

**PUBLIC PROSECUTOR**

-v-

**JIMMY NOUWAI**

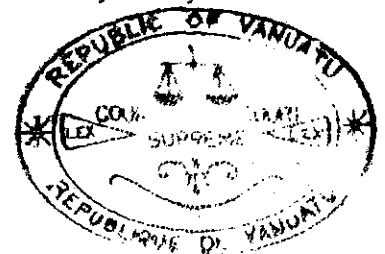
**Coram:** Justice Tuohy

Mr. Alain F. Obed for Public Prosecutor  
Mr. Yawha for Accused

**Date of Sentence:** 23 November 2006

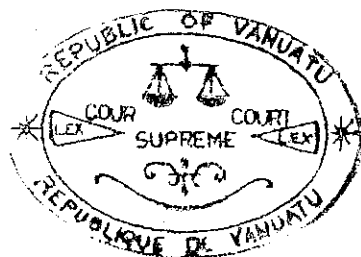
**SENTENCE**

1. Jimmy Nouwai you appear for sentence on 2 charges both arising from one incident that happened on the 14<sup>th</sup> of July 2006 on Erromango Island. One of the charges is intentional assault to which you pleaded guilty as soon as possible. The other charge is one under section 121 of the Penal Code of Threatening Language and again you pleaded guilty to that as soon as that particular charge was before the Court.
2. You met on the road a truckload of people returning from collecting wild mandarins. You believed that those mandarins had been taken from land belonging to your family by people who had no right to take them. You were very angry about this. Your anger was particularly directed against a woman who is an Auntie to you Wendy Tambou also known as Naimpin.
3. The driver stopped the truck beside you. He had the courtesy of stopping with the intention of explaining that he was too heavily loaded to give you a lift. Almost immediately and as a result of your anger, you struck Wendy with your



hand on the shoulder and then struck her a blow on the head in the eye area with a stick that you were carrying. You then used threatening language to her. While not amounting to a direct threat to kill her, the language you use was intended to frighten her by suggesting that she might be killed by someone else. She was frightened by the threatening language and I do not have any doubt that she had good cause to be frightened in the circumstances that she was facing at that time.

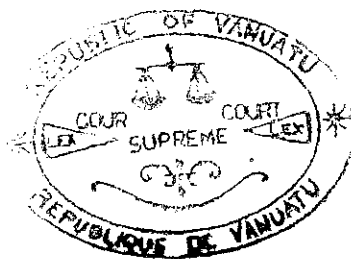
4. You are aged 27; you are married with one small child. You have no previous convictions. You are entitled to full credit for your pleas of guilty because you did plead guilty immediately to the intentional assault charge and immediately to the threatening language charge once the count was amended to that.
5. On your behalf Mr. Yawha eloquently expressed your apology to Wendy from the bottom of your heart and that apology was made directly to Wendy in the open Court. I urge her to accept that apology in the spirit in which it was been given. You have also offered to carry out a customary reconciliation ceremony at the Nakamal but the victim and her family are not open to that at least at this time. Under section 119 of the Criminal Procedure Code Act the Court in assessing the amount of penalty to be imposed is required to take into account any compensation made or due by the offender under custom and if, not yet determined to postpone sentence for such purpose. That is why I asked about the attitude of the victim and her family to that but since they are not open to that there is no point in postponing the sentence. However under the law I am required to take your offer into account.
6. It is accepted by the Prosecution that this charge of intentional assault falls under section 107 (b) of the Penal Code which provides that if the intentional assault results in temporary but not permanent injury there is a maximum penalty of 1 year imprisonment. Although it produced no permanent injury I am satisfied however that this was a heavy blow struck with a weapon. It was



heavy enough to cause Wendy to go to Vila Hospital and I note that she was in hospital, it must have been at least 1 night because she was admitted on 15<sup>th</sup> July and her police statement was taken there on 16<sup>th</sup> July. So I consider that although no permanent injury, it was quite a serious assault.

7. The charge under 121 of the threatening language carries a maximum of 3 years imprisonment as a penalty. I need to say something also about the underlying problem which is a land dispute which has caused bad feeling between families in the same small community, families that obviously have relationship connections with each other. I need to say that whose land these mandarins were taken from is not relevant to these criminal offences. There is no justification in the law for one person to assault and threaten another even if the person believes rightly or wrongly that the mandarins were taken from his land without right. That is not justification for hitting and threatening someone. Sadly there many land disputes in Vanuatu. Disputes which divide tribes, divide villages and divide even families. These disputes lead to bad feeling. It is very important to the peace and stability of Vanuatu that all people accept that these disputes must be solved peacefully in accordance with the law. The stability of Vanuatu would quickly be destroyed if everyone who had a land dispute used violence or threats in relation to it. I also call on people to exercise tolerance and forgiveness. Mr. Nouwai has done wrong. He has admitted that publicly. He has apologized publicly and shortly he will be receiving publicly a punishment for that. He should then be forgiven because life must go on in peace in small communities.

8. Mr. Yawha spoke to the Court very eloquently. He asked that any sentence of imprisonment be suspended and he gave reasons for that. I have to say though that there are some serious aggravating features to these offences. The first factor which makes this worse is that the victim was a woman and an older woman too and she is vulnerable as a woman and not able to protect herself from a strong young man. Secondly a weapon was used. A stick.



Although I am sure that Mr. Nouwai could damaged her more than he did, I am also satisfied that the blow was a very hard one, not quite enough to cause her to be unconscious but enough to require her to fly to Vila and stay in hospital at least one night. These factors in my view make imprisonment the only appropriate sentence. The Court must publicly show that it will not tolerate assaults on women especially, older women and especially when a weapon is used.

9. In my view a starting point of 6 months imprisonment is justified but you are entitled to a substantial reduction on that for the factors that I have already noted in your favour, that is your pleas of guilty, the fact that you had have no previous convictions, your public apology and your willingness to undergo a custom ceremony. In my view all of that means that you should have your sentence of 6 months reduces by one-third to 4 months imprisonment. I have considered Mr. Yawha's request for suspension of that sentence but I have decided that it is not appropriate to suspend the sentence because of the facts that I mentioned already: that the victim was a woman, that a weapon was used, that there was considerable force used and to the head which of course is a very dangerous part of a human being's body to hit with a stick. So the sentence will be 4 months imprisonment on each charge, that 4 months will run concurrently so the total sentence is 4 months.

10. You have 14 days to appeal this sentence if you disagree with it.

**DATED at Port Vila on 24 November 2006**

**BY THE COURT**

