy passed by the room and came to the kitchen but there was not anyone in the kitchen. He replied that no, Jessy lied.
63. It was put to him that Jessy then passed by the kitchen and went to near the bathroom which is where he saw Heleno. He replied that Jessy spoke with them then went to the place between the toilet and the kava bar ("*haos blo nakamal*").
64. He saw the 2 bigger children run away when Jessy told the children that he would cut one of them with the knife. Only the small girl Heleno stayed still so he held her hair and put the knife to her neck (demonstrating with his hands). When the 2 bigger children called out, he



ran over and saw Jessy holding Heleno like that and saying that he would cut her now. He called out but he was scared too that Jessy would cut Heleno or one of them or one of their customers.

65. It was put to him that when Jessy got to the children, Heleno was already crying so Jessy patted her head and walked off. He replied that no, Jessy lied – the children were playing; when he threatened them, the 2 bigger children ran away leaving Heleno there. He agreed that he saw Jessy hold the knife to Heleno's neck.
66. He said that when Bulu and Ranson called out, he ran over because Jessy had already said that he would cut one of them. He ran over and saw Jessy holding Heleno's hair and with the knife to her which made him call out himself.
67. It was put to him that Jessy only held Heleno's head as she was already crying. He said no, Jessy lied – Heleno cried because of Jessy's action with the knife, frightening her and making her cry.
68. It was put to him that he said in his Police statement that he was not happy with Jessy who had been cross that there was no food in the kitchen. He replied that on 21 February 2022, he had cooked the rice but not yet the soup. Jessy came to the kitchen and asked for food. He told him that the rice was cooked but the soup not yet. Jessy started forcing him to hurry up and cook the soup. He responded by telling Jessy that he was not his employee so how about Jessy take some of his money earned from selling plastic bottle and go and buy tinned fish to eat with the already-cooked rice instead of buying marijuana with it. He agreed that because of what he said, Jessy went outside and was cutting at the mango tree and swearing at him because of what he said about buying a can of tinned fish rather than buying marijuana.
69. He denied that he made up a story about what Jessy did to Heleno because he was not happy with Jessy.
70. In re-examination, he stated that the 3 children playing were 3 of Manaseh's children – Heleno, Jonas and Jiliana.
71. I accepted Mr Garae as a truthful witness and accepted his evidence. He gave his evidence clearly and was consistent in his account, including in cross-examination.
72. The last Prosecution witness I heard from was **Manaseh Silli Aru**. He lives at and runs a kava bar at Namburu area. He has 4 children – Jiliana, Jonas, 3-year old Heleno and Esuva is the last born.
73. In the afternoon of 24 February 2022, he was at his kava bar with the boys who have already given evidence to the Court and customers when Jessy arrived. He had a knife with him and was hitting it on chairs and the wall of the house, and made threats to the boys and Heleno. He saw Jessy hold Heleno's hair and put his knife to her.
74. When Police officer Jacky arrived, he told Jacky that Jessy had just left still holding his knife but he did not feel safe because of the threats he had made and could Jacky help by handcuffing Jessy and taking him away? Jacky said yes. They drove in Manaseh's truck and



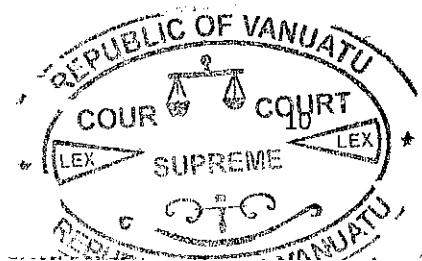
stopped at Peter Chan store. Jacky called out to Jessy who responded by swearing at Jacky and pointing his knife at Jacky and said don't move – if you move, I will cut your head off (*"Yu no mov. Yu mov mi kateam aot head blo yu"*). Jacky hurriedly backed away from the knife but Jessy ran to cut him so he came out of the truck and called out at Jessy. Jessy ignored him so he grabbed a piece of firewood from the store-front and threw it at Jessy to disturb him.

75. Jessy turned away from the police officer and came for him with the knife. Jessy was 3 metres away from him. Jessy swore at me and told me that today, he would knife Manaseh to death (*"Manaseh, tedei bae mi katem ded yu"*). Jessy looked like he really wanted to cut someone. He felt that his family and he were not safe. He used the firewood to hit the knife out of Jessy's hand but the knife slipped and cut his inner left forearm.
76. Jessy attacked him a second time. Jacky used some firewood to disturb Jessy but Jessy cut him (Manaseh) from his neck to his left shoulder.
77. He knows Jessy. Jessy has come to his house a lot and stayed at his house. He knows Jessy as homeless but doesn't know his family. Sometimes Jessy asked him to buy empty plastic bottles from him and he would so then Jessy started coming daily to his house.
78. In cross-examination, he agreed that Jessy would stay at his house and eat from his kitchen. He had become like family to them. He denied that Jessy would play with his children or give them sweets. He saw what Jessy did to Heleno, holding her hair and putting his knife to her neck.
79. He filed a report with the Police the very next day. His statement dated 24 April 20o22 named the child as "Jiliano" because the Police officer incorrectly wrote that. He only noticed the error when he received a copy of the statement with his summons to attend Court. He denied the error was due to him not seeing what Jessy did to Heleno – that he was at the yard and saw Jessy.
80. He stated that when Police officer called to Jessy to come speak with him, Jessy told him to go back inside the truck and not to touch him or he would cut off his head (*"Yu go back inside lo truck. Yu no tajem mi or bae mi katem aot head blo yu"*).
81. He said that Jessy was lying to say that he only pointed his knife at Jacky but did not say anything to him. He also said that Jessy was lying that he wanted to walk away from the two of them but was surprised that Manaseh held a piece of firewood and approached him with it. He said that Jessy was lying that Jessy was going to ask him what he had done to them when Manaseh hit his eye with the firewood. He said Jessy was going to cut him so he threw the firewood to block the knife and it hit Jessy's eye.
82. It was put to him that after hitting Jessy in the eye and making him bleed, Jessy saw the Police officer too grab firewood so he went in the store. He replied no, the Police officer just grabbed firewood after he cut me. He said that Jessy lied that he did not swear at both of them and did not tell him (Manaseh) that he would kill him. He denied that Jessy acted in self-defence after Manaseh struck him in the eye – he said that Jessy threatened him and his family starting from 21 February until Jessy cut him with the knife and he had told the Police officer that he and his family and yard were not safe from Jessy who was threatening

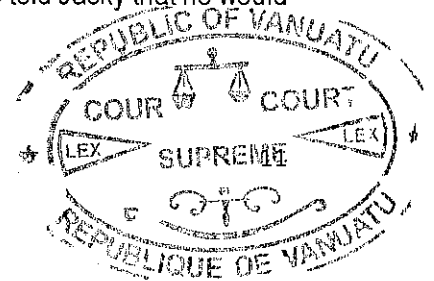


them. He denied making up a story about Jessy holding a knife to Heleno because he was not happy with Jessy – he said that what he said was true, it was not a made-up story.

83. In re-examination, he stated that the reason why he was not happy with Jessy was he had provided for Jessy, fed and clothed him and Jessy had acted as he did towards him and his family.
84. I accepted Mr Aru as a truthful and accurate witness and accept his evidence. His evidence was comprehensive but concise. He did not say in evidence in-chief about striking Mr Bakeo in the eye but readily accepted that in cross-examination. He explained that that happened when he was blocking the knife with the firewood. Otherwise his evidence was consistent with that of the other Prosecution witnesses.
85. That was all of the evidence for the Prosecution.
86. **Mr Bakeo** elected to give evidence. He is 28 years old, from Ambae. He is single and lives in Vila. His parents live at Santo. His siblings live here in Vila.
87. On 21 February 2022, he took empty plastic bottles to sell to Manaseh for his kava business at Namburu area. He knows the boys there who help prepare kava – Bulu, Brandon, Jino and Max. They all live with Manaseh. He came to know them through selling plastic bottles to them. Manaseh's wife gave him clothes and they all call him to the kitchen to eat. He ate with them on 21 February. There was nothing to spoil his relationship with the boys before 24 February.
88. On 24 February 2022 afternoon, he went to Manaseh's house to check Jino for tobacco leaves which they smoke. He had with him his bag of plastic bottles and a shopping bag which had his small bale knife and some clothes inside. He left the plastic bottles beside the mango tree. Jino was not in his room so he went around behind the house and saw the small girl crying by the toilet. He patted her head then left, got his knife from his shopping bag and took it and the plastic bottles with him to go to Seven Star to sell his plastic bottles there. He passed Manaseh and police officer Jacky sitting down talking. He did not see anyone inside the kitchen. No one saw him put the plastic bottles at the mango tree. He does not know if anyone saw him put his shopping bag in the kava bar ("*nakamal*").
89. When he got to the Chinese store, Manaseh and Jacky arrived in Manaseh's truck to speak with him. Jacky called him to get into the truck. He pointed the small knife at him and said no, you get into the truck. He was turning to go to Seven Star when Manaseh got out of the truck and ran for the bundle of firewood at the front of the store. He saw that Manaseh was going to hit him with the firewood so he asked, what did I do to you? ("*Mi mekem wanem lo yufala?*"). Instead of answering him, Manaseh hit his eye with the wood. Blood started running down his face from the hit to his eye. After that, he cut Manaseh's hand so that Manaseh would not hit his head with the wood then he (Jessy) ran into the store. Jacky stood outside the store with a piece of firewood to hit him with.
90. He did not say anything to Manaseh and Jacky before Manaseh hit him with the firewood.



91. Inside the store he took some cans of pork and threw the cans at them outside. Then he took 2 long knives to cut them with but Jacky hit his hand and the knife fell out of his hand. Then he ran inside the store and stayed there until the Police arrived and arrested him.
92. The next day, 25 February 2022, he was in Cell No. 6. Jacky and another officer came to Cell No. 6 and hit him before taking him to Correctional Services. Jacky stood on the bed and urinated on him. They hit him, he fell onto the floor then they kicked him. He does not know how many times he was kicked as he was blocking his head with his hands so the kicks landed on his hands and chest.
93. He knows Jacky from when he was selling plastic bottles to Manaseh's kava bar.
94. In cross-examination, he agreed he went to Manaseh's house on 21 February 2022 to sell plastic bottles. He agreed he went to the kitchen where he met Ranson who had already cooked rice. He denied forcing Ranson to hurry up and cook the soup. He agreed that Ranson told him to take his money to buy a tin of fish to eat with the rice. He denied feeling cross with Ranson for telling him to go buy a tin of fish.
95. He agreed that on 24 February, he went again to Manaseh's house to sell bottles but Manaseh had already bought other bottles. He stated that he has other people too that he sells bottles to. He denied that there was anyone in the kitchen. He denied holding his knife. He denied telling Bulu that he would cut someone. He denied using his knife to cut at the chairs in the kitchen.
96. He agreed that when he went round the house he came to Jiliana, Jonas and Heleno playing. He denied telling them that he would cut one of them with the knife. He denied that when he said that, Jonas and Jiliana ran away. He agreed that Heleno alone stayed as she is small. He denied holding onto her hair with his left hand and putting the knife with his right hand to her neck and saying he would cut her now. He denied that Heleno cried because he put a knife to her neck. He denied threatening to cut Heleno's neck. He denied meaning to cut her neck. He denied that the young boys came running and called out at him because they saw him with the knife to Heleno's neck to cut her. He denied that but for them calling out at him, he would have cut Heleno's neck.
97. He said that Jayson Bulu lied that he had held a knife in his hand. He said that Benoit Ranson too lied that he saw him holding a knife in his hand. He said that Brendon Garae too had lied that he had a knife in his hand. He said that the 3 lied that he held a knife and that he put it to Heleno's neck and said that he would cut her. He said he had left his knife in the kava bar. He denied that he ran away when the boys called out at him.
98. He agreed that at Peter Chan store, Manaseh and Jacky arrived in the truck for Jacky to talk with him. He said maybe they came to talk about him putting the knife to Heleno's neck but that didn't happen. He agreed he was only 1 metre away from Jacky. He agreed that he pointed his knife at Jacky for Jacky to get back into the truck. He denied telling Jacky that if he moved, his neck would be cut. He said that he only pointed the knife at Jacky and told him to get back in the truck. He said Manaseh and Jacky lied that he told Jacky that he would cut his neck. He denied that he was the one lying.

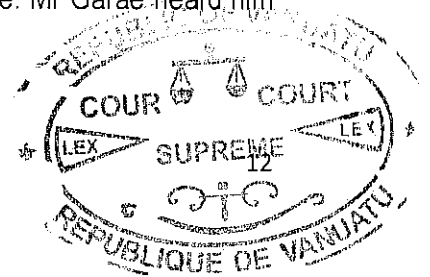


99. He denied going after Jacky first – that he went for Manaseh first to ask him what he had done to him? Manaseh didn't answer him but hit his head. He denied that Manaseh hit him with the firewood because he cut him with the knife. He agreed though that he cut Manaseh then the knife slipped on the firewood and cut Manaseh's hand. He denied telling Manaseh that he would cut him dead or that he would cut his neck.
100. He said that he had only touched Heleno's head – that he patted it.
101. He stated that Jacky did kick him at the Police station. It was put to him that the other Police officer was the one who kicked him at the Police station. He said maybe so but he had his eyes shut, blocking the kicks with his hands, so he didn't see who exactly was kicking him. He stated that Jacky did urinate on him. He said that Jacky lied that he didn't do so. He said he was telling the truth about that. He denied attempting to cut Heleno's neck, that he didn't do so because he was disturbed by the young boys, threatening to cut Jacky and then Manaseh and that he did so because he was cross that Manaseh didn't buy his plastic bottles and because there was no food in the kitchen.
102. Mr Bakeo's denials were many but there was no other witness called in defence to provide independent evidence corroborating his version of events as to the matters subject of the charges against him. He admitted pointing the knife at Jacky who was only 1 metre away from him and telling Jacky to get back in the truck. He admitted cutting at Manaseh resulting in a cut to Manaseh's arm. In the face of these admissions and the evidence to the contrary from the Prosecution witnesses, I determined that his evidence should be accepted only where there was some independent credible support of it, with one exception.
103. The exception was Mr Bakeo's evidence as to what PC Lui and another Police officer did to him at Cell No. 6. No witness including a Police officer was called to rebut this evidence and the Prosecution could easily have done so. Accordingly, I accepted Mr Bakeo's evidence as to what happened at Cell No. 6.

D. Discussion

Charge 1 – Attempted intentional homicide

104. Heleno was a very young witness to give evidence in Court. However, she did so clearly, telling me that Jessy said he would cut her with a knife, that he was holding a knife and he put the knife to her neck.
105. Heleno's evidence was admitted under subs. 83(2) of the *Criminal Procedure Code*, therefore there must be other corroborating evidence before Mr Bakeo can be convicted.
106. Four witnesses gave corroborating evidence. Their accounts were consistent with Heleno's and with each other. Mr Bulu, Mr Ranson, Mr Garae and Mr Aru gave evidence that they saw Jessy holding Heleno's hair with his left hand and had his knife with his right hand to her neck. They all called out at Mr Bakeo and then he let go of Heleno. This happened after they had heard Mr Bakeo threatening to cut someone with the knife. Mr Garae heard him make that threat on 21 February and again on 24 February.



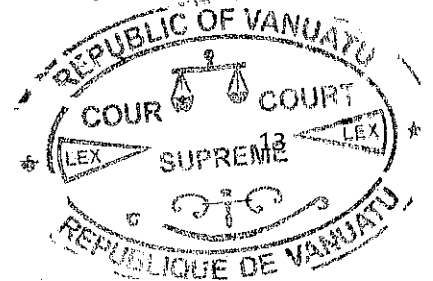
107. Mr Bakeo denied putting his knife to Heleno's neck but this flew in the face of the eye-witness accounts given by the Prosecution witnesses. Further, Heleno is of a very tender age to be giving evidence in Court. However, she did come to Court with her parents' support and gave her harrowing evidence. I considered the inherent likelihood of her account was that what she and the other witnesses said had happened did happen and that they wanted the Court to be told so that Mr Bakeo could be held to account.
108. I find it proved that Mr Bakeo holding Heleno's hair tightly in one hand and putting his knife to her neck using his other hand was an attempt at an act intended to cause Heleno's death. Mr Bakeo had been saying since 21 February 2022 that he would cut someone with a knife. Mr Garae gave evidence that he heard Mr Bakeo say to the children that he would cut one of them with the knife. I find therefore that Mr Bakeo's actions towards Heleno went beyond just thinking or talking about knifing someone. He acted with a premeditated design to kill Heleno.
109. The act if it was carried out (cutting Heleno's neck) would have resulted in her death except that the boys prevented Mr Bakeo from doing so. Charge 1 has been established beyond reasonable doubt.

Charge 2 – Threat to kill Heleno

110. Heleno gave evidence that she knows Mr Bakeo and that he said he would cut her neck.
111. Heleno's evidence was admitted under subs. 83(2) of the *Criminal Procedure Code* therefore had to be corroborated by other evidence before Mr Bakeo can be convicted.
112. Mr Garae gave corroborating evidence that he heard Mr Bakeo say that he would cut Heleno's neck now.
113. I find it proved that Mr Bakeo directly caused Heleno to receive an oral threat to kill her and that Mr Bakeo intended Heleno to receive the threat. As Mr Bakeo was holding a knife to Heleno's neck, I find it proved that Mr Bakeo knew the content of the threat. Charge 2 has been established beyond reasonable doubt.

Charge 3 – Threat to kill PC Jacky Lui

114. It was accepted that Mr Bakeo pointed his knife at PC Lui and told him to get back inside the truck. He was only a metre away from PC Lui. Both PC Lui and Mr Aru heard Mr Bakeo say while pointing his knife at PC Lui words to the effect of threatening to cut off his head. I find it proved that Mr Bakeo directly caused PC Lui to receive an oral threat to kill him and that Mr Bakeo intended Jacky to receive the threat.
115. As Mr Bakeo was holding his knife to PC Lui within 1 metre of him, I find it proved that Mr Bakeo knew the content of the threat. Charge 3 has been established beyond reasonable doubt.



Charge 4 – Threat to kill Manaseh Silli Aru

116. Both Mr Aru and PC Lui heard Mr Bakeo say to Mr Aru words to the effect that he would cut Mr Aru's (Manaseh's) head. I find it proved that Mr Bakeo directly caused Mr Aru to receive an oral threat to kill him and that Mr Bakeo intended Mr Aru to receive the threat.

117. As Mr Bakeo had just pointed his knife at PC Lui and threatened to cut off PC Lui's head, then made a similar threat to Mr Aru, I find it proved that Mr Bakeo knew the content of the threat. Charge 4 has been established beyond reasonable doubt.

E. Result

118. Mr Bakeo is convicted as charged in Charges 1-4 (inclusive).

**DATED at Port Vila this 25th day of January 2023
BY THE COURT**

.....
Justice Viran Molisa Trief

