

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

CRIMINAL CASE NO. 40 OF 2014

PUBLIC PROSECUTOR

V

SELINA DAVID

**Coram: Justice Mary Sey**

Counsel: Tabisa Harrison for the Public Prosecutor  
Jacob Kausiama for the Defendant

Date of Sentence: 6 March 2015

### SENTENCE

1. On 20<sup>th</sup> day of August 2014, the Court sitting at Isangel, Tanna was informed that the defendant **Selina David** was charged with the following offences:

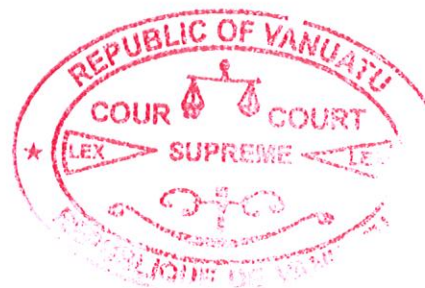
Count 1: Criminal Trespass – contrary to section 144 of the Penal Code Act;

Count 2: Intentional Assault – contrary to section 107(b) of the Penal Code Act;

Count 3: Threats To Kill – contrary to section 115 of the Penal Code Act;

Count 4: Intentional Homicide – contrary to section 106(b) of the Penal Code Act.

2. On 26<sup>th</sup> August 2014, the defendant pleaded guilty to counts 2 and 3 - Intentional Assault contrary to section 107(b) of the Penal Code Act [Cap. 135] and Threats to Kill – contrary to section 115 of the Penal Code Act [Cap. 135] and she was convicted accordingly.

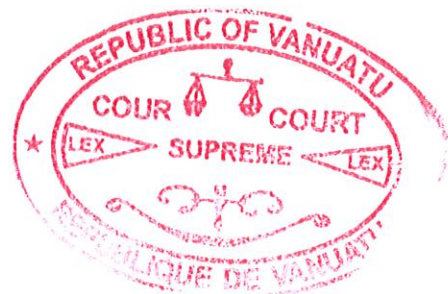


3. The defendant pleaded not guilty to counts 1 and 4 i.e. Criminal Trespass and Intentional Homicide. On 12<sup>th</sup> February 2015, the prosecution entered a nolle prosequi in respect of these two counts and the defendant was discharged accordingly.
4. **Selina David**, you are before this Court in Port Vila for sentence today. You must note that the offence under section 115 of the Penal Code carries with it a maximum penalty of 15 years imprisonment.
5. The defence concedes to the facts on counts 2 and 3 as tendered by the prosecution.

#### Agreed facts

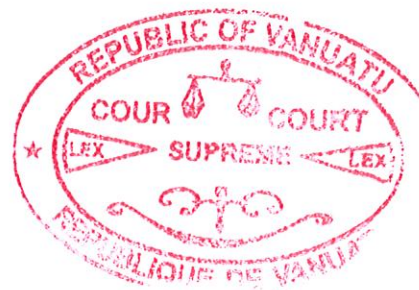
On 6<sup>th</sup> December 2013, the complainant Peter Nocklam filed a written statement against the defendant alleging trespass, threats to kill and killing late Colety Peter. The complainant stated that on 25<sup>th</sup> November 2012, the defendant turned up at his house in the morning. The complainant told the defendant to go back but the defendant took baby Colety from her mother Lesbeth Peter and she also assaulted Lesbeth Peter with a piece of wood.

On 1<sup>st</sup> December 2013, around 0900hrs the defendant returned to the complainant's house swearing "cunt blo you I open" to Lesbeth and Lesbeth said "you stap swear long mi from wanem". Then the defendant said because you are showing of with that daughter of yours. The complainant said he talked to the defendant about the threats she had been making and saying "you tink se bai pikinini ia i life?" The complainant also said that on the same date the defendant went to the house twice to fight and that on both occasions he had ordered the defendant to go back. It is also alleged that on 4<sup>th</sup> December 2013, Selina David returned to the house in the afternoon when nobody was home and that she went inside the room where baby Colety Peter was sleeping. However, the complainant does not know what the defendant went to do at the house.



A witness statement was also submitted by Lesbeth Peter in which she stated that on 28<sup>th</sup> November 2013, Selina David entered their home around 1300hrs and took her baby late Colety Peter from her and assaulted her. The defendant also chased Lesbeth and assaulted her several times with a piece of wood. Lesbeth also stated that Selina was angry because she had baby Colety with her husband David Iauko. She also stated the defendant always assaulted her and that on 1<sup>st</sup> December 2013, around 0900hrs, the defendant went to swear at her and threatened her saying "Pikinini ia i must ded." On 5<sup>th</sup> December 2013, Lesbeth went to eat at Ellen Kota's house at night but the baby was sleeping alone at the house. When Lesbeth came back to the house she checked on the baby and she noticed that the baby was no longer breathing. She also tried to open her eyelids but the baby was dead. Blood also came out of the baby's nose. Baby Colety was 3 months old. The baby was taken to the hospital and the medical certificate indicated that the baby had bruises on her body and that the baby could have been physically abused by the defendant.

6. The Court had ordered a pre-sentence report to be prepared by the probation officer on Tanna Island and this Order was complied with promptly. I am grateful to the correctional services for its assistance in this regard. I have also found the sentencing submissions filed by both the prosecutor and defence counsel very useful.
7. The aggravating factors here are that the defendant swore at the victim Lesbeth Peter on numerous occasions and also assaulted her with a piece of wood at one stage. The defendant had also made threats to the victim that her baby Colety will not live.
8. **Selina David**, this is appalling conduct on your part. It is clear that you were emotionally charged and overcome with jealousy at the knowledge that your



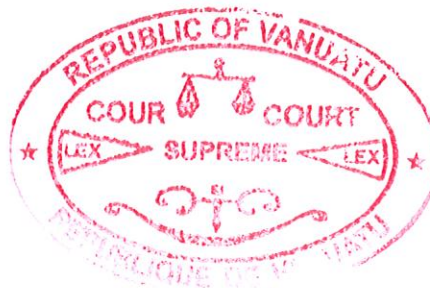
husband had fathered baby Colety. Your offending is serious enough to warrant a custodial sentence which would not only mark the gravity of your offending but will also publicly denounce your actions as well as punish you adequately.

9. The prosecution submits that a sentence of imprisonment should be imposed on the defendant to reflect the seriousness of the offence.
10. The defence acknowledges that both counts warrant custodial sentences but defence counsel has referred me to a number of relevant cases where suspended sentences were imposed in respect of offences of threats to kill involving bush knives and pieces of wood.
11. In Public Prosecutor v Kaloran [2014] VUSC 14, the defendant was 29 years old and was charged with one count of threats to kill Contrary to Section 115 of the Penal Code [CAP 135] and one count of Intentional Assault Contrary to Section 107 (b) of the Act. The defendant was in a relationship with the victim who was an Australian female. He threatened to kill the victim with a knife. He swung an axe at her and threatened to kill her and then kill himself. On another occasion, the defendant bit the victim's mouth and caused serious injuries around her lips. He also held two coconuts and threatened to smash her head. The defendant also threatened to kill the victim at a motel and then he threatened to kill the motel staff. The Court sentenced him to 15 months imprisonment suspended for 2 years, plus community work and 6 months probation. In Public Prosecutor v Philip Enaus (2008) VUSC 04, the defendant threatened to kill the complainant with a bush knife like a pig. The defendant was angry because he believed he had a claim over the land which the complainant was clearing. However, after the threat was made, there was no attempt by the defendant to cut the complainant with the bush knife. The defendant was 39 years of age and had 5 children. He entered an early guilty plea and he was a first time offender. The Court sentenced the defendant to 18 months imprisonment suspended for 2 years plus community work and 6 months



supervision. In Public Prosecutor v Manses (2005), the Defendant went into the office of Peace Corp and threatened to cut the complainant with a bush knife which he had on him. He pleaded guilty and the Court sentenced him to 3 years imprisonment suspended for a period of 2 years.

12. **Selina David**, I am of the view that a custodial penalty is the appropriate sentence in the circumstances of your case. Accordingly, in relation to count 2 which is the offence of intentional assault, I hereby sentence you to 6 months imprisonment and for count 3, which is the offence of threats to kill, I sentence you to 2 years imprisonment. Both sentences are to run concurrently.
13. I note from the pre-sentence report that you are from Lamnatu Village, Middle Bush area, Tanna. You are 31 years old and come from a family of eight including two brothers and four sisters. You are married and you are presently living with your husband and four children including an adopted disabled son. You attended French primary school from grade one to six and you later advanced to secondary level where you obtained your year 10 school leaving certificate from Isangel College. You also told the probation officer that you worked for White Grass Ocean Resort as a tour guide from 2009 to 2013 but you decided to give up your job because you felt ashamed after you were arrested by the Police in 2013.
14. You are also a first time offender and you pleaded guilty at the first available opportunity. Consistent with the view of the Court of Appeal in PP v Gideon [2002] VUCA 7 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.
15. I turn next to consider whether this Court should suspend the sentence pursuant to the provisions of Section 57 of the Penal Code. I have considered relevant authorities referred to me and I accept the submission of defence counsel that this is an appropriate case where the sentence can properly be suspended.



Accordingly, your sentence of 6 months imprisonment for intentional assault and 2 years imprisonment for threats to kill is hereby suspended for a period of 2 years.

16. In addition, you are sentenced to 200 hours community work.
17. I note that you were remanded by this Court on 12<sup>th</sup> February 2015 to await your sentencing today and that you were previously remanded from the 10<sup>th</sup> December to 20<sup>th</sup> December 2013. Given the circumstances of your case, I adopt the Court of Appeal's view as stated in Public Prosecutor v Moli [2011] VUSC 244, that the "clang of the prison gates" is sufficient punishment. You should also 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 imprisonment shall be re-activated and you may be required to serve this sentence in addition to any sentence that may be imposed on you for your re-offending.
18. You have 14 days to appeal against this sentence if you are dissatisfied with it.

**Dated at Port Vila this 6th day of March, 2015.**

**BY THE COURT**

  
**M.M. SEY**  
Judge

