

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

Criminal Case No 30 of 2010

PUBLIC PROSECUTOR

V

ALI KENNETH

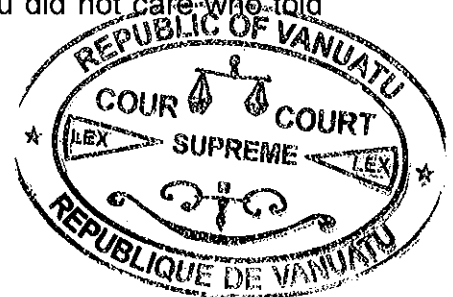
Coram: Justice J. Macdonald

Counsel: Mr. G. Takau for the State
Mr. S. Stephens for the Defendant

Date of Decision: 1 September 2010.

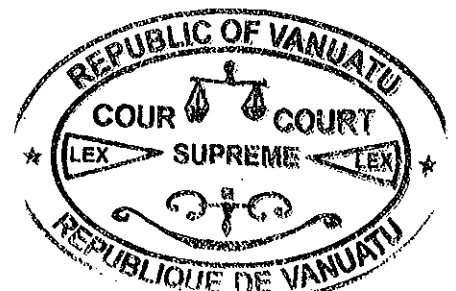
SENTENCE

1. Mr. Kenneth you have pleaded guilty to a charge under section 121 of the Penal Code of using threatening words.
2. The penalty provided under that section is imprisonment for 3 years. As discussed with counsel that reads like a mandatory sentence, as do most other penalties under the Penal Code. By way of contrast I note that in section 58Z (2) the penalty is expressed as "*imprisonment for a period not exceeding 3 months or a fine not exceeding VT10,000*". However, I will treat 3 years imprisonment as the maximum penalty.
3. Initially you had been charged with threatening to kill.
4. To put the offending in context you had threatened a man you believed was trespassing on your land to do surveying work. This was on 20 September 2007 at Lakatoro. You told him that you did not care who told



him to do the surveying as it was not state or public land. In essence you demanded that he get off the land. There was no indication as to what you might do if he failed to heed your demand but I infer that there was some veiled threat involved and that this was an angry and tense situation.

5. If the victim, that is, the man you threatened, was indeed a trespasser then there were proper ways to deal with that.
6. I do not have any information as to how the victim might have been affected by your threatening words but I take it that it was serious enough for him to complain to the police. Neither do I know how he feels about the matter 3 years on, but in the absence of any information to the contrary I will assume that he has put it behind him.
7. This morning I have read a same day report from the Probation Officer, which contains helpful information. You are aged 39 and married with three children, two of whom are at secondary school. You are working as a contractor on the roads here in Malekula. I note that you are heavily involved in the Presbyterian Church. You are prepared to perform a kastom ceremony towards the victim, if given the opportunity. You have no previous criminal convictions.
8. The probation officer recommends a sentence of supervision and your counsel Mr. Stephens supports that. Mr. Takau submitted that a suspended prison sentence should be imposed.
9. As always the maximum penalty is reserved for the worst case. This fails by a long margin to fall into that category. The wording of the charge does not contain any overt threat. It seems to have been a sudden outburst and one that was out of character at that. It happened almost exactly 3 years ago with there being no suggestion of any further incidents of this kind.



Indeed, according to the Probation officer, when you were arrested and spent a night in police custody you expressed regret for what you had done and said that nothing like this would happen again. So far you appear to have kept your word.

10. Although I might have been persuaded to defer sentencing, under section 56 of the Penal Code, I have decided in the end that supervision would be appropriate, having regard to the explanation from Mr. Stephens about what that would entail.
11. Mr. Kenneth you are sentenced to 12 months supervision on the standard conditions.
12. If you wish to appeal against this sentence you have 14 days in which to do so.

DATED at Port Vila, this 1st day of September, 2010.

BY THE COURT



J. MACDONALD
Judge.

