

**PUBLIC PROSECUTOR - v - WESLEY MOSES
BOB NABUK
ERIC DAN
DOMINIQUE ANDRE
ROY IATI
GEORGE PAKOA**

Coram: *V. Lunabek CJ*

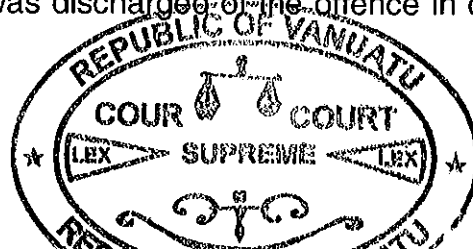
Counsel: *Mr Tristan Karae for the public prosecutor
Mr Daniel Yawha for the Defendants*

SENTENCE

This is the sentence of each above-named Defendants: Wesley Moses, Bob Nabuk, Eric Dan, Dominique Andre, Roy Iati and George Pakoa.

Each and all above-named Defendants are charged with one count of unlawful assembly, contrary to section 69 of the Penal Code Act (count 1); and one count of intentional assault, contrary to section 107(b) of the Penal Code Act (count 2); and one count of kidnapping, contrary to section 105(b) of the Penal Code Act [CAP.135] (count 3).

On 9 August 2011, Wesley Moses, Roy Iati, Dominique Andre and George Pakoa entered each guilty pleas on the offences laid against each of them in counts 1, 2 and 3. On 9 September 2011, Bob Nabuk entered guilty pleas on the offences charged against him in counts 1, 2 and 3. On the same date, Eric Dan entered guilty pleas for unlawful assembly, contrary to section 69 of the Penal Code Act (count 1) and for kidnapping, contrary to section 105(b) of the Code (count 3). However, Eric Dan entered a "not guilty" plea on the offence of intentional assault causing temporary damage, contrary to section 107(b) of the Code (count 2). The prosecution applies and the Court grants a nulli prosequi in favour of the Defendant Eric Dan in respect to the offence of intentional assault causing temporary damage in count 2. Eric Dan was discharged of the offence in count 2 accordingly.



In this case, the offences occurred in June 2011. The facts are not disputed. They are as follows:

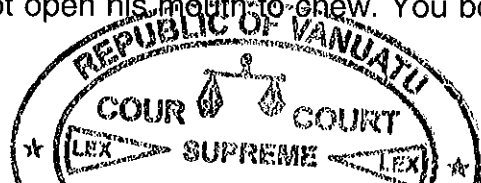
The complainant in this case was Mr Tom Sam. On or about the 2nd of June 2011, the complainant Tom Sam was heading back to Teouma area from Port Vila. He got home before lunch time and was at the house until sometime around lunch when he heard noises coming from outside the house.

The complainant then went outside to see what was going on and when he came outside he saw you standing outside. You were there with other young men, holding stones and iron bars. One of you yelled out to the complainant to follow you to Ohlen Nambanga to attend a meeting, a meeting which was held by Mr. Daniel Yawha regarding a court case between the complainant and the defendant Wesley Moses. The complainant refused to go with you and he told you that he would just meet in Court rather than to follow you to Ohlen Nambanga.

Upon hearing this one of you Mr. George Pakoa came up to the complainant and punched the complainant to which the complainant fell back and hit the side of the house. Two of you then came and grabbed the complainant from the hands and dragged the complainant to the truck.

In the truck the complainant was sat down at the back of the truck and you sat around him. The truck then took off for Ohlen Nambanga, once you arrived at the area you went to a Mr. Jeffery's house and took out the complainant from the truck and sat the complainant down. At this time the complainant was being told off some of you brought a rope to tie the complainant hands but others were reluctant to allow for the complainant to be tied up.

On the ground defendant Wesley Moses was arguing with the complainant and to one point slapped the complainant and started kicking the complainant. Then the complainant saw you were running over to where he sat and also continued with the kicking and punching. The complainant lying on the ground was bleeding with bruises and abrasions all over his face and when you saw that the complainant was really covered in his own blood you stopped. Some of you then got some water and were washing the blood off the complainant face and tried to get him to eat some food but the complainant could not open his mouth to chew. You boiled



water to try and stop the swelling and later in the afternoon the complainant was assisted by your Chief, who carried the complainant to the road when the complainant was picked up by the Police.

The complainant was taken to the hospital and was examined, according to the medical report the complainant suffered severe facial injuries (bruises) and swollen eyes and mouth but there were no other internal bleedings sustained by the complainant.

On the 3rd of June 2011, you were arrested and brought to the Police station. You were cautioned and interviewed regarding the allegations that were laid against each of you. You made statements in which you said you would only answer to these allegations in Court.

The laws that you have broken when you decided to take the law into your own hands to do justice to yourselves on 2nd day of June 2011 are:

- (1) Section 69 of the Penal Code Act which provides:

*"69. No person shall take part in an unlawful assembly.
Penalty: Imprisonment for 3 years."*

Section 68 of the Penal Code defines the offence of unlawful assembly in this way:

"68.(1) When three or more persons assembled with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause nearby persons reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

- (2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with common purpose in such a manner as aforesaid.*

..."

- (2) Section 107 of the Penal Code Act which provides:

"107. No person shall commit intentional assault on the body of another person.



Penalty:

(a) ...

(b) if damage of a temporary nature is caused, imprisonment for 1 year."

(3) Section 105 of the Penal Code Act provides:

"105. No person shall-

(a) ...

(b) by force compel, or by any fraudulent means induce, any person to go from any place to another place.

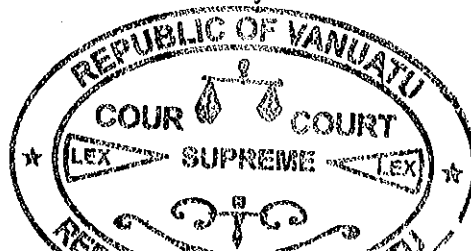
Penalty: Imprisonment for 10 years."

As you can judge by yourselves, you have committed serious offences on 2 June 2011. The seriousness of your offendings is reflected in the maximum penalties imposed by law for such offendings. In your case, the circumstances of your offending are aggravated by the following factors:

1. You have acted as a revenge to what the complainant/victim did to Defendant Wesley Moses while Mr Moses' complaint against the complainant (Tom Sam) was in the hand of the police.
2. You are grouped together to assault a person (Tom Sam).
3. The victim complainant has sustained serious injuries on his body.
4. You use violence or force to compel the complainant to get into the vehicle.
5. Defendant George Pakoa, you have a previous conviction for assault in 2004 and you were sentenced to 6 months imprisonment.

The pre-sentence reports filed by the Probation Office in respect to each and all of you provide relevant information to assist the Court in your respective sentencing. The reports show that the offending occurred as a revenge from some previous assaulted by the complaint of this case (Mr Tom Sam) on the body of the Defendant Wesley Moses.

In sentencing each and all of you, the Court condemns in the strongest terms your offendings as contrary to the laws. You cannot take law into your own hands to do justice to yourselves or as a revenge of criminal actions by others.



Wesley Moses

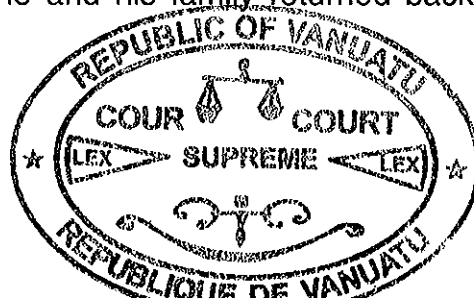
You are 41 years of age. You originate from Bethel village, West Tanna. You are married and have 4 children with your wife. Your eldest daughter is 13 years old. You were angry because the complainant Sam Tom got a relationship with your daughter and she did not concentrate on her schooling. There was disagreement between you and the complainant. The complainant assaulted you. You lodged a complaint to the police. While waiting for the police to deal with your case, you decided also to give a revenge on what the complainant did to you.

In your mitigation, you are a first time offender. You pleaded guilty at the first opportunity. Your ambition in life is to support your children to undertake high level of education. You have carpenter skills and you had worked for several private construction companies. You are currently working as a public driver for public transport vehicles. The report shows also after you initially blamed the complainant, you realised that you have offended against the law. You have shown some remorse and you wanted to perform a custom ceremony but the complainant has already left Port-Vila, Efate and returned to Tanna Island.

Eric Dan

You are 37 years of age and you reside at Ohlen Nambanga, Port-Vila. You are married and have six children attending primary and secondary schools. You are a security officer working for a private security company in Port-Vila. You were part of the unlawful assembly and kidnapping of the complainant but you did not assault the complainant. You have tried to stop the other Defendants not to assault the complainant but they were too strong for you. You said you have tried to assist Defendant Wesley to get the complainant to the nakamal. You have now realised that what you did is called kidnapping and is against the law. You say sorry and you also stated that if you had known that it is against the law to force a person to go from a place to another place against his will, you would not involve yourself.

You are a first time offender; you plead guilty to your offendings. You felt sorry for what you did. You express your intention to perform a custom ceremony reconciliation to the complainant but he and his family returned back to Tanna Island.



Dominique Andre

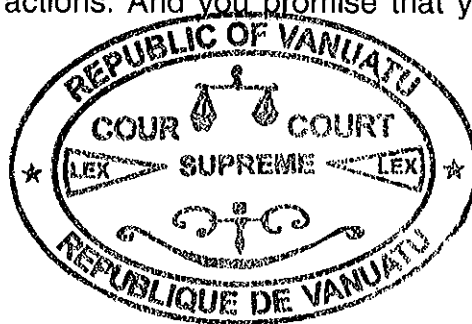
You are 31 years of age. You are originated from Bethel village, West Tanna. Your wife and five children reside in Tanna. You reside at Ohlen in Port-Vila and you work for Au Bon Marché maintenance section to support your family in Tanna. You give the same explanation of your offendings like other Defendants. You felt sorry for Defendant Wesley Moses as the police did nothing when the complainant (Sam Tom) assaulted Wesley Tom. You now say sorry to what you did to Mr Tom Sam. You are a first time offender. You plead guilty to your offending.

Roy Iati

You are 32 years old. You are from Bethel village, West Tanna. You are married with children. You have grand children. You reside in Tanna and you do gardening, copra and planting kava. You said you were not involved in the assault of the complainant along with the others. You have just arrived from Tanna and you were in Port-Vila to spend a week of Independence celebrations with your grand children in Vila. In the offending, you said although you did not assault the complainant, you assist Defendant Wesley Moses by involving yourself in the unlawful assembly and kidnapping the complainant to bring him to the nakamal for a custom court session to deal with the matter. You added also that at the time of the assault, you have tried to stop other Defendants from assaulting Mr Tom Sam but you are too old to stop them. You realised your actions were unlawful as you could have taken the steps to follow up Defendant Wesley Moses' complaint to the police. You have expressed insight into your offending. You are a first time offender. You pleaded guilty.

Bob Nabuk

You do not recall about your age. The estimated age is about 28-29 years of age. You are from Lenakel, Tanna. You reside at Ohlen Freshwind area. You live with your girlfriend. You are employed as a shop security officer. You explain that you are not happy that the complainant Tom Sam assaulted Defendant Wesley Moses so because Tom Sam failed to attend few minutes, you decided to take revenge to his assaults on Wesley Moses. You now realise that what you did was wrong and you expressed regrets over your actions. And you promise that you will not re-offend again.



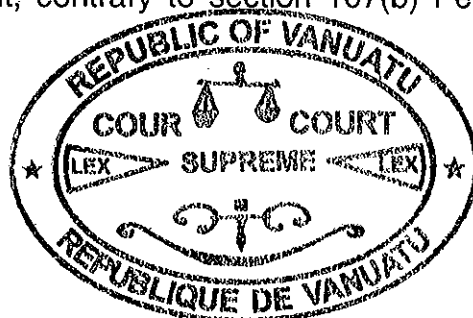
George Pakoa

You are 32 years of age. You originated from Merio village, Tongoa Island. You are married and you have 3 children. You reside with your family at Ohlen Freshwind area, Port-Vila. You are now unemployed. The report shows that before the offending, you were called by the other Defendants to go to the gardens. You joined the other Defendants and went to the complainant's house. You denied you punched the complainant as the prosecution facts said, you responded to a call to grab the victim. So you grabbed the complainant. You are not a first time offender. You were convicted for the offence of intentional assault in 2004 and were sentenced to 6 months imprisonment. You expressed insight into your offending and you feel guilty of your actions.

On balancing between the aggravating and mitigating factors, I sentence each and all of you to 2 years imprisonment for the offence of unlawful assembly, contrary to section 69 of the Penal Code Act. I also sentence the following Defendants: Wesley Moses, Bob Nabuk, Dominique Andre and George Pakoa to 11 months imprisonment for the offence of intentional assault, contrary to section 107(b) of the Penal Code Act. I further sentence each and all of you to 3 years imprisonment for the offence of kidnapping, contrary to section 105(b) of the Penal Code Act. All the sentences are to be taken as starting point for respective offences in counts 1, 2 and 3. I decide to reduce your respective sentences to $\frac{1}{3}$ to reflect your guilty pleas and further 2 months allowance for other mitigating factors.

The following Defendants: Wesley Moses, Bob Nabuk, Dominique Andre and George Pakoa are sentenced to an end sentence as follows:

- 14 months imprisonment for unlawful assembly, contrary to section 69 of the Penal Code Act; 5 months for offence of assault, contrary to section 107(b) of the Penal Code Act and 22 months imprisonment for offence of kidnapping, contrary to section 105(b) of Penal Code Act [CAP.135].
- Defendants Eric Dan and Roy Iati are discharged without convictions for the offence of intentional assault, contrary to section 107(b) Penal Code Act.



- Both Eric Dan and Roy Iati are sentenced to an end sentence of 14 months imprisonment and 22 months imprisonment respectively for unlawful assembly, contrary to section 69 of the Penal Code Act and kidnapping, contrary to section 105(b) of the Penal Code Act.

All your respective sentences are to run concurrently. This means you will serve each 3 sentences together and at once making a total imprisonment term of 22 months for each of you to serve.

The last question I ask is: should your respective sentence of 22 months imprisonment be suspended? I answer to the question in the affirmative in the circumstance of your case. In the present case, you stopped assaulting the complainant victim (Tom Sam) after his face was covered with blood. You boiled hot water to clean and wash his injuries. You have tried to give him food but he could not open his mouth to chew food. You assisted him through your chief to leave the complainant/victim in the hands of the police authorities. Those coupled with your guilty pleas and remorsefulness.

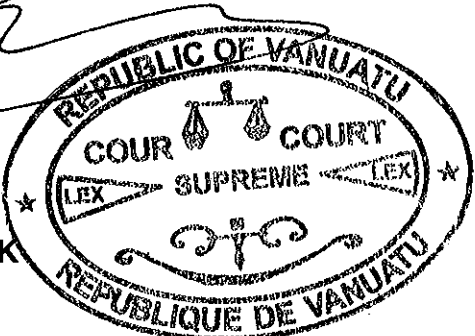
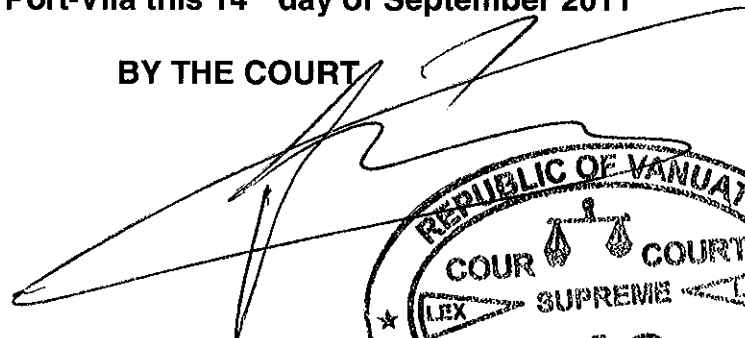
Your respective concurrent sentence of 22 months imprisonment is suspended for a period of 2 years. During the 2 years suspension you shall not re-offend. If you fail, your suspended imprisonment term of 22 months shall be reactivated in respect to any of you who re-offend before the 2 years suspension period.

In addition, you are each ordered to serve 80 hours of community work.

Each of you has 14 days to appeal his sentence if he is not satisfied with it.

DATED at Port-Vila this 14th day of September 2011

BY THE COURT



Vincent LUNABEK
Chief Justice