

**IN THE SUPREME COURT**  
**OF THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

CRC 30 - 2002

Criminal Case No. 30 of 2002.

**PUBLIC PROSECUTOR**

-v-

**WILLIE KALORIS**  
**MOISE KALORIS**

**JUDGMENT**

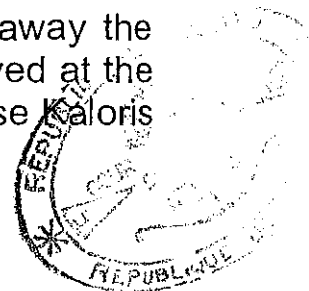
Willie Kaloris was a candidate for the general election this year. In the evening of 8<sup>th</sup> April one of his posters was put up outside the Café du Village restaurant. It was placed over the menu board. The restaurant owner Christophe Rodot removed the poster. This case arises out of those facts.

Moise Kaloris is charged with Intentional Assault contrary to Section 107 (b) of the Penal Code in that *"Moise Kaloris yu blong Tongoa samtaem long namba 9 April 2002 long Café du village yu bin assaulthem CHRISTOPHE RODOT mo long taem ia yu bin forcem hem blong kakae wan pepa"*.

Willie Kaloris is charged with Demanding Money with Menaces contrary to Section 132 of the Penal Code in that *"Willie Kaloris yu blong Tongoa samttime long namba 9 April 2002 long Café du Village yu bin demandem man ia CHRISTOPHE RODOT se bae hemi payem yu VT20,000. Long taem ia yu bin fightem counter blong restaurant ia mo yu bin threatenem hem blong bre-breakem every samting long restaurant sippose hem ino givim money long yu. Long taem ia yu mekem se hemi fright tumas long yu mo givem yu wan cheque blong VT20,000"*.

Willie Kaloris faced three other charges, counts 3 to 5. These have been dismissed.

The prosecution say that Rodot took down and folded away the poster. On the morning of 9<sup>th</sup> April Christophe Rodot arrived at the restaurant with his girl friend. He was approached by Moise Kaloris



and about nine others. Moise Kaloris asked him if he was the restaurant owner and if he took the poster down. The tone of voice was unpleasant. When he said yes, he was punched to the side of the face, and pushed to the ground. Moise held his neck, pushed the poster into his mouth and made him eat it. Rodot's girl- friend tried to stop it. A man from a nearby shop intervened and Rodot was able to go inside. He was bleeding, shaking and frightened.

A short while later Willie Kaloris arrived. He was angry about the poster and hit the counter. Rodot tried to explain. Willie Kaloris said the poster cost him a lot of money. He should pay VT50,000 or his restaurant would be smashed up and if Willie Kaloris became foreign minister he would be deported. Rodot had no cash. He went home and got a cheque for VT20,000 and his girlfriend handed it over. It was cashed that day.

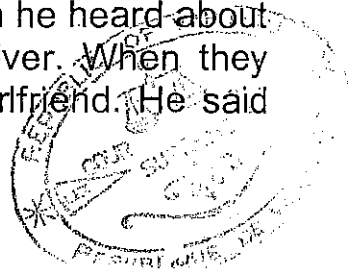
In interview with the police Moise Kaloris maintained his right of silence. Willie Kaloris in interview agreed he made the remark about deportation and also said "*An emi true mi bin demandem VT50,000 from posters blong mi. Be emi givim VT20,000 cash long wan cheque*".

That is the prosecution case.

Moise Kaloris denied the charge. The defence asserted that Rodot screwed up the poster and threw it in the bin. He made derogatory comments about Willie Kaloris. He instructed his staff to contact Kaloris and tell him to collect the poster.

The next day staff stopped Moise Kaloris in his taxi told him what happened, including the remarks, and returned the poster. (There might have been two posters). Moise said they asked him to get some boys, beat Rodot and throw him in the sea. The defence say there was bad feeling from the staff against Rodot. Moise Kaloris returned a short while later with three others. It was they who wanted to see Rodot. When he saw them attacking Rodot he intervened to stop them and Rodot clung to his legs for help. Rodot then pulled the poster from Moise and started to eat it. Moise tried to stop him. Rodot then went inside.

Willie Kaloris denied the charge against him. When he heard about the poster he went to the restaurant with his driver. When they arrived Rodot was behind the counter with his girlfriend. He said



he was a bit angry about the cost of his posters. He slapped the counter, but did not hit it. He told Rodot the posters had cost VT50,000. He agreed saying if he became minister he would deport Rodot. He denied making any threats or being threatening. He said Rodot suggested paying the VT20,000 to settle the matter. This was agreed and Rodot went off for the cheque. His girlfriend handed it over.

That is the case of each defendant.

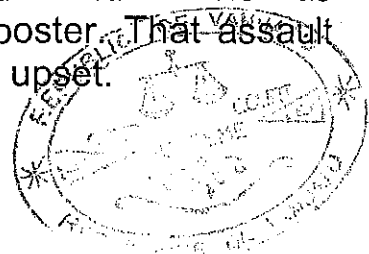
This is a criminal prosecution. Both defendants are presumed innocent unless and until proved guilty beyond reasonable doubt. I treat each count separately and each defendant separately, although they arise out of the same set of facts.

There is no dispute that Rodot was injured to the right side of his face and cut inside his mouth. There is no dispute Rodot gave Willie Kaloris a cheque for VT20,000 and it was cashed.

I look at the case of Moise Kaloris first. I am satisfied beyond reasonable doubt Moise Kaloris was the person with Rodot when he ate the poster. Emma Willie said it was him. Moise Kaloris said it was him. There is no suggestion anyone else was. The central question is whether the prosecution have proved beyond reasonable doubt Moise was the aggressor and not the person helping.

A portion of this trial has been taken up with suggestion that Rodot was a bad boss, who did not look after his staff and would sack them if they gave evidence against him.

With some reservations which I set out below, I accept the evidence of Rodot. I find he did remove the poster. He either put it folded under the counter or screwed it up and put it in the rubbish bin. He made some derogatory remarks about Willie Kaloris and his poster. The next day Moise was told of this by staff and the poster returned. He collected some others and returned to the restaurant to wait for Rodot. I do not find his presence there was chance or by way of just taking others. He was angry about the poster and angry about the remarks. When Rodot said who he was Moise assaulted him and made him eat the poster. That assault caused injury albeit not serious, and shock and upset.



Before coming to the conclusion I assessed carefully the evidence of Moise Kaloris and his witnesses. I did not believe him. It was clear he would say anything if he thought it helped his case or that of his co-defendant. At one stage he gave an answer to Willie Kaloris counsel. When questions were put again and he realised his answer did not help his brother he promptly changed it.

I do not believe him when he says Rodot himself took the poster and started to eat it. I do not believe him when he says he was trying to pull the poster out of Rodot's mouth. There is no reason why Rodot should turn against Moise Kaloris if Moise was the one who helped him.

The medical evidence showing injury to Rodot was unchallenged. Whilst the injuries were not serious, there was injury and shock.

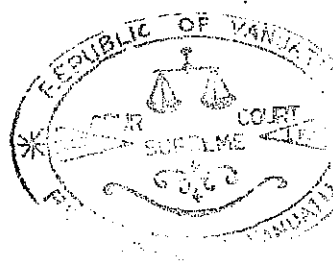
I find him guilty and convict as charged of the offence contrary to Section 107 (b) of the Penal Code.

Moise Kaloris asserted his good character in examination in chief. Leave was given to cross-examine upon his previous convictions. Neither assisted or influenced the assessment of the credibility of Moise in this case.

The only defence witness bearing upon Moise Kaloris case was Massing Boe. He was not present at the assault. He dealt with the handing over of the poster earlier by staff.

The defence say Emma Willie could not have seen the assault from where she was. It was suggested to her she was afraid of losing her job and had to support her boss. She did state Rodot threw the poster in the bin. She said she saw Moise hold Rodot by the neck. She knew Moise. She saw him push the paper in Rodot's mouth. She was afraid and went behind the restaurant. She was also afraid of the men with Moise.

In cross-examination she accepted matters which were inconsistent with answers she gave in chief to non-leading questions. In particular at one stage she said Moise was pushing the poster in and then pulling it out.



When the Court informed her she did not have to accept what was put in cross-examination to her, she then accepted some matters but rejected others.

I find her evidence is of limited value. She supports the fact it was Moise who pushed the poster in Rodot's mouth. I find she only accepted he then tried to pull it out as it was put firmly to her in cross-examination. In answers to the Court she did express concern about giving evidence and keeping her job.

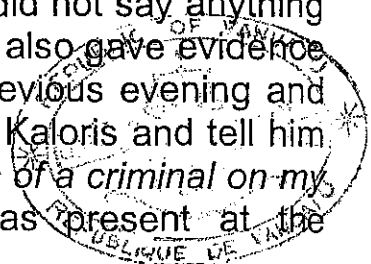
I do not rely on the evidence of Obed Daluan. When he saw there was trouble outside the restaurant he left. He said Moise was in the restaurant. It is undisputed Moise Kaloris was not in the restaurant.

I turn to the case of Willie Kaloris. There is no dispute he went to the restaurant and spoke to Rodot about the poster. Twenty thousand Vatu was handed over. Willie Kaloris said a print run of 200 posters cost VT50,000. This makes the costs of a poster VT250 although it would appear they were no more than photocopied A4 sheets.

Willie Kaloris says he received a message and went to the restaurant with his driver Morrison Alick. He said "*You know me*" and slapped the counter. It was not hard. He saw Rodot was shaking. Willie Kaloris said "*When I become Minister of Foreign Affairs, I will deport you from the country*". He saw a scratch on Rodot's cheek.

Willie Kaloris then told him his posters cost VT50,000. Rodot said "*I'll give you VT20,000*". This was agreed and Rodot went for the money. He denied actually asking for money and denied threatening to smash the place if money was not paid. He shook hands with Rodot's girlfriend. He said his statement to police wasn't the one in Court.

Morrison Alick, his driver, gave evidence in support. He said he (Morrison) didn't hit the counter. Willie Kaloris did not say anything about breaking up the restaurant. Glenda Alick also gave evidence in support. She related what happened the previous evening and said Rodot screwed up the poster, and to ring Kaloris and tell him to pick up his dirty poster. "*I don't want pictures of a criminal on my restaurant*". The next day Glenda Alick was present at the



conversation in the restaurant. She said there was no threat to smash up the restaurant. Rodot offered the money. It wasn't demanded.

Emma Willie in evidence heard part of the conversation. She said Kaloris spoke not too nice, not too rough.

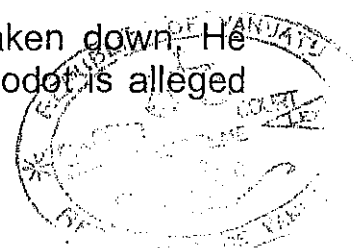
There is no explanation as to how Willie Kaloris came to hear about the poster incident. The fact is Moise Kaloris arrived with other men and Rodot was assaulted. A very short time later Willie Kaloris was present, saying his posters costs VT50,000 and making threats of deportation. Rodot was shaking. Morrison Alick the driver was present. He is a large, physically powerful looking man. He stood next to Kaloris at the counter. Eddie Willie, another well-built man and a relative of Kaloris, happened to be taking a video back over the road and was told by Kaloris to wait outside.

I must first assess carefully the evidence of Willie Kaloris. He said in evidence he did not ask for money. His statement to police was unchallenged. In that he stated "*An emi true mi bin demandem VT50,000 from posters blong mi*". He said that wasn't his statement. I don't accept that. It was his statement. He was asked twice in cross-examination what would happen if Rodot refused to give any money. Twice he did not answer the question and became aggressive. He was asked why Rodot was making the allegations if he happily handed over the money. Kaloris replied he was shaking. He denied threatening him.

I am satisfied beyond doubt that Kaloris did ask for money. It is absurd to suggest that request for money related purely to the value of the poster. At the very most a poster cost VT250, two cost VT500. The question arises why did Rodot offer VT20,000 and Kaloris accept that?

I find Rodot had been assaulted outside. He was shocked and shaken. Willie Kaloris with a large man stood in the restaurant in front of his counter requiring payment of money. Kaloris slapped the counter and made the deportation threat. On no showing could the money requested be in respect of 1 or 2 posters at VT250 each.

I find Kaloris was angry about his poster being taken down. He was also angry at Rodot concerning the remarks Rodot is alleged



to have said about him and relayed to him. Kaloris was also angry that rival candidates posters, put up in his area had not been touched whereas his poster had been taken down. There was no consideration of the fact one poster had been put over the restaurant's menu board.

I am satisfied beyond reasonable doubt Rodot felt very intimidated and for those reasons for the sake of his own personal safety and that of the restaurant he offered the VT20,000. It is difficult on the evidence to say whether or not Willie Kaloris actually made the threat to smash the place up. However, as there is a doubt as to whether the demand was actually made with menaces I must resolve it in the defendant's favour.

I do not reject the evidence of Glenda Alick. The prosecution accept she was present. It is clear though she had some animosity towards Rodot. She had not given a statement to the police, although she saw the whole incident inside the restaurant. There was a strong suspicion she had been spoken to about her evidence. She was first asked to give evidence a day or so before. Her recollection of events followed that of the defendant very closely.

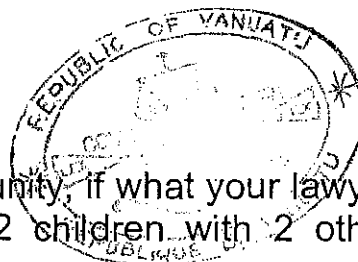
The behaviour of Willie Kaloris was threatening and did amount to a simple assault, the apprehension of violence. It is open under Section 109 (2) Criminal Procedure Code for me to convict of that. I will stay the proceedings against Willie Kaloris on the conditions he repays the VT20,000 to Rodot by 3 p.m. on 27<sup>th</sup> September (Section 43 of the Penal Code).

### **SENTENCE – MOISE KALORIS**

You have been found guilty of assault contrary to Section 107 (b) of the Penal Code Act. It is 3 ½ years since you were last convicted for assault. I take little regard of that earlier offence. I disregard the other matters.

I cannot give credit for a plea of guilty.

You have done many things for the community, if what your lawyer says is correct. You support your own 2 children with 2 other



children. You have several businesses and the trust of many people. That is to your credit.

I accept when you stated that morning you did not intend to commit an assault. I am satisfied by what you were told you were angry. You collected at least three other people and returned and waited for the restaurant owner. I don't know how long you waited. It might have been a short time. It might have been a long time.

As soon as he arrived and after two questions you assaulted him.

You deliberately waited for him and then assaulted him.

What make matters worse is you pushed the poster in his mouth and made him eat it. It doesn't matter if he swallowed it or not.

That was a nasty assault. That kind of assault means there should be a sentence of imprisonment. I find 4 months is the correct period. The question arises should I suspend it or not.

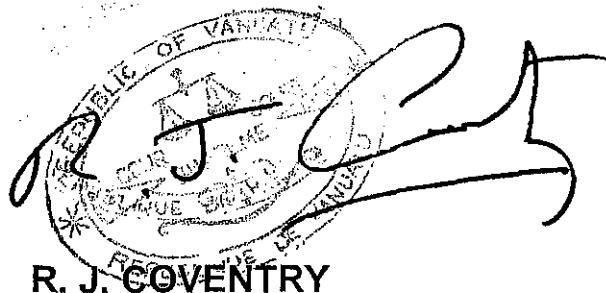
That is a very difficult question. I have no doubt Mr. Rodot thinks it should not be suspended. He is not a large man. His girlfriend was frightened.

I will suspend it, for 2 years. You will pay compensation of VT50,000 to Christophe Rodot. That must be paid by 31<sup>st</sup> October 2002.

Informed of rights of appeal.

**Dated at Port Vila, this 23<sup>rd</sup> day of September 2002.**

BY THE COURT

The image shows the official seal of the Republic of Vanuatu, which is circular and contains the text 'REPUBLIC OF VANUATU' at the top and 'REPUBLIC OF VANUATU' at the bottom. In the center of the seal is a coat of arms featuring a traditional Vanuatuan house and a palm tree. Overlaid on the seal is a large, handwritten signature in black ink.

**R. J. COVENTRY**

Jugde.