

PUBLIC PROSECUTOR

-v-

FRED TOKA

Coram: Chief Justice, Vincent Lunabek
Counsel: Mrs Losana Matariki for Public Prosecutor
Mr Colin Leo for the Defendant

SENTENCE

Mr Fred Toka, this is your sentence. You are initially charged with one count of reckless driving causing death, contrary to section 12 of the Road Traffic (control) Act [Cap 29] and one count of unintentional harm causing death, contrary to section 108 (c) of Penal Code Act. You entered not guilty pleas on both counts on 2 July 2013.

You were discharged of the offence of causing death by reckless driving, as charged in count 1 upon the prosecution entering a Nolle Prosequi. You were then tried only on one count of unintentional harm causing damage on the body of another person resulting in the death of that person, contrary to s.108 (c) of Penal Code.

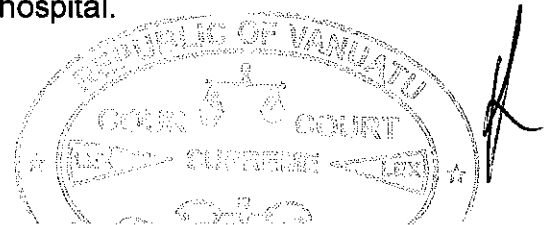
You were found guilty and convicted of that offence by the court on 6 September 2013. You were sentenced today for that offence on the basis of the following facts:-

In early hours of the morning of 28 April 2013, you were driving a vehicle Grey Toyota Prado Registration #5934 enroute to Port Vila International Airport from Havana Harbour via Mele road. There were two tourists with you in the vehicle you were driving. At that time, it was still dark, there was no other vehicle on the road and you were driving at a speed of 60km/hr.

On the road, you saw three boys on the left side of the road, drunk and not in control of themselves. While driving along with the same speed you kept your eyes on the three boys taking care not to hit them. As you drove past the three boys you turned to see a green object on the road. As you ran past the green object you realised that you had run over a person. You braked for a short time but you did not stop thinking of the safety of the two tourists. You went straight to the airport to drop off the tourists for their flight to Australia. You left the airport and surrendered yourself to the police.

Sam Pasua of Tanna was the victim. He sustained injuries on his body resulting in his death. He was drunk and laid down on the side of the road. His head was on the road whilst the remaining part of his body was on the side of the road. He was laying on the right side of the road near Samasama Store area in the direction leading to Port Vila town.

The victim was still alive when the vehicle you were driving on 28 April 2013 ran over him. He was declared dead upon the arrival to the hospital.



The offence of unintentional harm causing damage on the body of another person resulting in the death of that person, is prohibited and sanctioned by law under section 108 (c) of Penal Code. It carries a maximum penalty of 5 years imprisonment. Mr Fred Toka, upon your conviction of this offence, you are liable to this term of penalty.

It is a serious offence as reflected by the maximum penalty imposed by law.

In considering your sentencing, the court will take into consideration the submissions made by the prosecution and these made by your lawyer on your behalf. The court will also take into account of what is said in the pre-sentence report provided by the Probation office to assist the court in your sentencing.

This was more than a piece of negligence by you which comes at the bottom end of the scale of recklessness. You failed to slow down your vehicle speed when you arrived at a settlement where there were people on the road in that early morning. It was still dark. There were three boys on the side of the road drunk. Others were walking on the side of the road.

You saw a green object on the road after you ran passed the three drunken boys. You did not stop. You took the risk of running over it. You then realised that he had run over a person. Your look-out when driving the truck on that early morning was not grossly defective as you had seen that green object on the right side of the road and drove your vehicle over it regardless as a result of which a man died.

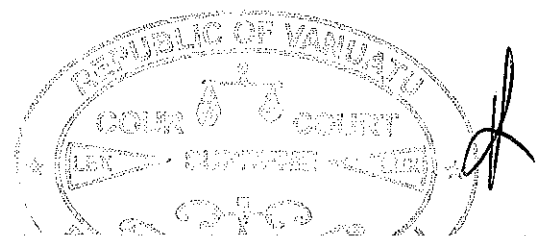
It was a serious piece of driving carrying a high risk of injury on the high way where the accident occurred. In that circumstance the starting point must be of a custodial sentence, and one in the region of 15 months imprisonment after aggravating factors are considered.

The report shows that you are 68 years old. You are from Nduindui village on West Ambae. You now reside at Bladiniere Estate, a compound owned by the Adventures in Paradise Tour Operator, the company you are working for. You are married to Mrs Helen Toka. You have five children, 37 grand children and five great grand children. You completed primary school and offered a scholarship to undertake secondary studies in Solomon Islands. You had spent six (6) years in the Solomon Islands from 1962 to 1967 and returned to Vanuatu.

You were employed by the government in some government departments before you were appointed a Pastor by the Church of Christ in 1977 after which you resigned from employment by the government. It is reported you are quite an outspoken person and you are now a driver and Tour guide for the company Adventures in Paradise Tour Operator. You also have skills in designing houses.

Your ambition is to teach the people of this country on God's words as a devoted Christian. At the moment, apart from your work as a driver and tour guide, you are also a pastor at the Apostolic church at Tebakor area.

In mitigation, you are a first time offender. After your conviction, you accept full responsibility for your offending or what has happened. On 24 September 2013, you performed a custom ceremony to the father, chiefs and family of the deceased. The custom items presented to and accepted by the family of the deceased include:



- Cash money of 10,000 Vatu
- A bull (steer) worth 40,000 Vatu
- A bag of rice (25kg) worth 3,300 Vatu
- Three bundles of Banana worth 500 Vatu for each
- A bundle of Island Taro worth 600 Vatu
- Two baskets of Kumala worth 500 Vatu for each
- Two Island Taro worth 400 Vatu each
- Four rolls of calico/garments worth 320 Vatu each
- A Kava stamp worth 5,000 Vatu
- Bundles of Manioc island crop worth 2,000 Vatu

A report on custom reconciliation between you and the family of the deceased is also provided to the court showing the details of the reconciliation ceremony. You have performed a custom ceremony and presented items worth Vatu 77,000 plus 12,000 Vatu for the transportation which represents a total of Vatu 89,000 Vatu.

The court takes all that in your sentencing. On balance between the aggravating and mitigating factors, your sentence of 15 months imprisonment is reduced to 10 months imprisonment.

The next question is whether this sentence should be suspended. The custom reconciliation ceremony report discloses that during the custom ceremony, an agreement was made between you and the family of the deceased. That agreement is that you will be funding the education of the victim's two children (a daughter – Ms Salina) and (a son – Mr Pasua) who are still to attend primary education. You intend to make a deposit of 7,000 Vatu each month until high education. It is reported that Pastor Paul assisted the deceased's family to open a bank account for you to deposit money on monthly basis.

The above matters justify that the court suspends your imprisonment sentence of 10 months to allow you to fulfill your civil responsibility towards the family of the deceased as it is reported in the custom reconciliation report dated 25 September 2013.

Your sentence of 10 months imprisonment is suspended for a period of 2 years. During the suspension period, you must not re-offend. If you re-offend during the suspension period, your current 10 months imprisonment will be re-activated.

You have 14 days to appeal your sentence if you are unsatisfied with it.

Dated at Port Vila, this 26th day of September 2013.

BY THE COURT



**Vincent Lunabek
Chief Justice**

