

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(CRIMINAL JURISDICTION)**

CRIMINAL CASE NO. 172 OF 2014

PUBLIC PROSECUTOR

V

WILFRED WILLIE

Coram: Justice Mary Sey

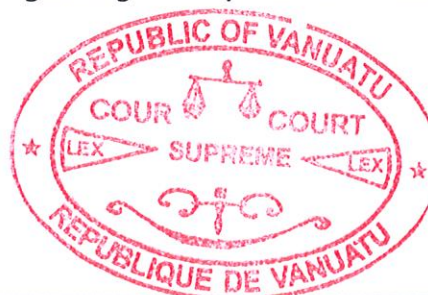
Counsel: Damien Boe for the Public Prosecutor
Clifton Rau for the Defendant

Date of Decision: 20 February 2015

SENTENCE

1. **Wilfred Willie**, you are for sentence today having pleaded guilty on 18th February 2015 to one count of abusive words contrary to section 121 of the Penal Code and one count of threats to kill contrary to section 115 of the Penal Code [Cap 135].
2. The brief facts of the offending are provided by the prosecution and no dispute is taken with the summary of the facts presented by the prosecutor as follows:

On the 1st of June 2014 at around 2:30 pm at the Nakamal of Leviamp, the complainant Chief Maxim Willie and three other members of the Village Council were getting ready for a meeting



which was to be held at the Nakamal. While waiting for the meeting to commence, you walked close towards the Nakamal and shouted out in loud voice abusive and threatening words as follows:

"Who ya oli stap long nakamal ia? yufala ie stap tok abaot wanem ia, yufala ie no save se villij ia ie no kat Jif, yu fala ie no save se mi nao mi jif long villij ia? mi talem long yufala ie must aout naoia? Yufala ie wantem talk abaout wanem ia? yufala ie save se chief ia emi pikinimi blong rod, yufala ie save se hemi man Naman. Mi talem long yufala aout quick. Sipose yufala ie no aout bae mi makem yufala ie kaekae kok blong yufala. Sipose no, yufala ie wet, bae yufala ie kaekae bullet"

3. The Chief and other members of the Village Council who were present at the meeting felt unhappy and ashamed as a result of your actions. After uttering the said words you went back to your house.

4. **The Law:**

Section 121 Penal Code provides:

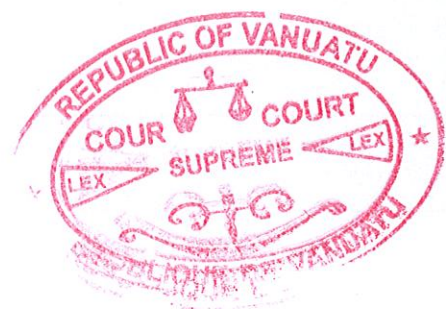
No person shall in a public place use threatening or abusive words, or threatening gestures, towards any other person or persons.

Penalty: Imprisonment for 3 years

Section 115 Penal Code provides:

No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.

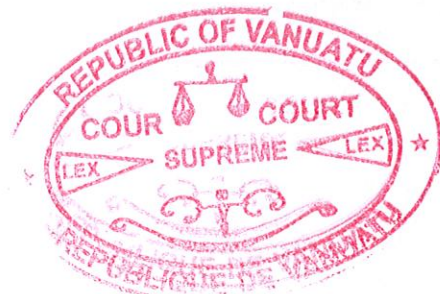
Penalty: Imprisonment for 15 years.



5. The prosecution submits that a sentence of imprisonment should be imposed to reflect not only the seriousness of the offence but to punish the defendant and to protect the community.
6. To bolster his submissions, the prosecutor has referred me to the case of Public Prosecutor v Walker [2007] VUSC 61; Criminal Case 20 of 2007 (12 June 2007) where the Court remarked as follows:

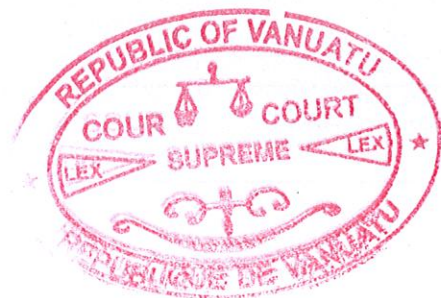
"Cases of this nature must always warrant imprisonment sentence to reflect the seriousness of the offence as intended by Parliament. For offence of threats to kill a person, by a defendant with the presence of a weapon and the use of the weapon is on the higher scale of aggravation and seriousness. A suspended sentence of imprisonment must be only granted if the circumstance of the case is justified."

7. For his part, defence counsel submits that this case can be distinguished from Walker where the words were directed to Glenn Frazer with threats "to cut off his head". Counsel further submits that even though the defendant did refer to bullets he had neither guns nor bullets with him at the time of the commission of the offence. In support of his submissions, counsel cited the case of Public Prosecutor v Manses [2005] VUSC 151 where the defendant entered the Peace Corps Office and threatened to cut the complainant with a bush knife which he had on him.
8. I have read the submissions on your behalf from your defence counsel as well as the submissions made by the public prosecutor. In my view, even though the circumstance of this case is not near to the



top of the scale of aggravation I consider that it falls somewhere in the centre of the scale. The abusive and threatening words were directed at the Chief and other members of the Village Council. These are persons who represent authority in the community and deserve the uttermost respect from all residents of their community. The Court cannot condone a situation where your blatant disrespect and impertinence could have caused chaos and anarchy in the community. The aggravating factors are the threats to the Chief and other members of the Village Council whereby a breach of the peace may have occurred.

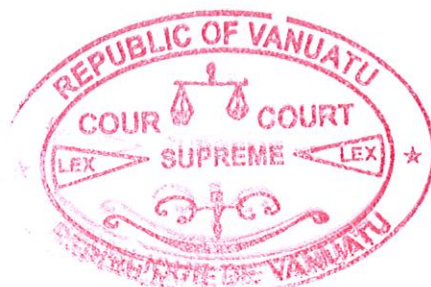
9. In mitigation, defence counsel submits that you pleaded guilty at the earliest opportunity and that you cooperated well with the Police during the time of your arrest and investigation. You are the sole bread winner of your family and your wife who is now five months pregnant fears that she will be left alone if you are sent to prison.
10. It is also submitted that you are the manager and owner of a Kindergarten providing preschool education to 48 needy children in the community. Furthermore, that you are a diabetic patient on a special diet and as per the advice of your Doctor you swim two hours in the sea twice a week to treat your diabetes.
11. **Wilfred Willie**, this is a very serious offence. In my view, a custodial penalty is the appropriate sentence in the circumstances of your case. In relation to count 1, I sentence you to 3 years imprisonment. In relation to count 2, I sentence you to 2 years imprisonment. The sentences are to be served concurrently which means you are to serve a term of 3 years imprisonment.



12. Defence counsel has referred me to the case of PP v Gideon [2002] VUCA 7 where the Court of Appeal said:

"As is always the case, having reached that conclusion, it is necessary to consider what reduction should be allowed for mitigating factors. The first and most obvious in this case was the plea of guilty. That always will attract a substantial reduction particularly when it occurs at the first available opportunity. It is also an indication of remorse and contrition."

13. Consistent with the view of the Court of Appeal in PP v Gideon and Public Prosecutor v Andy [2011] VUCA 14, I have considered what reduction should be allowed for mitigating factors in this present case. I give you full one third credit for your early guilty plea and I deduct 12 months from the sentence. I also deduct a further 6 months for mitigating factors making a total end sentence of 18 months imprisonment.
14. I believe that your personal circumstance warrants suspending the end sentence of 18 months imprisonment for 2 years. You should note that even though you are not going to prison today, you now have a criminal record. If you re-offend and you are convicted before the 2 years' suspension period expires, your sentence of 18 months imprisonment shall be re-activated and you may be required to serve this sentence of imprisonment in addition to any sentence that may be imposed on you for your re-offending.



15. In addition, I impose on you a sentence of 12 months supervision with the following special conditions:
- (a) To undertake Niufala Road Program and/or any other rehabilitation programs available as directed by the Probation Officer.
 - (b) To undertake spiritual counseling with a Church Pastor as directed by the Probation Officer.
 - (c) To report to the Probation Officer as and when directed to do so.
 - (d) Not to re-offend.
16. I should warn you that breach of your supervision conditions is an offence punishable with 3 months imprisonment and/or a fine of up to VT10, 000.
17. You have 14 days within which to file a notice of appeal against this sentence if you do not like it.

Dated at Lakatoro, Malekula this 20th day of February, 2015.

BY THE COURT


M.M.SEY

