

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

Criminal Case No.77 of 2011

PUBLIC PROSECUTOR

-V-

GRAHAM DAVID

Coram: Justice D. V. Fatiaki
Counsels: Mrs. L. Matariki for the State
Mr. B. Bani for the Defendant
Date of Sentence: 2 September 2011

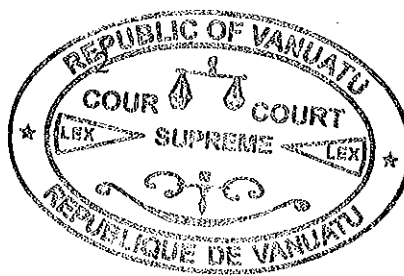
SENTENCE

1. On 5 July 2011 the defendant was charged with 2 offences. **Count 1** - Reckless Driving Causing Death contrary to Section 12 of the Road Traffic Control Act [CAP. 29] and **Count 2** - Unintentional Harm Causing Death contrary to Section 108 (c) of the Penal Code Act [CAP. 135]. After an initial mix-up the defendant entered a '*not guilty*' plea to Reckless Driving and '*guilty*' to Unintentional Harm Causing Death.
2. Prosecuting counsel then entered a '*nolle prosequi*' in respect of the Reckless Driving charge and the defendant was discharged pursuant to Section 29 of the Criminal Procedure Code. The prosecution proceeded only on the Unintentional Harm Causing Death charge which carries a maximum sentence of 5 years imprisonment.
3. The brief facts of the case tells of how the defendant **David Graham** on the fateful day, was driving a Hyundai Grace bus along the road heading towards Vila North School, when he stopped in the middle of the road to have a conversation with another bus driver, Joseph, who was also stopped on the side of the road heading in the opposite direction. The defendant while still talking to Joseph and without look to ensure that the road ahead of him was clear, accelerated his bus and collided with a young 7 year old boy **Lukie Luke** who was in the process of crossing the road in front of the defendant's bus. On impact Lukie Luke was thrown 6 meters onto the road and the defendant's bus came to a halt on the side of the road.
4. Lukie Luke was rushed to the Vila Central Hospital and died 3 days later from the injuries he sustained in the collision with the defendant's bus.



5. Lukie Luke's medical report discloses that he was in a coma on arrival at the hospital and he had "external bruises on both knees, wound over left ankle, wound on the left temporal area and the left peri-orbital wound". His "chest x-ray showed pulmonary contusion and supra lung infection".
6. The defendant admitted the brief facts and was convicted on his guilty plea to the offence of **Unintentional Harm Causing Death**. A pre-sentence report was ordered together with sentencing submissions from counsels.
7. I acknowledge the assistance received from the report and counsel's submissions which I have read and taken into account in determining the sentence in this case.
8. I extract from the pre-sentence report the following relevant personal details of the defendant:
 - The defendant originates from Nguna island and is 35 years of age. He has been in a defacto relationship for the past 12 months and currently lives with his parents at Nambatu area in Port Vila.
 - The defendant achieved a class 6 certificate from Kawenu Primary School and left secondary school after year 9 without completing his second education;
 - He returned to his home island for 2 years before returning to work in his elder brother's construction company in Port Vila as a driver. He also drove a bus on a part time basis;
 - He had been driving for 9 years without incident until the present case;
 - The defendant is a first offender and he expressed his heart-felt sorrow and regret at his careless driving which had such tragic consequences. In his own words to the probation officer:

"hemi no tingting blong mi blong tekemaot laef blong smol pikinini ia, be hemi wan aksiden, mo mi sori tumas long smol pikinini ia".
 - The defendant contributed a coffin and some foodstuff and material towards the victim's funeral and later performed a kastom reconciliation ceremony to the victim's family to seek forgiveness and say sorry as a sign of "klinim fes" to restore peace and unity between the two families. The gifts presented during the ceremony included, a bullock, a pig, kava root, sugarcane, banana and a large quantity of uncooked root crops as well as 5 bales of material and



free transport for 14 members of the victim's family to attend the ceremony at the Chief's Nakamal;

- The defendant also verbally announced at the ceremony his intention to transfer to the victim's family a piece of land as a lasting symbol of remembrance of Luckie Luke;
 - To their credit Lukie Luke's family have graciously accepted the defendant's traditional apology and gifts which I will take into account in determining the sentence to be imposed on the defendant;
9. Defence counsel has also drawn the Court's attention to a not dissimilar traumatic childhood experience of the defendant when he was 10 years of age and was struck by a vehicle at Malapoa while he was crossing the road. Although his physical injuries have healed, the mental scars continues to haunt him to this day and, after the present accident, the defendant allegedly suffered "*a nervous breakdown*";
10. Prosecuting counsel has also helpfully drawn the Court's attention to two decisions of this Court in **PP v. Obed** [2003] VUSC82 and **PP v. Joe Kaltang** [2002] VUSC9 in which the facts are quite similar to the present case in that young children were struck whilst crossing a road and died. In both cases a sentence of 12 months imprisonment was imposed for convictions of Unintentional Harm Causing Death. In **Obed's** case the sentence was suspended for 2 years but in **Kaltang's** case where the defendant was a bus driver who had consumed alcohol, the sentence was not suspended;
11. I am satisfied that this was a case of negligent inattentiveness rather than recklessness. Furthermore the defendant was not speeding excessively prior to the collision. It is more similar to **Obed's** case than **Kaltang's** (op. cit). I cannot overlook the fact, however, that the defendant as a bus driver would have known about the existence of Vila North School where he was heading, and, the very real possibility of school children being present on and crossing the road thus calling for extra care and vigilance from drivers on the road.
12. Neither can I overlook the "*all-too-common*" circumstances of this case where the defendant slowed his vehicle on the road "*to have a conversation with a passing driver*", and, without ensuring that the road ahead was clear, sped up his vehicle again with tragic consequences.
13. What you did **David Graham** in slowing or stopping your bus in the middle of the road, was irresponsible and highly dangerous to other drivers who may have been following you at the time. It would have also created uncertainty in the minds of other road users and pedestrians who might, wrongly, have thought that you were intending to stop completely.



14. David Graham nothing I say to you today and no sentence that I impose on you will bring back the life of Lukie Luke. That is a heavy burden you must bear personally for the rest of your life knowing that your careless driving was responsible for the untimely death of a young child.
15. I give you credit for your guilty plea and for the elaborate kastom reconciliation ceremony that you and your family performed to Lukie Luke's family and relatives. I note that this is your first offence and that you are genuinely remorseful for what happened, but a custodial sentence cannot be avoided.
16. In all the circumstances I sentence you, David Graham to imprisonment for 18 months suspended for 2 years.
17. I also order that you undergo probation under the supervision of a probation officer for a period of 2 years **and** as a special condition of your probation you are prohibited from driving a bus for the duration of your probation.
18. Although you will not have to go to prison today I must warn you that if you commit another offence in the next 2 years and are convicted, you will be required to serve this sentence of 18 months imprisonment in addition to any other penalty that may be imposed on you for your re-offending.

DATED at Port Vila, this 2nd day of September, 2011.

BY THE COURT


D. V. FATIAKI
Judge.

