

**PUBLIC PROSECUTOR**

- v -

**JOHNSON NAMRI**

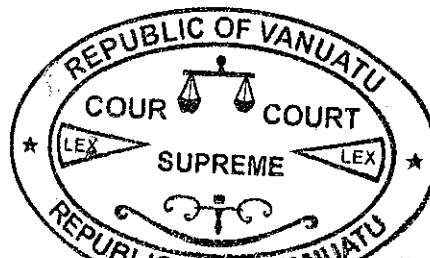
**Coram:** Vincent Lunabek - CJ

**Counsel:** Mr Philip Toaliu for Public Prosecutor  
Mr Bryan Livo for the Defendant

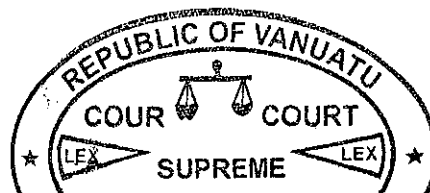
*Date of Sentence: 03 September 2018*

**SENTENCE**

1. Mr. Johnson Namri, this is your sentence. You are charged with one principal offence of Attempted Premeditated Intentional Homicide, contrary to sections 106 (1) (b) and 28 of the Penal Code (count 1) and two alternative offences of intentional assault (count 2) and of threats to kill a person (count 3), contrary to sections 107 (b) and 115 of the Penal Code respectively.
  
2. On 12 September 2017, you entered following pleas:
  - Not guilty on attempted premeditated intentional homicide;
  - Guilty on intentional assault; and
  - Guilty on threats to kill a person.
  
3. The prosecution decided to proceed with a trial against you on the most serious charge on the principal offence of Attempted Premeditated Intentional Homicide (Count 1). If you are found guilty on that offence, you will be sentenced solely on that count 1 as counts 2 and 3 are only alternative to the principle offence. But if you are found not guilty to that count 1, then, you will be sentenced on both counts 2 and 3 instead.

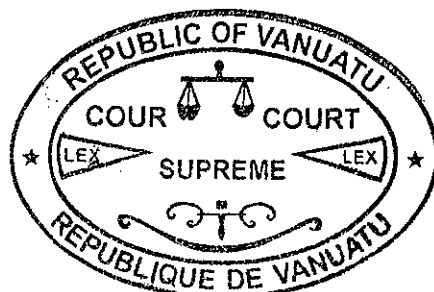


4. On 29 May 2018, you were found guilty and convicted of attempted premeditated intentional homicide, contrary to sections 106 (1) (b) and 28 of the Penal Code by the Supreme Court (Count1). You are sentenced today on that principal offence of Attempted Premeditated Intentional Homicide in count 1 only.
5. The facts of your offending are contained in the judgment of this Court on verdict of 29 May 2018. I did not intend to go back to the details of these facts. What follows is a summary.
6. On Sunday 26<sup>th</sup> March 2017 in the afternoon, you did some unlawful acts intended to cause the death of your wife (the complainant) that went beyond just thinking or talking about it.
7. You attended the church service in the morning of Sunday 26 March 2017 with your daughter. Before the church service started, you said you saw one of the pastors whispered at the door of the room your wife was sleeping in. You said you saw and knew that that Pastor slept with your wife in that room. The cloths of that Pastor were seen also in that room. You said your wife did not attend the church service on that day. She was staying back in that room. She must have been afraid. You have also expressed your frustrations that while you are looking after the children, your wife spent her time praying and so you exclaimed: "What kind of prayer was she doing!".
8. You said these things happened in the morning of Sunday 26 March 2017. You said you did not do any act intended to cause the death because you acted in the heat of passion based on some provocation when you saw these things that morning. You were calm that Sunday afternoon. There were no spontaneous reactions or any reaction caused by the heat of passion based on some sort of provocation that Sunday afternoon, as you said.
9. After the church service, you returned home with you daughter at Black Sands. You prepared food for lunch for your children and yourself. You had lunch. After lunch, you took a steel hammer and hidden it in your pack bag. You took a bus and returned to the church premises where your wife stayed. You arrived at the church. You pushed your head in the door of the room and you went inside the

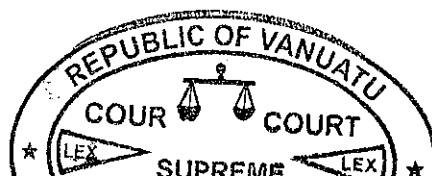


room. You sat on a chair inside that room near the door. You talked to the women inside. You asked them if they knew who you are. They responded to you

10. You told your wife that you came to end her life. You pulled out the steel hammer from your pack bag and assaulted your wife on her head 2 or 3 times with the steel hammer.
11. You had motives for your acts to cause death of the complainant. You testified you saw one Pastor Moses whispered at the door of the room your wife (Roselyn lato) was sleeping in. You said you knew pastor Moses was sleeping with your wife in that room at the church premises. Although when cross examined you said you did not see Pastor Moses and Roselyn lato slept in that room. You said your daughter (Monique) went into the room her mother was sleeping in and said "*hemi no stret.*" because Pastor Moses' clothes were also in the same room her mother (Roselyn lato) was sleeping in.
12. You took a hammer. You said you were not cross or angry. You were not blinded by any sort of provocation. You took a steel hammer and put it in your pack bag. You took the bus from Black sands to New Covenant Church premises at Anabru (some few kilometres away). When you arrived at the church, you were calm. You sat down with the women. You asked them twice whether they knew who you are. The women responded to you. There was nothing, no act made in the heat of the moment or in the heat of passion based on some kind of provocation.
13. You told the women who were together with your wife that you came to put an end to your wife's life. That was your design to kill your wife. You thought about it. You took the steel hammer for it. You put the hammer inside your pack bag. You took a bus to the place your wife was. You repeated to the women including your wife, you came to end the life of your wife. You proceeded to assault your wife with the steel hammer on her head and shoulder. Bleeding gushed out from the serious injuries. There were deep cuts on her head. The injuries on her head were stitched as she said "*Doctor oli saumapem hed blo me*" on two different parts of her head.

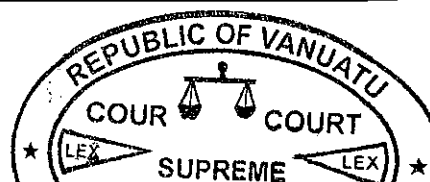


14. A premeditated design to kill existed which was that there was a conscious decision to kill. The decision must be present in the mind at the time the act was committed. ~~The premeditated intent to kill was formed at lunch time before the act was committed in the afternoon.~~
15. But in this case, the actual killing did not occur. The evidence established that after the first hit on the head of the complainant, blood gushed out of the complainant's head as this happened. You continued to hit your wife on her head but at the same time she struggled and grabbed you inside the small sized room and pushed you outside the room. You were prevented by her reaction from killing her as and once outside that room, the pastors of the church and others were also standing there watching what was going on in the premises of the churches and you have realized this yourself and you stopped your plan to kill your wife.
16. A pre-sentence report is provided by the Probation office to assist the Court in your sentencing. I read and consider the content of that report.
17. The prosecution filed submissions in respect to your sentencing referring to the sentencing principles, purposes and their respective considerations contained in some case authorities such as **Public Prosecutor –v- Kalosil and others [2015] VUSC 149**. Those principles and purposes of sentencing include:
- Deterrence, enduring others considering similar crimes will be deterred from offending
  - Protection of society
  - Retribution and
  - Reform or rehabilitation of offenders.
18. The prosecution refers also to the principle of proportionality considerations in sentencing which requires that a sentence should neither exceed nor less than the gravity of the crime having regard to the objective circumstances of each case.
19. The prosecution further refers to **Public Prosecutor –v- Andy [2011] VUCA 14** in terms of sentencing approach to be followed by this Court in your sentencing.



20. The prosecution observed and submitted that as there is no guideline on the ~~sentences of attempted premeditated intentional homicide, they refer the court~~ to the Sentencing Guideline of the Council of UK issued as the Definitive Guideline for the Offence of Attempted Murder in 2009 to the sentencing of offenders aged 18 and above. The starting point in the Guideline is set on the assumption that the offender has no previous convictions. The sentencing guideline of the Council of UK is applied to similar type of offending by the High Court of Fiji. In Fiji, the sentencing law (Presidential Decree) makes references to the Guideline of the Council of UK as to how it will be applied although consistency was still a pressing issue by different judges on sentencing of offenders convicted of attempted murder.
21. However, in the case of *Sharma v State* [2015] FJCA 178; AAU48, 2011 (3 December 2015), the Court of Appeal of Fiji seemed to hold that the Definitive Guideline of the Council of UK is relevant and applicable in the courts in Fiji as the process that has been adopted by the courts is that recommended by the Sentencing Guidelines Council (UK), although, unlike (UK), there is no statutory duty imposed on the courts in Fiji to have regard to the Guidelines issued by the Council of (UK).
22. The relevant part of the said sentencing guideline of Council of UK is as follows:

Nature of Offence	Starting Point	Sentencing Range
<p>Level 1</p> <p><i>The most serious offences including those which (if the charge had been murder) would come within para. 4 or para. 5 of schedule 21 to the Criminal Justice Act 2003.</i></p> <ul style="list-style-type: none"> <li>• Serious and long term physical or psychological harm</li> <li>• Some physical or psychological harm</li> <li>• Little or no physical or psychological harm</li> </ul>	<p>30 years custody</p> <p>20 years custody</p> <p>15 years custody</p>	<p>27-35 years custody</p> <p>17-25 years custody</p> <p>12-20 years custody</p>
<p>Level 2</p> <p><i>Other planned attempt to kill</i></p> <ul style="list-style-type: none"> <li>• Serious and long term physical or psychological harm</li> <li>• Some physical or psychological harm</li> <li>• Little or no physical or psychological</li> </ul>	<p>20 years custody</p> <p>15 years custody</p>	<p>17-25 years custody</p> <p>12-20 years custody</p>

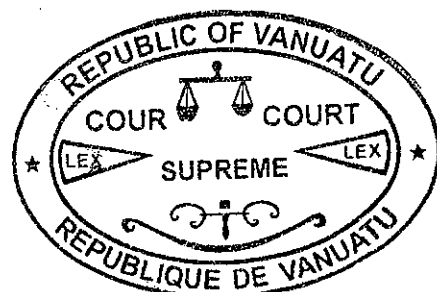


harm	10 years custody	7-15 years custody
Level 3 <i>Other spontaneous attempt to kill</i>		
• Serious and long term physical or psychological harm	15 years custody	12-20 years custody
• Some physical or psychological harm	12 years custody	9-17 years custody
• Little or no physical or psychological harm	9 years custody	6-14 years custody

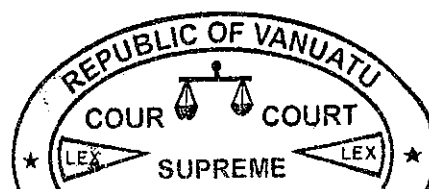
23. The prosecution said the following aggravating factors exist in the circumstances of this case:

- a) The ongoing nature of the assault, the multiple injuries, choice of weapon and force used and the fact the defendant continued to assault the victim even when she was trying to push him away. The defendant used a steel hammer to assault the victim.
- b) The vulnerability of the complainant as a woman compared to the defendant as a man with more natural physical force.
- c) The assault of the victim was in front of other women including a sickly woman.
- d) The complainant was admitted to hospital and required stitches to her injuries.
- e) Betrayal of trust in a domestic relationship.

24. The prosecution submitted that in this case, the appropriate starting point without aggravating factors is level 2 of the Sentencing Council (UK) Guidelines because Defendant Johnson Namri brought his steel hammer from home at Black sands, hidden it in his pack bag and went to Anamburu Covenant Church (the place of the crime). The complainant suffered some physical and/or psychological harm too. The starting point is 15 years imprisonment. Considering the aggravating factors, 3 years will be added to reflect the aggravating factors. This brings the total to 18 years starting point inclusive of aggravating factors. And as Defendant Johnson Namri is not entitled to any deduction apart from some consideration that will be taken into account in respect to the time already spent in custody since 9 May 2017, the prosecution submitted for an end sentence of 18 years imprisonment to be effective on 9 May 2017.



25. In mitigation, the defence acknowledged that the offence of Attempted Intentional Homicide is a very serious offence. Defendant Johnson Namri is a ~~first time offender with no prior conviction. He is 44 years of age, he is the only~~ bread winner for his family of six children and extended family. He has good relationship with his community in Port Vila and Tanna as confirmed by his chief Joe Kamu. He cooperated with the police during investigations. Defendant Johnson Namri has spent time in custody before his trial and sentence from 31 March 2017 to 6 June 2018. He wishes that his children have good education.
26. The defence submitted that the sentencing approach in PP v Andy [2011] VUCA 14, should be adopted in this case. The defence submitted also that this case falls under the lower scale of attempted intentional homicide, the degree of planning was not very high. The use of a hammer, instead of a knife, the injuries even though the complainant was admitted to the hospital, but was sent back few hours later. The injuries have not left a permanent cause to the complainant to suffer for the rest of her life. Defendant Johnson stopped hitting the complainant when they moved outside the house. The defence submitted that the appropriate starting point should be 10 years or less. And after some deductions were taken off for mitigating factors and the fact that the defendant had already spent 1 year and 4 months from 31<sup>st</sup> March 2017 to 6<sup>th</sup> June 2018 (now in August more), the defence submitted that an end sentence of 7 years or less is appropriate.
27. The defence submitted also that the offences of intentional assault and threats to kill a person as alternative offences to the principal offence should run concurrently with the offence of Attempted Intentional Homicide.
28. I think the defence misapprehended on this final point as to how to proceed with the situation of this type of case scenario like the present. The situation is as I have explained earlier. I am going to sentence you (Mr Johnson Namri) only on the principal offence of Attempted Intentional Homicide. I am not going to sentence you separately for the alternative offences of intentional assault and threats to kill in addition to the sentence I am going to impose on the principal offence on Attempted Intentional Homicide and make them concurrent as suggested by your lawyer. The best I can do in the circumstance of this case,



and in the way I understand the prosecution case and position and how the prosecution puts and runs the prosecution case, is to use the circumstances of ~~alternative offences on which you entered guilty pleas as aggravating~~ circumstances only to the principal offence for your sentencing.

29. The position of the law is set out below. Sections 106 (1) (2) and 28 (1)(2)(3)(4)(5) relevantly cover the crime and penalty of attempted intentional homicide. They provide as follows:

**106. Intentional homicide**

*(1) No person shall by any unlawful act or omission intentionally cause the death of another person.*

*Penalty:*

*(a) if the homicide is not premeditated, imprisonment for 20 years;*

*(b) if the homicide is premeditated, imprisonment for life.*

*(2) For the purpose of subsection (1), premeditation consists of a decision made before the act to make a homicidal attack on a particular person or on any person who may be found or encountered.*

**28. Attempts**

*(1) An attempt to commit a criminal offence is committed if any act is done or omitted with intent to commit that crime and such act or omission is a step towards the commission of that crime which is immediately connected with it, or would have been had the facts been as the offender supposed them to be.*

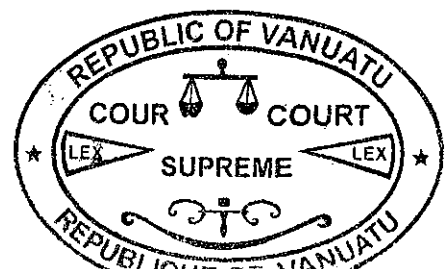
*(2) An attempt shall be committed notwithstanding that complete commission of the offence was impossible by reason of a circumstance unknown to the offender.*

*(3) Acts committed in mere preparation of an offence shall not constitute an offence.*

*(4) The commission of an attempted offence shall constitute an offence punishable in the same manner as the offence concerned.*

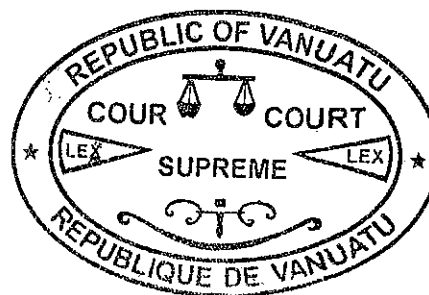
*(5) The criminal responsibility of a person committing an attempted offence who voluntarily withdraws from the attempt before the offence has been committed shall be diminished.*

30. Subsections (3) and (5) of Section 28 above are not relevant in this case.





31. It is noted that a person who attempts to commit an offence is guilty of the offence attempting to commit that offence and is punishable as if the offence attempted, had been committed. Accordingly, a person who is convicted of attempted to commit premeditated intentional homicide is liable to be punished as if he or she had committed premeditated intentional homicide, the penalty is imprisonment for life.
32. It is also noted that despite the sentence being the same, there are critical differences between premeditated intentional homicide and attempted premeditated intentional homicide; not only is the intended result not achieved but also, for attempted premeditated intentional homicide, there must have been a premeditated intention to kill whereas a charge of premeditated intentional homicide may arise where the accused knew what he was doing would cause death or very serious harm. In a case of premeditated intentional homicide, a valuable human life is lost whereas in an attempt to commit the premeditated intentional homicide the unlawful act would not have resulted in even a slightest injury to the person targeted.
33. The intention and position of the law is clear in the sense that Mr. Johnson Namri, you were convicted of attempted to commit premeditated intentional homicide and you are liable to be punished as if you had committed premeditated intentional homicide, the penalty is imprisonment for life. That is the maximum penalty for attempted to commit premeditated homicide.
34. In this case, most of the following aggravating features exist:
- a) There is a degree of planning with a choice of weapon concealed in the pack bag (a steel hammer) and which was coupled with a premeditated design to kill which existed in that there was a conscious decision to kill. The decision to kill was present in the mind at the time the act was committed. The premeditated intent to kill was formed at lunch time before the act was committed in the afternoon.



b) The ongoing nature of the assault, the multiple injuries and force used and the fact the victim was threatened spontaneously to be killed. The defendant used a steel hammer to assault the victim.

c) The vulnerability of the complainant as a woman compared to the defendant as a man with more natural physical force and the fact he was a former boxer.

d) The assault of the victim was in front of other women including a sickly woman.

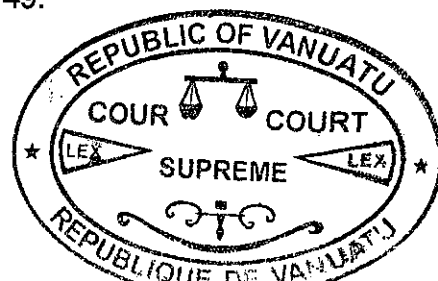
e) The complainant was admitted to hospital and required stitches to her injuries.

f) Betrayal of trust in a domestic relationship.

35. In this type of case, I take note of the prosecution submissions that there is no guidelines on sentencing of attempted premeditated intentional homicide. I also take note of the Definitive Guidelines on sentencing of Attempted Murder of Council (UK) of 2009. I bear in mind of the approach of sentencing undertaken by the Court of Appeal in **PP v Andy [2011] VUCA 14** and relevantly Paragraphs 10 to 19 as follow:

**“The correct approach to sentencing**

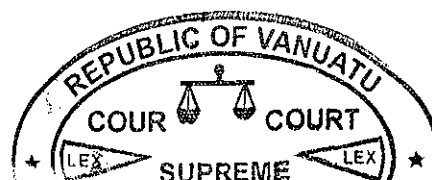
10. The Penal Code [CAP 135] contains specific provisions relating to sentencing at ss 36 - 58ZH. These sections refer to a number of particular matters but make no comprehensive statement as to the principles to be applied in fixing the correct sentence. Undoubtedly, these principles include the need to denounce the criminal conduct, the need to deter offenders and those in the community who might be tempted to offend, and the need to protect the community from those offenders. The harm and loss suffered by victims must also be recognized. There are specific provisions in the Penal Code for compensation for victims at sections 39 - 49.



11. Of equal importance to these principles is the requirement, in section 37 of the Penal Code, that the Court must, in addition to other sentencing options, ~~have regard to the possibility to keeping offenders in the~~ community so far as that is practicable and consistent with the safety of the community.
12. There is also reference in the Penal Code at s 38 to the requirement to promote reconciliation. Other principles, such as the need for consistency of sentencing with other sentences being imposed in Vanuatu, and parity between offenders will also be applied.
13. At a sentencing hearing, a court will always have regard to the maximum sentence that has been prescribed by Parliament as a critical reference point. That being the maximum penalty imposed by Parliament for the most serious offending, it provides a standard against which a sentence for offending of lesser culpability can be assessed.
14. The first task of the Court is to set the starting point bearing in mind the maximum penalty for offending of the most serious culpability.

*First Step: The Starting Point*

15. The starting point can be defined as the sentence of imprisonment that reflects the seriousness of the offence and the culpability of the actual offending; that is, the specific actions of the offender and their effect in the context of the specific charge and its maximum sentence. In this first step, there is no consideration of circumstances which are personal to the offender. The calculation has regard only to the seriousness of the offending.
16. In a case such as this where the charge is unlawful sexual intercourse with a child under the age of 13, the factors to be taken into account in fixing the starting point will include how the offending arose; what happened during the course of the offending and the effects on the victim. Through this process of assessment, bearing in mind the principles of sentencing and the maximum term, a correct starting point of imprisonment is ascertained. If there are relevant judgments relating to the type of offending, these will be considered in the course of the sentencing process to ensure consistency of sentencing.

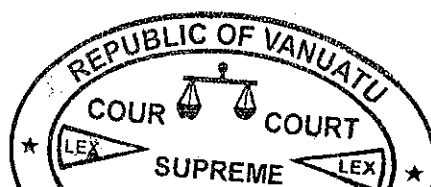


*Second Step: Assessment of factors personal to the offender*

17. Once the starting point has been reached the Court, then embarks on the second step which is the assessment of the aggravating and mitigating factors relating to the offender personally. It is under this head that aggravating matters such as the past history of the offender will be considered. If there are previous convictions, particularly for a similar type of offence, this may result in the starting point being increased. Under this head, mitigating factors such as a lack of previous relevant convictions, good character and remorse will be assessed and may result in a reduction of the starting point to reach a second stage end sentence.

*Third Step: Deduction for Guilty Plea*

18. Once this process has been completed, as a third step, the trial judge will then consider what discount from the second stage end sentence should be applied for a guilty plea. The greatest discount allowed under this head will be a discount of one third where the guilty plea has been entered at the first reasonable opportunity. A later guilty plea will result in a smaller discount. No discount is available under this head if the charges have been defended through a trial.
19. By this two or three stage approach, an end sentence is reached."
36. The above process described in the Andy case, is the process followed by the courts in Vanuatu in their sentencing exercise. Having perused the Definitive Guidelines of Sentencing on Attempted Murder of Council (UK) 2009 and having read and considered the process adopted by the courts in Vanuatu in their sentencing functions (re- PP v Andy [2011] VUCA 14), I am satisfied that the approach or process adopted by the Vanuatu courts is the process or similar type of process that is recommended by the Definitive Guidelines Sentencing of Council (UK) 2009. Although in England, there is a statutory duty to have regard to the guidelines issued by the Council (UK), there is no such duty on the courts in Vanuatu. As a matter of good sense, when the circumstance of a case is relevant, the Definitive Guidelines of sentencing issued by the Council (UK) on Attempted Murder in 2009, can be applied also in



Vanuatu courts. I am going to apply it in this case to assist me with the starting point sentence and the sentencing range on Attempted premeditated intentional homicide.

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37. In this case, the nature and seriousness of the offending reflected some physical or psychological harm which had occurred justifying level two of the Guidelines which is 15 years. The aggravating factors represent an addition of 3 years terms of imprisonment. I accept that a term of 18 years is the appropriate starting point sentence for this offence including aggravating features. 10 years imprisonment as the starting point suggested by the defence is inadequate.
38. A period of 12 months will be allowed to recognize that you are a first time offender and cooperate with the police during investigations. You have also already spent a period of 1 year and 6 months and 25 days in custody before you are tried and sentenced. This period will be taken into consideration in your favour.
39. Your end sentence is 17 years imprisonment to be effective from 31<sup>st</sup> March 2017.
40. You are ordered to serve a term of 17 years imprisonment to be effective from 31<sup>st</sup> March 2017.
41. You have 14 days to appeal against this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence.

**Dated at Port Vila, this 03<sup>rd</sup> September 2018.**

**By the Court**



Vincent Lunabek  
Chief Justice

