

PUBLIC PROSECUTOR

-V-

SAM KALS AU

*Mr. Malantugun for the State
Mr. Loughman for the Defendant*

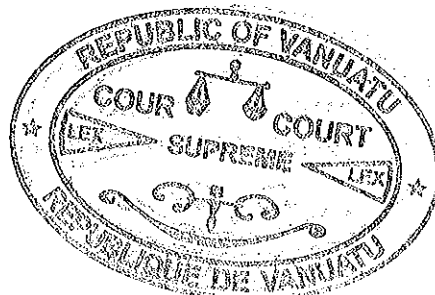
SENTENCE

Sam Kalsau, you appear today for sentencing on your conviction for the intentional assault of Peter Vari Malakai causing him injury. You pleaded guilty to the charge and subject to a slight amendment, you admitted the facts outlined by the Public Prosecutor.

On the day in question the 24th of May 2008, you were driving a bus and you picked the victim outside the Au Bon Marché Manples area and instead of taking him to his requested destination at Lama MTN, you drove him to the Bladinière Estate at the Tagabe area where you assaulted the victim inside your bus.

As a result of the assault, the victim received injuries to his face and jaw which were painful and swollen. He also sustained a fractured molar which was directed to be extracted.

After the assault you drove the victim to the police station, lodged a complaint against him and left him there to be dealt with.



You were interviewed about the incident a month later and you frankly admitted assaulting the victim because you claim that he had stolen some items that were missing from your house including a chainsaw, rolls of barb wire and your son's bicycle.

Sam Kalsau you are a grown mature man of 55 years, married with 4 children of your own. Two of your children are attending high school in Santo and one is in primary school. You pay school fees of VT150,000 a year and you are the sole bread winner in your family earning income as a bus driver. You have no prior convictions and this is your very first appearance in Court.

The victim Peter Vari Malakai on the other hand is an 18 year old student who was an unsuspecting passenger on your bus on his way to visit his grandparents.

I have listened carefully to your counsel who has eloquently mitigated on your behalf. He says you are a first offender and a family man. You pleaded guilty to the charge and frankly admitted the assault to the police when interviewed. You also took the victim to the police station after the assault and counsel submits that the assault occurred out of a sense of anger and frustration on your part at seeing the victim who you suspected of stealing valuable items from your home. Counsel pleads for the Court's leniency and urges a fine on your behalf consistent with other sentences passed in similar cases in the Magistrate's Court (see for example: Public Prosecutor v. James Samuel Criminal Case NO. 375 of 1982).

Counsel says there has not been any attempt at a customary reconciliation with the victim or his family because the victim's father demanded excessive compensation of VT5 million which you could not afford.

The Public Prosecutor for his part, whilst leaving it to the Court to determine the appropriate sentence, nevertheless drew the Court's attention to the more recent



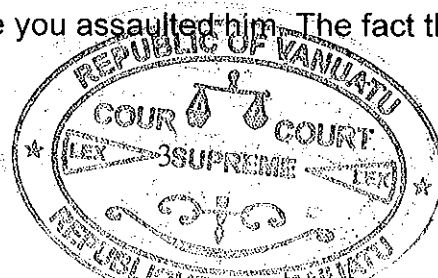
Supreme Court case of Public Prosecutor v. Nouwai [2006] VUSC 86 where Tuohy J. imposed a short immediate prison term for an offence of intentional assault under section 107 (b) of the Penal Code. In that case too, no customary reconciliation had occurred and, like you, the offender believed that the victim had stolen mandarins from his family land. The case differs however from the present in that the victim was an elderly woman and a stick was used in the assault which caused injuries that required the victim to be evacuated to Vila where she was hospitalized for a night.

Although the case is materially different from your case I entirely agree with Tuohy J. when he said in rejecting the offenders excuse for the assault in that case:-

"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."

Likewise in this case, however justified or aggrieved you may feel against the victim you are not entitled to take the law into your own hands. The Courts and the police are the appropriate state organs to deal with crimes and with people's disputes and grievances. Although you did eventually take the victim to the police station, that was after you had assaulted him. If people were allowed to assault each other to settle their grievances and disputes, then society would quickly disintegrate into a state of lawlessness and utter chaos. The law must be respected and allowed to take its course.

This was an unjustified assault by a mature able-bodied man on a teenage boy which is further aggravated by the fact that you accepted the victim into your bus as a passenger when you clearly had no intention of taking him to his destination. Instead you took advantage of the victim's presence in your bus and transported him to an isolated spot where you assaulted him. The fact that you later delivered



the victim to the police station does not excuse the prior assault on him. Indeed, you are fortunate that you were not charged with an offence of false imprisonment or of kidnapping the victim. This behavior cannot be met with a fine.

I am satisfied that the appropriate penalty in this case is a custodial sentence with a starting point of 6 months imprisonment. I accept however that you are entitled to a significant reduction for your early admission of the offence firstly, to the police and then with your guilty plea in this Court. The sentence is accordingly reduced to one of 4 months imprisonment. However, having regard to the particular circumstances of the crime including, the fact that you unusually delivered the victim to the police station albeit after the assault and coupled with your hitherto unblemished record, I propose to adopt a course consistent with the approach contained in section 37 of the Penal Code. Accordingly, your sentence of 4 months imprisonment is hereby order to be suspended for a period of 12 months with effect from today.

This means that if, within the next 12 months, you are convicted of any offence, you will be required to serve this sentence of 4 months imprisonment in addition to any other penalty which may be imposed on you for your re-offending.

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

DATED at Port Vila, this ^{21st}..... day of August, 2009.

BY THE COURT

