

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

Criminal Case No. 1936 of 2017

**PUBLIC PROSECUTOR**

**-v-**

**SAMSON NAIKAPEN**

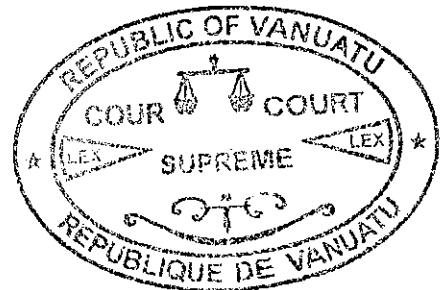
**Coram:** V. Lunabek- CJ

**Counsel:** Mr Tristan Karae for Public Prosecutor  
Ms Kylie Bakeo for the Defendant

**Date of Delivery:** 18<sup>th</sup> August 2017

**SENTENCE**

1. Samson Naikapen, this is your sentence. On 2 August 2017, you entered a guilty plea on one count of threats to kill a person contrary to s.115 of Penal Code Act.
2. On 25 April 2017, at Ilmansa nakamal, Tanna, you took a big knife (bush knife) and chased the complainant on the road.
3. You told the complainant (Solomon Namri) that you would kill him by cutting him to death.
4. During the time, police officers were accompanying Mr Solomon Namri (the complainant) on the vehicle when you chased them with the knife and threatened to kill the complainant.
5. The complainant, Mr Solomon Namri lodged the complaint against you for this offence of threats to kill him on 26 April 2017.
6. On 27 April, you were arrested and detained. You were cautioned and interviewed. You made no admission to the offence as alleged against you.
7. The pre-sentence report reveals the following:-



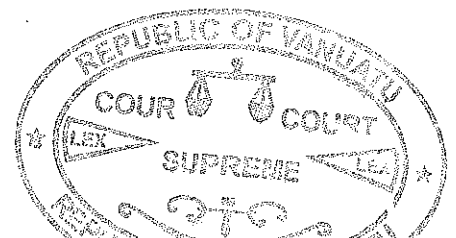
You are 42 years of age. You originate from Tanna and currently you reside at Erakor Bridge with your brother. You agreed with the Prosecution's summary of facts. But you say you were never intended to harm your brothers. You were fixing the nakamal's roofing which required you using a knife and the fact that you had to jump of the roof with the knife in your hand must have mislead your brothers to thinking you were going to cut them with the knife. You say you agreed with the fact that you were holding a knife at that time, but after jumping of the roof, you were assaulted by other relatives. The report shows that your action is not a planned action. There was a conflict within the family that was never resolved and had been standing for almost 6 years without resolution. You were also victim of that conflict as you were also assaulted by your brothers.

8. The prosecution submitted referred to Guideline Judgments for this type of offending: *Walker -v- Public Prosecutor [2007] VUCA 12* in which the Court stated:

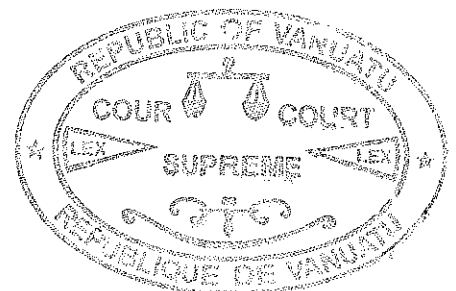
*"Cases of this nature must always warrant imprisonment sentence to reflect the seriousness of the offence. For offence of threats to kill a person, by a defendant with presence of weapon and the use of the weapon is on the higher scale of aggravation and seriousness. A suspended sentence of imprisonment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

9. I read and take into account of what your lawyer says in her submissions on your behalf.
10. This is a serious offence. It carries a maximum penalty of 15 years imprisonment.
11. In the present case, the circumstances of this case are aggravated by the following factors:

- a) The presence of a weapon/ bush knife when the threats occurred.




- b) You chased after the complainant with a knife.
- c) Police officers were present with the complainant at the time of offending - you show lack of respect for officers of the law when the threat was carried out.
- d) You fear to the complainant and the accompany police officers for their lives.
12. The prosecution submitted that an appropriate starting point should be 3 years inclusive of the aggravating circumstances.
13. I sentence you to 2 years imprisonment as a starting point sentence.
14. In mitigation, you are a first time offender. You pleaded guilty at the first opportunity given to you by the Court. I reduce your sentence to one third for your early guilty plea. Your remaining term of sentence is 16 months imprisonment.
15. You have performed custom ceremonies to the victims of your offending.
16. In the first custom reconciliation ceremony you gave:
- One pig, worth 20,000vt
  - Two stamba Kava blo 5 years
  - Three mats
  - One bundle Kaliko
17. In the second custom reconciliation you gave:
- One foul
  - One mat
  - One bundle Kaliko
  - One, pig worth 35,000vt
  - One stamba blo Kava for 5 years



18. Your term sentence of 16 months is further reduced by 8 months making an end sentence of 8 months imprisonment.
19. I consider the nature and circumstances of your offending, I decide to suspend your term of imprisonment of 8 months for 2 years. I do order.
20. In addition, you are ordered to perform 80 hours community work.
21. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Port Vila, this 18<sup>th</sup> day of August, 2017**

**BY THE COURT**



**V. LUNABEK**  
**Chief Justice**

