

**PUBLIC PROSECUTOR -v- JERRY JEFFREY NAMULY  
ANDREW JEFFREY NAMULY**

**Coram:** Chief Justice Vincent Lunabek

**Counsel:** Mr Gregory Takau for the Public Prosecutor  
Mr Jerry Boe for the Defendants

## **SENTENCE**

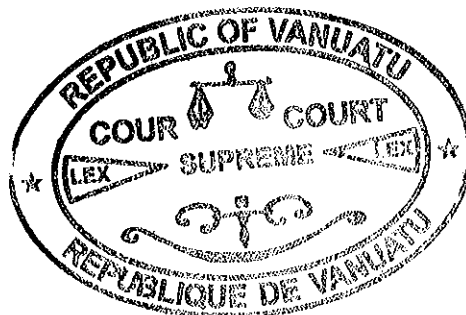
### **INTRODUCTION**

Jerry Jeffrey Namuly and Andrew Jeffrey Namuly, this is your respective sentence on the Unlawful Killing of Mr Johnny Nakuhu of Koromanu village, Whitesands District, Tanna, on 26<sup>th</sup> September 2010.

On 14 December 2010, Jerry Jeffrey Namuly, you pleaded guilty to one count of Intentional Homicide, contrary to section 106(1)(a) of the Penal Code Act and your brother, Andrew Jeffrey Namuly, pleaded guilty to one count of Inciting and soliciting Intentional Homicide, contrary to sections 35 and 106(1)(a) of the Penal Code Act [CAP.135]. Each of you are respectively convicted of the offences you are each charged with.

The maximum penalty for Intentional Homicide under s.106(1)(a) is 20 years imprisonment. The same maximum penalty of 20 years is set by law for inciting and soliciting Intentional Homicide, contrary to sections 35 and 106(1)(a) of the Penal Code Act.

Each of you have committed very serious offences as reflected by the maximum penalty set by laws for those offences.



A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long, sweeping horizontal stroke.

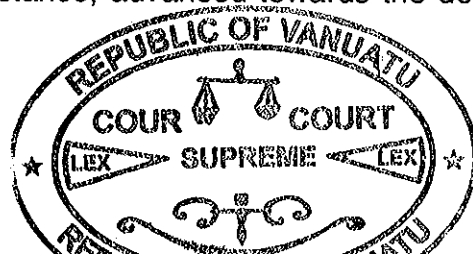
Your lawyer accepts on your behalf the brief facts provided by the prosecution. They are reproduced below:-

## BRIEF FACTS

Prior to the death of Mr Johnny Nakuhu on the 26<sup>th</sup> of September 2010, there was a long standing dispute over land between the family of the deceased (the Namri family) and the family of the defendants, Jerry Jeffrey Namuly and Andrew Jeffrey Namuly (the Namuly family). Both families of which reside in Koromanu village, Whitesands District, Tanna. Attempts at the village level to settle the dispute between the two families have repeatedly failed and the constant hostility between the parties led ultimately to the horrendous and untimely death of Mr Nakuhu. The events leading up to his death began in the morning of Sunday 26<sup>th</sup> September 2010.

After String Band practice at about 9.00 am of Sunday 26 September 2010, Mr Johnny Nakuhu (the deceased) suggested to the other band members that they get together in the afternoon and have kava to commemorate the Band's reunion. The group consensually agreed thus they went their way to their gardens to gather food and kava.

On his way to his garden, the deceased met Mr Nako Georgie, Mr Eric Nauras and Mr Jackson Nurnan who were collecting and eating honeycomb. The three men offered him some honey so he sojourned and helped himself. Just before they left, they saw Mr Andrew Jeffrey Namuly, the second defendant approaching them. On arrival he immediately asked them, "*yufala askem hu blong karem sugarbee? (Translation: Whose permission did you obtain to collect, the honey?)*" To which Mr Georgie replied, "*Ankel, mifala I karem from sei bifo I kam mifala i stap kakae long ples ia, noa*" (*Translation: Uncle, we took it because this is where we have always obtained food from*). Mr Georgie then told the second defendant that if they had done something wrong they would get some kava, drink together and sort out their differences in an amicable way. The deceased then told the second defendant that Mr Georgie and Mr Nauras and Mr Numan have already spoken contritely and explained everything. The deceased further told the second defendant to stop acting up and stop being a tough and aggressive person. The deceased was angry over the defendant's obstinate stance, advanced towards the defendant



who was at that time holding a knife. The second defendant warned the deceased not to progress any closer or he will cut him with the knife. Mr Georgie and Mr Nauras intervened, obstructed the deceased and told the second defendant to leave. The second defendant then told the deceased that he will wait for him in the village and they will sort this matter out man to man. The deceased replied that he will also meet up with him later.

As they were making their way to the garden, Mr Keiabi Nawio riding on his horse approached them and informed them that the second defendant was going to burn down the deceased's house. The three men immediately made haste to the house of the deceased.

On their way, they saw the second defendant, Mr Andrew Jeffrey Namuly and the first defendant, Mr Jerry Jeffrey Namuly advancing towards them. When they encountered head to head, the first defendant said to the deceased, "Yu ia noa, tedei hemi taem blong yumitu (Translation: So it's you, today is our day)". The deceased replied using words to this effect, "Brata hemia ino problem we ia hard, sugar bag nomo ia, mo mifala kam blong yumi stretem (Translation: Brother, this is not a big problem, it is only honey and we are here to settle the problem)".

Albeit the deceased's attempt to affably settle the dispute, the first defendant immediately swung his knife towards the deceased. The deceased sidestepped the first slash. The First Defendant threw his knife again and incised the left shoulder of the deceased with two of his fingers. Mr Numan told the deceased to run but the deceased was unable to due to the injuries. The second defendant went up to the deceased to cut him but the first defendant told him that "yu lego bae me katem hemia fastaem ale bae me jes katem gud hemia". The First defendant walked towards Jackson Numan to cut him but he moved out. The first Defendant then cut the right side leg of Mr Nawio's horse which was standing at that time. The deceased then told Mr Numan to run for his life hence Mr Numan took flight. The second defendant gave chase after Mr Numan but he was unable to apprehend him. The deceased, with whatever life he had left, dragged himself towards bamboo trees. The first defendant went after him, cut his neck almost slitting the entire structure of his



neckline and then he cut and sliced his backside and face. The deceased died instantly as a result of the defendant's merciless and hideous acts.

After the first Defendant murdered the deceased in cold blood, he called Police Officer Mackenzie Tameta and told him to go and pick him up and the Second Defendant as soon as possible. When Mr Mackenzie enquired, he told him that he had killed Mr Nakuhu. Before the police arrived, the Defendants hitched a ride with an immigration officer, one Mr Antonio Tara who at that time was heading towards Isangel. Mr Taru took the defendants to Isangel Police Station where they were temporarily detained on house arrest in the custody of another police officer until they were relocated to the Correctional Centre in Port Vila for security reasons. Meanwhile, a Police investigation team along with a medical officer arrived at the crime scene and an official investigation ensued.

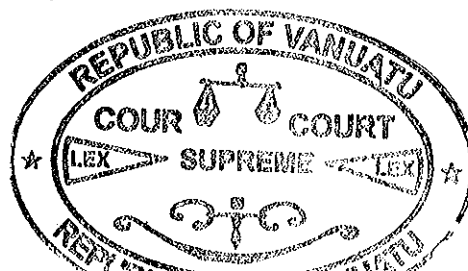
The medical report dated 26 September 2010 shows the following findings:

**SEVERE LACERATIONS TO:**

- skull (site external antitory Muscle Born)
- Neck (site – from the left side to the backside of the neck born)  
Deep 10cm deep – damaging jugular vein internally & externally and corotide Arteries leading to heavy blood loss (even neck born track)
- Left upper jaw: Fracture of the maxillar and loss of teeth
- Shoulder (site – right shoulder – 10cm long and 45cm deep
- Left shoulder – 15cm long and 10-15cm deep. Fracturing head of the Humerus
- Hand (site – left splite of left palm down to wrist.

The deceased died as a result of heavy bleeding from the lacerations caused by a sharp instrument which was in this case, the bush knife of the First Defendant.

On the 29<sup>th</sup> of September 2010, the first defendant made a statement to the police in Port Vila, under caution, admitting killing Mr Nakuhu and the second defendant also made a statement admitting his involvement in the killing. On the next day, the 30<sup>th</sup> of September 2010, Police Officer Roel Mesek in the presence of several other officers



conducted an interview with the defendants and the accounts of the interviews were recorded in a formal Record of Interview.

The violent attacks and multiples serious injuries on the body of the deceased and the manner as to how they were carried out would justify a more sever charge of premeditated intentional homicide under s.106(1)(b) with a maximum penalty of life imprisonment. I do not understand why you were charged with a lesser penalty by the prosecution.

In the present case, I sentence you under s.106(1)(a) and ss.35 and 106(1)(a) of the Penal Code Act respectively as referred to earlier.

In considering your sentencing, I read the prosecution submissions, submissions made by your lawyer on your behalf and I have also the opportunity to read the pre-sentence report filed by the Probation Office to assist the Court in your sentencing.

The appropriate starting point for sentencing in the type of this case is 15 years imprisonment for intentional homicide, contrary to s.106(1)(a) and 8 years imprisonment for inciting and soliciting for intentional homicide, contrary to sections 35 and 106(1)(a) of the Penal Code Act [CAP.135].

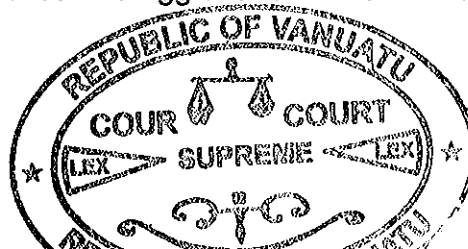
**Defendant Jerry Jeffrey Namuly**

Jerry Jeffrey Namuly, the appropriate sentence I impose on you for the Intentional Homicide, contrary to section 106(1)(a) is 15 years imprisonment as the starting point.

In this case, your offending is aggravated by the following factors:

- Your have used a weapon (a bush knife to kill the deceased).
- Repetition of your violent behaviour after inflicting two (2) serious cuts on the body of the deceased after he was defendless before you cut the deceased's neck and other cuts on other parts of the his body.
- The act was violent.

Your sentence is increased by 3 years to reflect the aggravation which is 18 years of



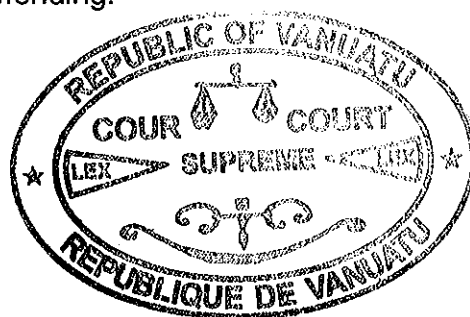
5

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke.

imprisonment.

In mitigation, your lawyer provided the following mitigating factors to the Court:

- You are 25 years of age. You come from Koromanu Village, Whitesands District, East Tanna.
- You are not married and without children but has an Australian girl friend, who now lives in Melbourne, Australia, and you intend to live with her permanently.
- You are unemployed and live as a subsistence farmer. You are a skilful mechanic and have been fixing generators and vehicles for other people from the surrounding villages.
- You assisted your family mostly in financial situations and needs by fixing generators and vehicles.
- You also have good relationship within your community. You have assisted the community by organizing rural water supply in their area. You also attend to marriages, deaths and other ceremonies by giving pigs, kava and other things when need arises. You have started setting up a mechanic workshop, with the assistance from your Australian girlfriend, to fix and also train your people to be mechanics.
- You are an active member of the Neil Thomas Ministry (N.T.M.) at Black Sands Area and leader of the Youth group. You are a band member in the Ministry.
- You have been to:
  - (a) Yanavate Primary School, South East Tanna, from 1993-1997;
  - (b) Loanatom Technical School, West Tanna, from 1998-2002;
  - (c) TAFEA Junior Secondary School, West Tanna, from 2003-2004;
  - (d) Lycee Louis Antoine de Bouganville, Port Vila, 2005;
  - (e) Other courses attended, CNS computer service, Mechanic School at Suran Paschal Practical Training Center, Blacksands, 2006-2008.
- You cooperated with the police
- You pleaded guilty at the first opportunity given to you by the Court.
- You are a first time offender and you have no previous convictions.
- You apologize to the Court for your offending.



6

I reduce your sentence of 18 years to 14 years imprisonment.

**Defendant Andrew Jeffrey Namuly**

Andrew Jeffrey Namuly, the appropriate sentence I impose on you for Inciting Intentional Homicide, contrary to sections 35 and 106(1)(a) is 8 years imprisonment as the starting point.

In your case, your offending is aggravated by the following factors:

- Not only you incited the commission of the offence of Intentional Homicide, but you attempted to use your bush knife to cut the deceased and you used your bush knife to chase other persons and you used your bush knife to frighten the deceased before the First Defendant killed the deceased.

Your sentence is increased by 2 years to reflect the aggravation which is 10 years imprisonment.

In mitigation, your lawyer provided the following information to the Court on your behalf:

- You are 19 years old from Koromanu village, Whitesands District, East Tanna;
- You are married and you have a 7 months old pregnant wife;
- You are unemployed and you live as a subsistence farmer.
- You raised pigs and have approximately 50 to 60 pigs in his 2 fences and also raised cattle, chickens and plant kava.
- You also have good relation within the community. You assisted the community in providing food and kava for ceremonial purposes.
- You assisted your brother, the first defendant, to organize the rural water supply system in the village.
- You assisted your family mostly in their financial situations and needs by selling chickens, pigs, cattle and kava roots.
- You are an active member of the Apostolic Youth Life Ministry
- You have never been to school.
- You cooperate with the police.
- You plead guilty at the first opportunity given to you by the Court.



7

- You are a first time offender and you have no previous convictions.
- You apologize to the Court for your offending.

I reduce your sentence of 10 years imprisonment to 7 years imprisonment.

Jerry Jeffrey Namuly and Andrew Jeffrey Namuly, you were both remanded in custody since 28 September 2010. I give each of you an allowance of 5 months for your parole rights under the relevant provisions of the Corrections Services Act.

Jerry Jeffrey Namuly, you are sentenced to 13 years and 7 months imprisonment with immediate effect.

Andrew Jeffrey Namuly, you are sentenced to 6 years and 7 months imprisonment with immediate effect.

Each of you has 14 days to appeal against your respective sentence if you are not happy with your respective sentence.

**DATED at Port-Vila this 11<sup>th</sup> day of February 2011**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**

