

BETWEEN: Public Prosecutor

AND: Nakou Iauko

Defendant

Dates of Plea: 22nd April 2024

Date of Oral Verdict: 29th day of April 2024

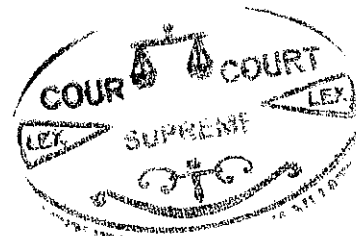
Before: Justice Oliver A Saksak

*Counsel: Ms Florence Sewen for Public Prosecutor
Mr Harrison Rantes for the Defendant*

SENTENCE

Introduction

1. Nakou Iauko pleaded guilty to one count of unintentional harm causing death (section 108 (b)) of the Penal Code Act [Cap 135]. And the defendant is called up for sentence today.
2. The defendant drove a Black Nisan Patro Reg TP 1803 on 2nd October 2021 under the influence alcoholic Liquor. He had about 12 passengers on the truck at the time namely Chris Lume, Geo Missiv, Jimmy Naio, Ronoi Kamin, Iamak lawilum, Nixon Litlet, Hepe Furo, Nuanu William, John Ken, Jackson Kawas, Titus Sam and Namat Nalu who died as a result of the accident.
3. At Lamauk Bridge the defendant lost control of the vehicle which collided with the railing of the bridge causing the passengers to fall out of the vehicle. Namat Nalu fell out of the truck and hit his head on the bridge. He was taken to the Lenakel Hospital but died later as a result of the serious injuries he had sustained. The other passengers namely Geo Missiv, Jimmy Nalu, Hepe Furo, Nuanu William, John Ken and Titus Sam all suffered minor injuries as a result of the accident. However Nixon Litlet sustained a fractured right arm.
4. The defendant had accepted those facts. There are no mitigating circumstances for his offendings. He is convicted and sentenced on his own plea.
5. The maximum penalty for an offence under section 108 (c) is 5 years imprisonment and for an offence under section 108 (b) the maximum is 2 years imprisonment. I bear and take account of these maximum penalties in considering sentence.



6. Next I consider the aggravating features which were that the defendant was drunk and he drove under the influence of liquor. And he took on a big number of passengers about 12 in all. As the driver it was his responsibility to ensure he did not carry the number of passengers he was authorized to carry. The collision on a bridge infers the defendant drove recklessly.
7. For comparative purposes I have been referred to the cases of PP v Moli [2018] VUSC 89 and PP v Massinglow [2023] VUSC 47 by the Prosecution. Defence Counsel also referred to the same 2 cases plus the case of PP v Nockac [2023] VUSC 164 and the Court of Appeal case of Kalfau v PP [990] VUSC 9.
8. In my view this case falls in the middle of the cases of Moli and Massinglow cases. And the appropriate level of sentences in similar circumstances but with slight variations are helpfully set out by the Court of Appeal in the Kalfau case.
9. Having said all that, I consider that the appropriate punishment the Court should impose on the defendant is to be a custodial sentence which I set as follows-
 - a) For unintentional harm causing death- Count 1- 3 years imprisonment as a start sentence.
 - b) For unintentional harm causing permanent injury- Count 2- 12 months imprisonment as a start sentence.These sentences are to be served concurrently. The total sentence shall therefore be 3 years imprisonment.
10. In mitigation I consider first the defendant's guilty plea. I allow the full 1/3 reduction of 12 months leaving the balance of 2 years imprisonment. Further I allow a reduction of 6 months for the custom reconciliation he performed, together with his other personal factors disclosed in his pre-sentence report. That leaves his end sentence to be 1 year 6 months or 18 months imprisonment.
11. Finally I consider the circumstances and nature of the offendings and the offender who is a first time offender, that his end sentence of 18 months be suspended under section 57 of the Penal Code Act. The suspension period shall be for 2 years on good behaviour. That means the defendant must be offence free for the next 2 years. If he commits any other offence for which he would be charged and convicted, he will expect to go to prison and serve out his sentence of 18 months imprisonment.
12. That is the sentence imposed by the Court on the defendant. Should he wish to appeal, he must do so in the next 14 days.

DATED at Isangel this 29th day of April 2024

BY THE COURT

.....
Hon. Oliver A Saksak
Judge

