

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

Criminal Case No.57 of 2015

**PUBLIC PROSECUTOR**  
**-V-**  
**JAMES KALO RENEVIER**  
**BRUNO WILLIE JACOB**

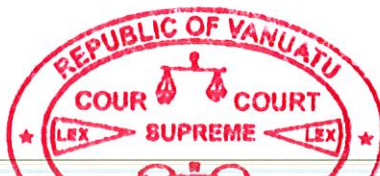
**Coram:** Justice D. V. Fatiaki

**Counsel:** Mr. T. Karae for the State  
Mr. H. Vira for Renevier  
Mr. B. Kalotiti for Jacob

**Date of Sentence:** 16 October 2015

**SENTENCE**

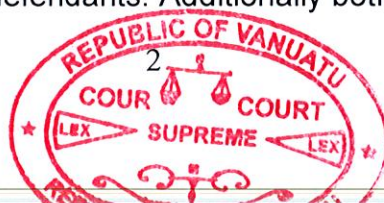
1. The defendants James Kalo Renevier and Bruno Willie Jacob appear today for sentencing. They were initially jointly charged with a single offence of Intentional Assault Resulting in Death. The charge was later amended into two (2) counts ostensibly to reflect the defendants respective roles in the assault that caused the death of Richard Simbolo. James Kalo Renevier was charged with punching and kicking the deceased and Bruno Willie Jacob with aiding James Kalo, how? is not particularized. Although the prosecutor in his wisdom has chosen to differentiate between the defendants respective roles the provisions and consequences of sections 30 to 33 of the Penal Code are clear in treating both defendants as principal offenders and punishable as such.
2. Be that as it may, the defendants pleaded guilty ("*Hemi tru be mi no meanem*") to the amended charges and both were convicted on their pleas after they admitted the facts.
3. The brief facts are to the effect that the deceased with 3 friends bought alcoholic drinks and went to a nakamal in Anamburu area where they consumed the drinks. At about 3 a.m. as the deceased and his friends were leaving the nakamal they were involved in an altercation with a group of youths outside the nakamal and a fight broke out. The deceased became separated from his friends and ran down the road pursued by the defendants. The defendants caught up with the deceased and the second defendant tripped and





tackled the deceased who fell heavily onto the road. The defendants then proceeded to punch and kick the deceased several times whilst he lay helpless on the ground. The assault finally stopped when a car's headlights were shone in the direction of the commotion. However before running off the first defendant went through the deceased's trouser pockets looking for money. After running back to the nakamal the first defendant hurriedly changed his shirt with one of the patrons presumably with a view to avoiding detection.

4. The deceased was taken to the hospital and died soon after his arrival from his injuries. A subsequent post mortem revealed the deceased had sustained multiple facial and head injuries including several fractured ribs and a ruptured lung and liver. The injuries were consistent with severe blunt force trauma. The deceased blood alcohol analysis revealed a concentration of 233.2 mg/100 ml.
5. The defendants were later arrested and interviewed. Under caution, both defendants admitted assaulting the deceased and the first defendant admitted rifling through the deceased's pockets before leaving him motionless in a yard beside the road.
6. By all accounts this was a vicious and brutal attack by both defendants on a heavily intoxicated, defenceless man. The nature and extent of the deceased's external and internal injuries is consistent with a multiple blunt force trauma applied to the head and body of the deceased. This was not a case of an accidental "one-punch" manslaughter. It was a sustained and intentional assault with no element of self-defence.
7. In addition, the impact of the offending on the deceased's family is described in the pre-sentence report as "enormous". The deceased's children are now without a father or a mother as she had already returned to live in New Caledonia before the incident. The deceased's children are now being raised by their paternal grandparents who are in their seventies and who are experiencing hardship as well as worrying about the future welfare of their grand children.
8. The maximum penalty for an offence under section 107(d) of the Penal Code is 10 years imprisonment. It is a serious offence for which the prosecution submits custodial sentences of between 6 to 7 years and 2 to 3 years is appropriate. In addition the State submits the offence is aggravated by the "repeated violence of assault ... by way of kicking and punching"; the use of a safety boot; and the attempted robbery of the unconscious victim.
9. Defence counsel in seeking a suspended sentence, submits that the offence was not pre-meditated and indeed was provoked by the deceased's prior assault of a friend of the defendants. Additionally both defendants expressed to





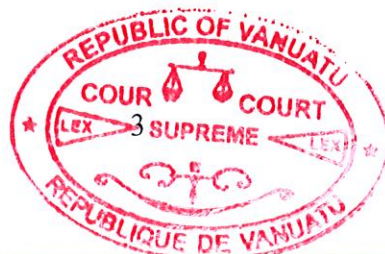
the probation officer, their heartfelt sorrow and remorse and both promised never to re-offend in their pre-sentence reports. The deceased's family also confirms that a custom reconciliation ceremony was performed by the defendants' family by way of "*klinim fes*" through the presentation of a pig, kava root and island food crops.

10. The defendants are 21 years of age and neither attended secondary school. The first defendant is also living in a defacto relationship and the second defendant has a 5 month old daughter that he is caring for. Both have carpentry skills and both aspire to become leaders in their respective church community. Both are first offenders and both confessed to the police and pleaded guilty in Court.
11. In assessing the appropriate sentences in this case I have considered the sentencing precedents helpfully referred to in the prosecution's sentence submissions. In particular the judgment of the Court of Appeal in Public Prosecutor v. Ierogen [2002] VUCA 34 where the Court said:

*"The sentence to be imposed by the Court under Section 107(d) of the Penal Code in disputed cases, depends on the particular circumstances and situation of each case ...*

*In a situation where the defendant uses his fist and legs to cause serious injuries to the body of another person and causes the victim's death as a result of the injury, sentence to be imposed is around 4 years to 7 years".*


12. Bearing that guidance in mind and noting that this is an uncontested case, nothing this Court says nor any sentence this Court imposes will bring back the life of Richard Simbolo. Whatsmore the taking of a human life is a heavy burden that both defendants must carry with them for the rest of their lives, especially for the first defendant who is distantly related to the deceased.
13. In all the circumstances I do not accept that any distinction can be drawn between the defendants and bearing in mind the aggravating features in the case including the fact that the first defendant attempted to conceal his identity by changing his shirt immediately after the fatal assault, I adopt a starting point of 4 years imprisonment which is elevated to 6 years for aggravating factors. For mitigating factors including the defendants' early guilty pleas and the custom reconciliation ceremony I reduce the starting sentence by 3 years making an end sentence of 3 years imprisonment which is ordered to take effect from 7 April 2015 when the defendants were first remanded into custody. Needless to say I have also considered and rejected as inappropriate any suspension of the defendants sentences.



14. Although there has been mention of a piece of land being given as compensation, no details have been provided to warrant a court order in that regard. Any question of civil damages must be claimed by way of a separate civil action brought on behalf of the estate of the deceased.
15. Both defendants are advised of their right to appeal this sentence within 14 days if they disagree with it.

**DATED at Port Vila, this 16<sup>th</sup> day of October, 2015.**

**BY THE COURT**

  
**D. V. FATIAKI**  
Judge.★

