

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

Criminal
Case No. 24/1246 SC/CRML

PUBLIC PROSECUTOR

V

LEON BURORO

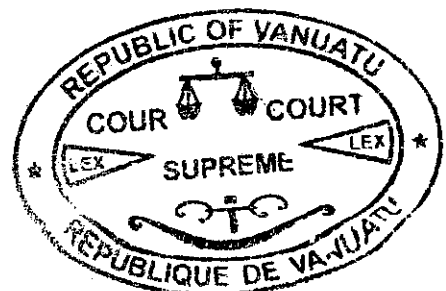
Date of Plea: 17 June 2024
Date of Sentence: 24 September 2024
Before: Justice M A MacKenzie
Counsel: Public Prosecutor – Ms F Sewen (Holding papers for Ms SR Langon)
Defendant – Mr KS Amos (Holding papers for Mrs K Karu)

SENTENCE

1. Mr Leon Buroro, you appear for sentence in relation to charges of intentional assault causing permanent injury contrary to section 107 (c) of the Penal Code [CAP 135] and domestic violence contrary to sections 4 and 10 of the Family Protection Act.
2. The maximum penalties for the offences are;
 - a. Intentional assault causing permanent injury -10 years imprisonment.
 - b. Domestic violence- 5 years imprisonment and/or a fine not exceeding VT 100,000.

The Facts

3. The victim is your 13-year-old nephew. The complaint was made by another family member, your brother Albert Buroro.



4. On 7 December 2023 at about 11 pm you and your brother drank kava together at his house. You went back to your house but felt your body was too heavy. You returned to your brother's place and asked him to give you a knife for security. You went home again but visited your brother a second time with your wife, saying your body still feels heavy. Family members accompanied you back to your house and they saw you put salt on your head and your wife's head. After that you washed your head and went back to your brother's along with the children at your house.
5. Your brother heard you calling out the victim's name and he heard a loud crack. He saw the victim fall to the ground and also that you were holding the knife as you were running away. The victim was injured, and was taken to hospital. There are two medical reports which show that the victim sustained serious injuries, including a deep laceration through to the oral cavity, a fractured jaw, severe blood loss, a wound of approximately 15 cm. The most recent report notes likely permanent damage as a result of this incident, including a scar on his left cheek, and jaw deformity.

Sentencing purposes/principles

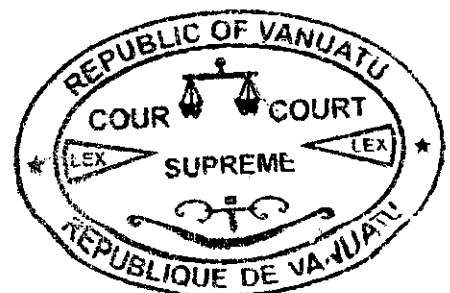
6. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

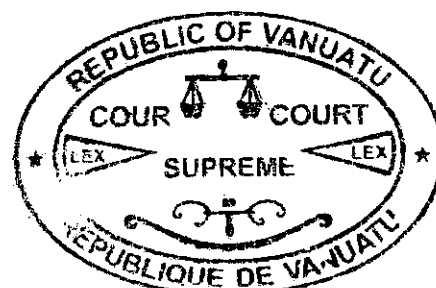
7. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

8. The first step is to set a starting point, taking into account the aggravating and mitigating factors of the offending and with reference to the maximum penalties for the offences.
9. The aggravating factors are:
 - a. This was an attack to the head, the most vulnerable part of the human body. You stabbed the victim to the cheek and jaw area.
 - b. The use of a weapon, a knife. A knife is capable of inflicting lethal harm.
 - c. This was unprovoked, gratuitous violence.



- d. The breach of trust – the victim is your nephew.
 - e. The offending occurred in the home where the victim should be able to feel safe and secure.
 - f. The victim was vulnerable because of his age.
 - g. The harm caused to the victim. The fact of a permanent injury is part of the charge. However, this must have been a frightening incident which has resulted in long term physical consequences for the victim. His mother says he is scared of you
10. There are no mitigating features of the offending itself. In the defence written submissions, there is a suggestion that this was unintentional. You sensed a witchcraft spirit in the form of a black dog. You swung the knife once thinking it was the dog. I disregard this submission. Firstly, you pleaded guilty to a charge of intentional assault and second, none of these matters form part of the summary of facts you accepted when you pleaded guilty.
11. Counsel have both referred to a number of cases to assist the court in setting the starting point. The prosecutor submits that the appropriate starting point is 3 to 6 years imprisonment for the lead offence, which is the assault charge. Ms Karu submits that the appropriate starting point is 2 years imprisonment.
12. The cases which are of most assistance are *Public Prosecutor v Qon* [2018] VUSC 140 and *Public Prosecutor v Nocklam* [2020] VUSC 253. That is because both cases involve the use of a knife to inflict injuries in a domestic context. In both cases the starting point adopted was 5 years imprisonment. In *Qon*, the victim was the defendant's sister-in-law. The defendant struck the victim with the back of a bush knife, which resulted in serious injuries. It was an unprovoked attack. In *Nocklam*, the victim was the defendant's partner. He struck her to the leg and then the head with a large knife. She suffered a 7-8 cm laceration to her head and the cut to her leg had exposed the bone and she had a type of leg fracture. I do not accept that the offending in the present case is less serious than either of those cases, given the offending here involved an unprovoked attack to the head, the use of a knife, the vulnerability of the victim due to his age and the serious nature of the injuries.
13. Taking the aggravating factors I have referred to into account, together with the cases I have just referred to, I adopt a global starting point of 5 years imprisonment.

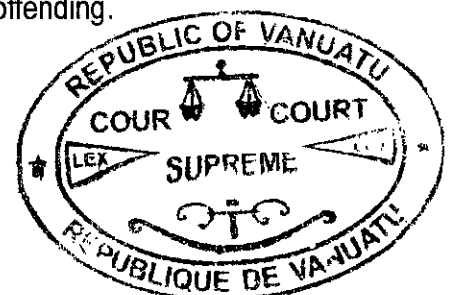


Step Two - guilty plea and personal factors.

14. You did not plead guilty at an early opportunity. A trial date was set. You indicated that you wished to plead guilty about 6 weeks prior to the trial date. It did save some time and resources, but the plea did not come early. The sentence is reduced by 15 % for the guilty plea, which is 9 months.
15. You are aged 30 years, and a first offender. You are from Ambrym. Currently you are living in Port Vila. You have a partner and three children and are self-employed. Your brother describes you as a troublemaker. Your chief says that you are a good man in the community. There has not been a custom reconciliation, but you are willing to do so. You say you are sorry for your wrongful actions.
16. Taking into account that you are a first offender, and that you are sorry for your actions, the sentence is reduced by 6 months, which is approximately 10 percent.
17. You were remanded in custody for 1 month 10 days, from 11 December 2023- 22 January 2024, an effective sentence of 2 months 3 weeks imprisonment. The sentence is reduced by 2 months 3 weeks for that factor.

End sentence

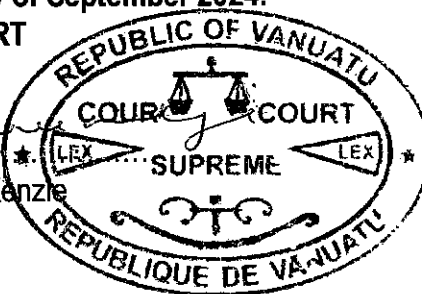
18. The end sentence is 3 years 6 months 1 week imprisonment for the lead offence of intentional assault causing permanent injury. There is to be a concurrent sentence of 1 years imprisonment for the domestic violence charge.
19. I am asked to suspend the sentence. The prosecutor does not appear to oppose this but submits that community work and supervision should be imposed if the sentence is suspended. Under s 57 of the Penal Code, I must have regard to the circumstances, the nature of the offending and your character. This is a serious incident, involving the use of a knife and the victim was vulnerable. Those factors point away from suspension. I also take into account that you are a first offender, have support from your chief, are sorry and are willing to perform a custom ceremony, which all favour suspension. This is finely balanced, given the seriousness of the offending. An immediate sentence of imprisonment is warranted, according to *Tari v Public Prosecutor* [2011] VUCA 26. However, I will step back from an immediate imprisonment sentence given you are a first offender and have the support of your chief. Suspending the sentence, in combination with community work and supervision will meet the need for accountability, deterrence and denunciation.
20. The sentence is to be suspended for 2 years. You are warned that if you are convicted of any offence in the next 2 years, that you will be taken into custody and serve your sentence of imprisonment as well as the penalty for the further offending.



21. In addition, you are sentenced to 2 years supervision to assist with your rehabilitation and 100 hours community work. While the Prosecutor submits that a term of 3 years supervision would be appropriate, the maximum term is 2 years.
22. I make an order for destruction of the knife.
23. You have 14 days to appeal.

**DATED at Port Vila this 24th day of September 2024.
BY THE COURT**

Mackenzie
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Justice M A Mackenzie

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COURT" and "COURT" are positioned on either side of the scale, with "SUPREME" below them. Two small triangles containing the word "LEX" are also present, one on each side of "SUPREME".