

BETWEEN: Public Prosecutor

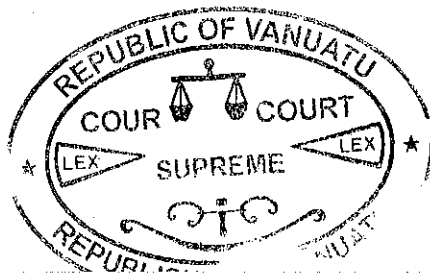
AND: Remmy Malon
Defendant

Before: Justice Aru

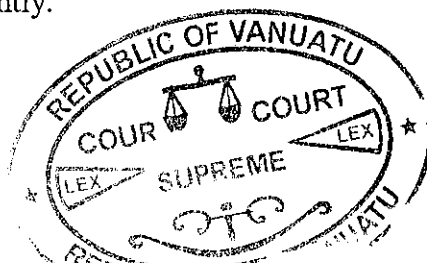
Counsel: Ms. L. Lunabek for the Prosecutor
Mr. E. Molbaleh for the Defendant

SENTENCE

1. MALON REMY you appear today for sentencing in this matter.
2. This defendant was charged as follows:-
 - Count 1 - Threats to kill contrary to s 115 of the Penal Code [CAP 135];
 - Count 2 – Attempted intentional assault contrary to s 28 and 107 (a) of the Penal Code; and
 - Count 3 – Abusive or threatening language contrary to s 121 of the Penal Code.
3. On 6 March 2018 he entered guilty pleas to counts 2 and 3 and pleaded not guilty to count 1. A trial was then fixed for 18 May to try the defendant on count 1. Before the trial begun, defence counsel informed the Court that his client wanted to re take his plea on count 1. He was then re arraigned and entered a guilty plea.
4. The brief facts of the offending are that the defendant and the complainant are both from the island of Nguna where the offending occurred. The complainant had a garden of food crops which was destroyed by the defendant's pig. Upon discovering this, the complainant killed the pig. When the defendant was informed of what happened to his pig, he sent a Richard Lakeleo to tell the complainant he would cut him up with a knife or axe if he found him anywhere.



5. On 16 May 2013 the complainant was on his way home from the gardens with his wife when he met the defendant on the road. The Defendant was heading towards the gardens. When the defendant saw the complainant he said words to the effect that "*mania long taem mi stap lukaotem yu be yu stap hide long mi tete nao hemi taem blong yu*" (Translated into English it means "*Hey I was looking for you now your time has come*"). The defendant then started walking towards the complainant and was holding a knife. He slipped and fell and the complainant ran away. As the complainant made his escape he heard the defendant say words to the effect that "*I gud ia yu ron I go faken bastard*" (Translated into English it means "*it's good that you are running away fucking bastard*").
6. When cautioned by the Police the defendant admitted his offending.
7. Of the three offences charged, threats to kill is the most serious as the maximum penalty is 15 years imprisonment. Intentional assault as charged at the time of the offending is punishable by imprisonment of 3 months. This has now been increased by Parliament to 1 year imprisonment. Abusive or threatening language is punishable by 3 years imprisonment. A threat to take away someone's life is not something that can be taken lightly and must be condemned in the strongest of terms.
8. The offending is aggravated by the fact that the defendant had a knife with him and approached the complainant with the clear intention to cause him serious harm.
9. Considering that the lead offence is threats to kill, I adopt a starting point of 5 years imprisonment.
10. From the Pre-Sentence Report the following personal factors are extracted. The defendant is 62 years old and comes from Negava village on Nguna Island. He completed his education at Epule Training Centre where he acquired skills in construction and joinery. He is married and has two daughters who are also married. He is the sole bread winner for his family and earns his income also from his pig farm. He participates in community activities and this is his first offending.
11. In mitigation I accept that the defendant is a first time offender with no previous record. He is entitled to some discount on his late guilty plea. And has also performed custom reconciliation to the complainant. This occurred at the defendant's house and is confirmed by the complainant.
12. For the late guilty plea I deduct 1 year reducing the sentence to 4 years imprisonment. As a first time offender the sentence is further reduced by 1 year reducing the sentence to 3 years imprisonment. A further reduction of 6 months is made to reflect the custom reconciliation leaving an end sentence of 2 years and 6 months imprisonment to be served concurrently.



13. Having considered the circumstances of this case, the nature of the offending and the character of the offender the sentence is suspended for a period of 1 year. Should the defendant reoffend during this period he will be arrested and remanded to serve the full term in custody. In addition he is ordered to do 100 hours community work within a period of 12 months.

14. You have 14 days to appeal if you are not happy with the decision.

DATED at Port Vila this 27 day of July, 2018

BY THE COURT

.....

D. Aru
Judge

