



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

Criminal Case No.2899 of 2016

PUBLIC PROSECUTOR

-v-

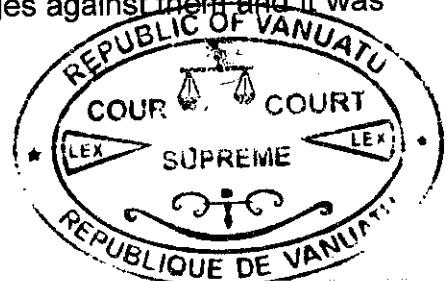
**SAMUEL NASEMEL
TUKZ MISAK
ANTHONY MISAK
JOHNNY ROGER
FREDERICK WESUR**

*Before Justice David Chetwynd
Hearing 7th July 2017
Ms Ngwele for the Public Prosecutor
Mr Napuati for Mr Nasemel
Mr Livo for the remaining Defendants*

Sentence

1. These five defendants got drunk one evening. They were on their way home in the early hours when they took umbrage at the way a bus was being driven. They thought it drove too close to them. One of them kicked the bus. Inside the bus was Mr Simon Lui, his girlfriend, the driver and two passengers. Mr Lui recognised one of the men in the group that kicked the bus as his friend Johnny Roger. He asked the driver to stop. When the driver stopped Johnny Roger approached the driver and passengers and it was clear he wanted to fight or attack them. Tukz Misak also approached the bus and made it clear he wanted to fight as well. He chased one of the passengers down the road. Tukz Misak then came back to the bus and Mr Lui was trying to keep a close eye on him when Samuel Nasemel punched him on his neck and kicked his legs away. Whilst he was lying on the ground Samuel Nasemel took out a small knife and went to stab him. As Mr Lui tried to fend off the blow Samuel Nasemel stabbed him in the hand. Mr Lui was able to get up and as he tried to get away Samuel Nasemel stabbed him in the back. At about this time Anthony Misak approached the bus and was threatening Mr Lui's girlfriend and the driver. He chased the driver. Last on the scene was Frederick Wesur. He took no part in the assaults. However he saw a wallet laying in the bus doorway and stole it. The wallet contained VT 7,000.

2. Those are the basic facts. Samuel Nasemel has always indicated his guilty plea as did Mr Frederick Wesur. The three remaining defendants all entered not guilty pleas. Unfortunately their counsel misread the charges against them and it was



on his advice they pleaded not guilty. Their counsel realised his mistake later and after talking to his clients they indicated they would plead guilty soon afterwards.

3. Samuel Nasemel has entered a plea of guilty to a charge of intentional assault causing permanent injury. The maximum punishment for such an offence at the time was 5 years. Had he committed the offence after 24th February 2017 he would have been liable to go to prison for up to 10 years.

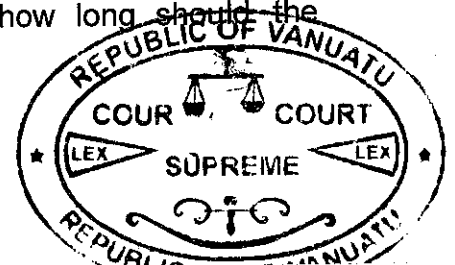
4. Tukz Misak, Anthony Misak and Johnny Roger each pleaded guilty to aiding and abetting the offence charged against Nasemel. They are liable to a maximum sentence of 5 years as well.

5. Frederick Wesur pleaded guilty to stealing the wallet. The maximum sentence for an offence of theft is 12 years.

6. I consider the offence committed by Frederick Wesur to be the least serious. Ironically, as can be seen above, it is the offence which attracts the most severe punishment. It is clear from the facts that the theft by Wesur was a petty opportunistic offence. He has returned the money he stole. He is a first time offender and entered a plea as the earliest appropriate occasion. He was under the influence of alcohol when he committed the offence. I consider that the starting point for his offending is 12 months imprisonment. As indicated though, he did return the money and is a young man who has never been in trouble before. On that basis his sentence can be reduced by 3 months. In addition, because he entered a guilty plea early on he is entitled to a full 1/3rd remission. The final sentence is one of 6 months. Looking at the offending and the character of the offender this is a sentence that can be suspended. It will be suspended for two years.

7. Turning to Tukz Misak, Anthony Misak and Johnny Roger, these three young men, fuelled no doubt by alcohol, acted aggressively and threatened people who were on the bus. They had no reason to, they were just behaving loutishly. Fortunately it was only Mr Lui who suffered any physical harm. This kind of aggression aggravated by drunkenness should attract a sentence of 27 months imprisonment. All three defendants are young and have never been in trouble before. They should be given credit for that and the sentence will be reduced to 24 months. All three eventually entered pleas of guilty although not at the earliest opportunity. I understand that they did what they did on advice from their counsel but they were well aware of what they were charged with and could have entered appropriate pleas when they first appeared. In the circumstances I am not prepared to give them a full 1/3rd discount but the sentence will be reduced to 18 months imprisonment. Because of their youth I am prepared to keep them in the community and their sentences will be suspended for two years.

8. That leaves Mr Samuel Nasemel. He is a very fortunate young man. He attacked someone with a knife. He could have very easily inflicted much more grievous harm than he did and it is only through luck that his victim did not suffer very serious injuries. Any such unprovoked attack with a bladed implement must attract a custodial sentence. The only question really is how long should the



sentence of imprisonment be. In this case the offence warrants a sentence of 36 months imprisonment. The drunkenness aggravates the offence and the sentence should be one of 39 months. In mitigation this defendant has shown remorse and seems to be genuinely sorry for what he did. He is a relatively young man who has not been in trouble before. He should be given credit for those factors. His sentence will be reduced by 3 months. He entered a guilty plea as soon as he could and will be given a full 1/3rd discount for that for expression of remorse. His final sentence is 2 years imprisonment. Due to the nature of offending and the character of the offender I will allow Mr Nasemel to remain at large in the community and his sentence will be suspended for a period of two years.

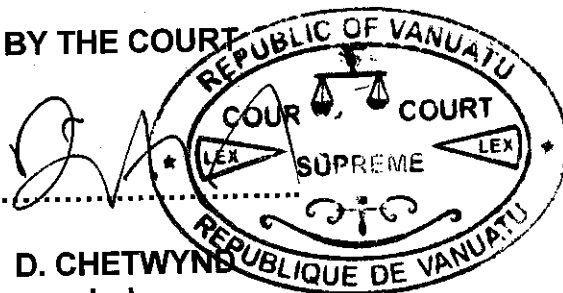
9. All 5 defendants have had their sentences suspended for a period of 2 years from today. This means they walk free from the Court this morning. However, as I explained to the defendants this morning, this means that they must not commit any further offences. If they do commit other offences within the two year period of suspension the sentences imposed today will immediately take effect. In addition they may have additional sentences for the "new" offences.

10. All the defendants will undertake rehabilitation programs as directed by a Probation Officer on Anger Management/Violence Awareness and Alcohol and Drugs Awareness. Each defendant will also undertake the Niufala Rod programme as directed by a Probation Officer.

11. I will remind the defendants of what I said in court this morning, namely if they are unhappy with the sentences handed down then they have the right to appeal. They were told of my reasons for the sentence being imposed in Court but it is only fair that the time for appeal will only start to run when their counsel receives a copy of these written reasons.

Dated at Port Vila this 7th day of July 2017.

BY THE COURT



D. CHETWYND
Judge