

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

FRANKINSEN DAVID

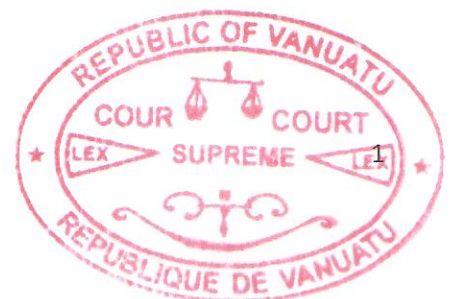
Mr Justice Oliver A. Saksak

**Mr Parkinson Wirrick for Public Prosecutor
Miss Jane Tari for the Defendant**

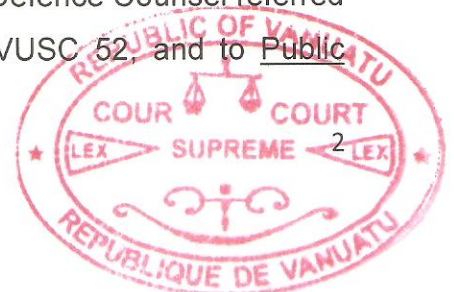
**Date of Hearing of Submissions: 3rd August 2012
Date of Sentence: 22nd August 2012**

SENTENCE

1. Frankinsen David, you pleaded guilty to one Count of Causing Death by Reckless Driving contrary to Section 12 of the Road Traffic (Control) Act, Cap 29 (the Act), and also to one Count of Driving Without a Valid Driving Licence contrary to Section 42 of the Act. A nolle prosequi was entered with regards to a further charge of Taking and Driving Away a vehicle Without Consent contrary to Section 52 of the Act. The charge in the first Count is a representative charge because through your reckless driving you caused the loss of two separate lives.
2. Causing Death by Reckless Driving attracts a maximum penalty of a fine not exceeding VT500,000 or imprisonment of a term not exceeding 5 years or to both such fine and imprisonment. An offence under Section 42 of the Act attracts a maximum penalty of Vt30,000 or imprisonment of a term not exceeding 3 months or to both such fine and imprisonment.
3. The facts to which you have conceded show that –



- (a) On Sunday 6th May 2012 at about 5.15 p.m you drove a right-handed Mazda Mini-Lorry belonging to your employer Stephen Remy. You were returning from a picnic party from Palekula Bay. You had 27 passengers on the truck at the time, most of whom were children.
- (b) At Banban near the Grenier Subdivision, driving towards town, you drove at an excessive speed. While on 4th gear you decided to overtake another vehicle travelling ahead of you, on a gravel road that has an uneven surface. Witnesses statements note the children at the back of the vehicle shouting, singing and urging you to drive faster.
- (c) At that juncture you turned to get back onto the right side of the road. You then lost control. You veered off the road and slammed into a tree some 8 metres off the road. Due to the large size of the tree, the impact of the collision caused extensive damage to the vehicle.
- (d) Your passengers fell out of the truck and many were crying, unconscious and injured, some more serious than others. Your baby son died as a result of the accident, and Lilian Vinia an adult mother also died during the impact.
- (e) Copies of Medical Reports which are contained in the PI Bundle before the Court reveal the extent of the injuries which some of your passengers sustained. Copies of photographs of the accident also show the extensive damage done to the vehicle and the injuries-sustained by a number of your passengers.
4. Those facts show that you caused a very serious accident through your reckless driving and driving without a valid drivers licence. These warrant a sentence that must reflect a component of specific and general deterrence to be imposed. This principle is established in the case of Jenkinson v. Public Prosecutor [2004] VUCA 5. Both Counsel referred the Court to this case. Defence Counsel referred the Court also to Public Prosecutor v. Nawia [2010] VUSC 52, and to Public



Prosecutor v. Kanas [2010] VUSC 5. The Public Prosecutor referred the Court also to Public Prosecutor v. Obed Malkali, Criminal Case No. 45 of 2010.

5. Nawia's case is very similar to your case in several respects in that the defendant was charged also under section 12. He had 5 passengers. His accident caused the death of a mother and a child of 11 years old. The sentencing judge was guided by the dicta of the Court of Appeal in Jenkinson's case. The Court imposed a sentence of 2 years imprisonment for the Section 12 offence but suspended it for a period of 2 years for mitigating factors such as being a first-time offender with a long history of good driving, good character, good employment record and involvement in community affairs. The Court also disqualified the defendant from driving.
6. This Court will adopt the sentence imposed in Nawia's Case for the Section 12, offence but it will not be a suspended sentence so as to ensure the component of specific and general deterrence as established in Jenkinson is achieved.
7. The case of Kanas where a sentence of 18 months imprisonment was imposed for a Section 12 offence and suspended for 2 years was appropriate for that case at that time with its own circumstances. The circumstances in your case differ very much therefore that case has no relevance.
8. Malkali's case is relevant to your case but it must be slightly distinguished. In that case there were 2 deaths out of 22 passengers, a mother and a young boy. The defendant was charged only under Section 12 of the Act. He was sentenced to 2 years imprisonment with suspension for 2 years, and disqualified from driving for 18 months. You had 27 passengers. And you were charged with two separate charges, one for not having a valid driver's licence. That puts your case slightly higher than Malkali's case.
9. Vehicles do not drive themselves and they cannot make choices. They move only on the command, control and the mental choices of their drivers. In this



case the defendant knew he had 27 passengers, mostly children. He knew the road was uneven. He travelled on 4th gear on that uneven road knowing it was risky and dangerous to do so. Yet he chose to do it and having done so, he was reckless and caused the tragic accident. As such he must now live with the reality of losing a son and living and caring for a handicapped wife for the rest of his life.

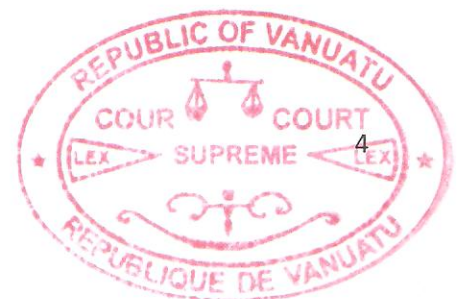
10. I have seen the Pre-Sentence Report submitted on his behalf which speaks of his good behavior and character. Unfortunately there are no separate written confirmations of those reports either from his church pastor, chief or employer. I note and accept that the defendant has performed a customary reconciliation ceremony to reflect his remorse. That ceremony was witnessed by three chiefs and a community leader. But this cannot be used as a "bargaining chip" to seek to wipe out any further punishment by the Court. The Court accepts the ceremony only as a mitigating factor to reduce the defendant's sentence.

11. I note the 13 mitigating factors submitted by defence counsel on the defendant's behalf but only a 1/3 general reduction will be made in respect to these. This is to ensure that the following purposes are achieved:-

- (a) The defendant and others are deterred.
- (b) The offendings of the defendant are serious.
- (c) The public do not condone the defendant's unlawful actions.
- (d) The public and other road-users are protected.
- (e) The defendant is punished adequately.

12. Having said all that, the Court hereby convicts and sentences you, Frankinsen David as follows:-

- (a) For Reckless Driving Causing Death – 2 years imprisonment with immediate effect.



(b) For Driving Without a Valid Driving Licence – 3 months imprisonment. This is to be served concurrently with your 2 year sentence for the reckless driving charge in Count 1.

13. The Court allows a reduction of 1/3 for your mitigating factors. That means that 2 years are reduced by 8 months leaving the balance of 16 months. The defendant is hereby committed to serve 16 months imprisonment at the Correctional Centre in Luganville with immediate effect.

14. The Public Prosecutor submitted that the defendant be disqualified from driving. This submission is rejected. This is not an option where the defendant is sentenced to a straight custodial term.

15. The defendant will be eligible to apply for parole having served 8 months of his 16 months term, provided he responds positively to his sentence.

16. He has a right of appeal within 14 days if he so chooses.

DATED at Luganville, this 22nd day of August 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge.

