

PUBLIC PROSECUTOR

V

ELTON WORWOR

Hearing : August 30th, 31st, September 1st, 2nd & 23rd.

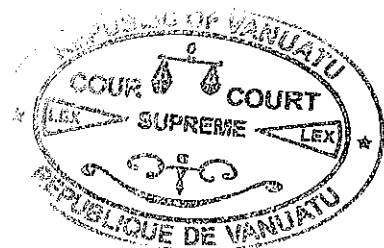
Judgment: Monday September 26th 2016 at 9 am

Before: Justice JP Geoghegan

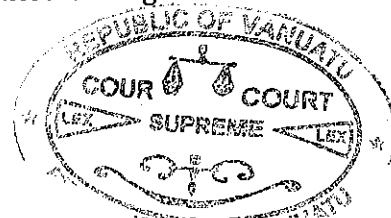
*Appearances: Damlen Boe for the Public Prosecutor
Andrew Bal for defendant*

JUDGMENT

1. Mr Elton Worwor faces one charge of unlawful assembly contrary to section 69 of the Penal Code Act arising from a well-publicised incident which occurred on March 13th 2016. Mr Worwor is one of a number of defendants who have been charged with a variety of offences arising from that incident.
2. Pierre Noal, Ben Koro and Glen Kovoï had previously entered guilty pleas to the charges of kidnapping and unlawful assembly on the first day of this trial. In the circumstances they could properly be regarded as the principal offenders in relation to this incident. Michael Samuel pleaded guilty to aiding and abetting kidnapping and could also be regarded as a principal offender.
3. No case to answer was found in respect of the defendants Charlie Kasuali and Ben Koro in relation to charges of threatening to kill, intentional assault and, in the case of Mr Kasuali, unlawful assembly.

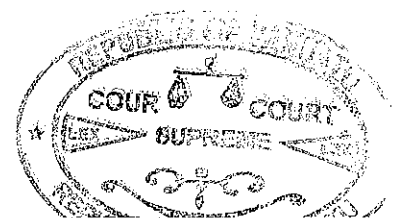


4. The incident on March 13th can be summarised in this way. The complainant Ms Florence Lengkon had posted comments on Facebook which related to the alleged lack of professionalism of some taxi and bus drivers.
5. Mr Noal, Mr Koro, Mr Kovoï and Mr Samuel drove to her place of work and forcibly removed her from her office. They brought her by bus to Star Wharf where a large number of taxi and bus drivers had assembled waiting for a cruise ship that was yet to dock that morning. It needs to be said at the outset that that gathering of taxi and bus drivers was not unusual and was normal in all of the circumstances when a cruise ship was expected into port.
6. Ms Lengkon was taken out of the bus and was forced to apologise to the gathered taxi and bus drivers. During the course of a repeated apology she was seriously assaulted and after that assault she was returned to her office. There has been no evidence of any kind which has been able to establish who was responsible for that assault, notwithstanding the fact that there were a large number of people present and someone must have seen who was responsible.
7. With reference to Mr Worwor the issue is what part he played in all of this and whether there is sufficient evidence to convict him of unlawful assembly.
8. The evidence of Ms Lengkon was that when she got to the wharf there were a lot of people standing there. She stated that she saw Mr Worwor standing next to a taxi. He asked her to apologize. She stated that there were a lot of people cursing and swearing, so she apologized saying, "I apologize, heart-felt apology because of my comment on Facebook which had obviously made people feel bad." She apologized a total of three times and after the second apology her evidence was that Mr Worwor asked her to apologize again. She was then assaulted during the course



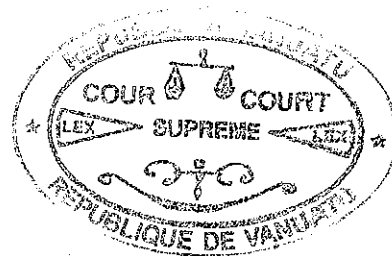
of that third apology at which point Mr Worwor according to Ms Lengkon's evidence said "That is enough boys" and arranged for her to be taken back to her work place. She stated that during the course of her apology Mr Kovoï was standing in front of the crowd displaying her face book message on her phone. She estimated that her ordeal lasted for approximately ten minutes. There is no question that what she was put through that day would have been terrifying for her.

9. Mr Worwor gave evidence in his own defence. He stated that he was the President of the Port Vila Taxi Association and was present at Star Wharf on March 13th. He stated that he was initially at the food stall located at the vicinity of where the drivers park their buses and taxis. After eating, he gathered a group of drivers together to say a prayer by a banyan tree where the drivers usually waited pending the arrival of a cruise ship. He stated that while walking to the tree he heard someone say "He is the one you are going to apologize to". He estimated that he would have been some six metres from that person. He then noticed Ms Lengkon walking towards him. He did not know her and he did not know why she would need to apologize. He gave evidence that he said to her "Sister I don't know why you are here, I don't know why you have to apologize". He stated that Ms Lengkon wanted to apologize to the crowd and there was a slight delay while the crowd noise was subdued. The crowd was moving towards her. He wanted to protect her. He stated that there were a lot of people talking and things were stirring up and he simply wanted to help. He was unaware of any Facebook posting until after Ms Lengkon had been assaulted. He said that the four principal offenders Mr Noal, Mr Koro, Mr Kovoï and Mr Samuel were not members of his Association. He stated that he did not see Mr Kovoï standing in front of the crowd displaying Ms Lengkon's Facebook message.
10. Mr Worwor estimated that Ms Lengkon was present at the wharf for some 20 to 25 minutes. He stated that he did not immediately return her to her work place as he did not know initially why she was there. Because of Mr Worwor's evidence and the fact that there were some



matters which had not been put to Ms Lengkon in cross examination and in respect of which Mr Worwor gave evidence, an application was made and granted for Ms Lengkon to be recalled.

11. When recalled she denied that Mr Worwor had ever said "Sister I don't know why you are here, I don't know why you have to apologize". Ms Lengkon also reiterated that it was her clear recollection and observation that Mr Worwor was chairing and controlling the meeting.
12. In fact she went further in her evidence and stated that Mr Worwor had told her when she got out of the bus that "We took you here for you to apologize to the taxi drivers and bus drivers for your comment on Face book". That was the first time such evidence had ever been given. That evidence was new evidence from Ms Lengkon. There were a number of matters referred to in her evidence on recall which were not given in evidence by her earlier. Such matters included evidence from Ms Lengkon and she was punched with some force to the back of the head when she first got out of the bus upon arrival at Star Wharf. She also said that when she was required to apologize a second time Mr Worwor told her that she had been brought to the wharf to apologize for comments on Facebook. Those are matter of some significance that I will return to shortly.
13. In addition, Ms Lengkon acknowledged under cross examination that some of her evidence was inconsistent with statements that she had made to the police. She acknowledged that in her police statement made on the day of the incident that she told the police that Mr Worwor was walking towards her when she got out of the bus at Star Wharf rather than that he was standing before the gathered drivers. Ms Lengkon stated that she was shaken when she made that statement to the police and I readily accept that. Her police statement however is consistent with Mr Worwor's evidence on this particular issue.

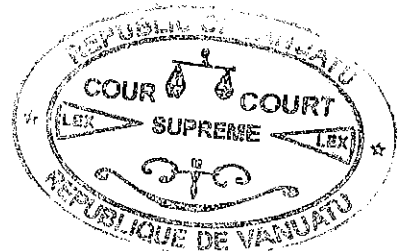


14. When cross examined by Mr Bal it was put to Ms Lengkon that when she arrived at the Wharf Mr Koro opened the bus door and called out to the President and other taxi drivers to come and see her. Ms Lengkon denied that that had occurred but then acknowledged under further cross examination that in a police statement made by her on March 17th that is what had happened.
15. The purpose in recalling Ms Lengkon to give evidence was to enable her to respond to aspects of Mr Worwor's evidence which had not been put to her in cross examination. It is not an opportunity for the prosecution to lead evidence from Ms Leigkon in respect of new matters that she had not given evidence in respect of when she was first called.
16. I have reached the conclusion that it would be wrong for me to take account of the new matters referred to by Ms Lengkon in her evidence, as firstly, the onus is on the prosecution to present its case fully before it closes and it should not be given two bites of the cherry and secondly, Mr Worwor has not been given an opportunity to respond. The burden on the prosecution is a very heavy one and it should not be permitted to adduce further evidence unrelated to matters in respect of which a witness has been recalled.
17. I need to say that none of this is intended as a criticism of Ms Lengkon who has given her evidence in a firm and clear manner, but criminal prosecutions cannot be permitted to be an evidential "free for all".
18. The only other evidence that I would refer to before turning to consider the charges against Mr Worwor is the evidence of Mr Jeremy Garae. He gave evidence that he was on his phone at Star Wharf on the morning of March 13th when he saw Mr Lengkon's message on Facebook. He showed it to Mr Kovoï who then took Mr Garae's phone and went to the banyan tree to show it to other drivers. His evidence is also however that at that time only Mr Kovoï, Mr Samuel and Mr Koro were at the banyan tree. His evidence was that he did not see Mr Worwor. That is

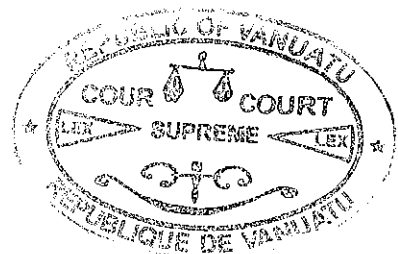


evidence which also has to be taken into account in determining this matter.

19. Having referred to the evidence I remind myself that the burden of proof sits firmly on the prosecution in respect of proving each of the essential elements of the charge against Mr Worwor. That burden never shifts at any point of a trial. It is not for Mr Worwor to prove anything.
20. The essential elements of the charge which Mr Worwor faces are firstly, the presence of three or more persons, secondly that they conducted themselves in such a manner as to cause nearby persons reasonably to fear that the persons assembled will commit a breach of the peace, and thirdly that the defendant intended to commit an offence or carry out some common purpose.
21. The first element is easily satisfied. It is the second and third elements that are more troubling. In this regard context is everything and there are some things that differentiate this case from what might be seen as the usual run of cases involving unlawful assembly.
22. On the morning of March 13th the gathering of taxi drivers was a normal occurrence and of no consequence. There is no evidence at all which in my assessment establishes that any persons other than Messers Noal, Kovo, Samuel and Koro had intended that Ms Lengkon be brought to Star Wharf to apologize for her comments.
23. Accordingly I am satisfied that Mr Worwor had no prior knowledge of the plan to bring Ms Lengkon to Star Wharf. Some there may have and I suspect that some did. But the Court determines cases such as this based on admissible evidence and not speculation or suspicion.
24. The evidence established that once Ms Lengkon arrived, things turned hostile and aggressive as no doubt word spread like wildfire of the reasons for her presence.

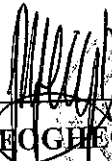


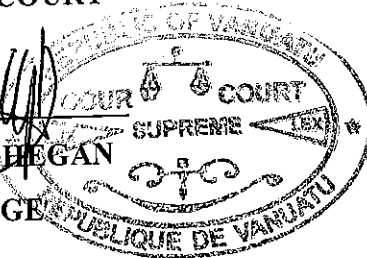
25. For the reasons referred to earlier I take no account of Ms Lengkon's evidence on recall that Mr Worwor made comments as to her being brought there to apologize for her comments on Facebook. In addition, while she gave evidence that Mr Worwor was clearly in charge of meeting, that observation was also consistent with his evidence that he had or was about to gather the drivers together for prayer. In that regard he did hold a position of recognised authority in respect of some of the drivers gathered.
26. Having heard the evidence of Mr Worwor however I am unable to discount his evidence that Ms Lengkon, a person initially unknown to him, was brought to him for reasons initially unknown to him but which then would rapidly have become clear. The reality is that this was a gathering where the mood of the crowd, or at least some within it, changed very quickly and a dangerous situation developed for Ms Lengkon. Mr Worwor's actions in getting Ms Lengkon into a taxi to remove her from the scene are consistent with his evidence that he was doing his best to protect her. While there can be no question that he asked her to apologize three times those actions are just as consistent with his explanation of trying to manage an increasingly hostile crowd, as they are of Ms Lengkon's view of Mr Worwor as effectively forcing her to do so.
27. In circumstances such as this it is not an issue of being required to choose Ms Lengkon's evidence over Mr Worwor's or vice versa. This was a rapidly developing situation where the perception of two people who were in the same place at the same time may be quite different. Ultimately, however the question is whether I am sure of Mr Worwor's guilt or whether there is a reasonable doubt.
28. Having heard the evidence, I cannot discount his explanation and in those circumstances I can only be left with a reasonable doubt. For that reason he is acquitted accordingly.



Dated at Port Vila this Monday 26th day of September 2016

BY THE COURT


JP GEOGHEGAN
JUDGE



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text around the seal includes 'REPUBLIC OF VANUATU' at the top, 'SUPREME COURT' on the left and right sides, 'SUPREME' in the center, and 'REPUBLIQUE DE VANUATU' at the bottom. The word 'LEX' is also visible on the right side of the seal.