

**PUBLIC PROSECUTOR V. GEORGE ALICK**

**TOARA KALIA**

**ROBEA SIRI SAMSON**

**DAVID DANIEL**

**PAKOA WILLIE**

**WILLIE FRED**

**WILLIE JAMES**

***Before:*** *Justice Oliver A. Saksak*

***Counsel:*** *Michelline Tasso for Public Prosecutor*  
*Francis Tasso for Defendants*

***Date of Trial:*** *8<sup>th</sup> & 11<sup>th</sup> October 2018*

***Date of Verdict:*** *11<sup>th</sup> October 2018*

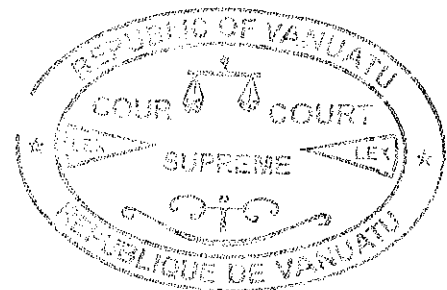
---

**VERDICT**

---

Introduction

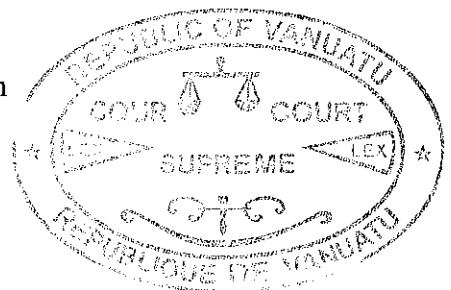
1. There were initially 7 defendants charged with –  
Count 1 – Criminal trespass – Sect. 144(a)  
Count 2 – Intentional assault – Sect. 107(b)  
Count 3 – Kidnapping – Sect. 105(b)
2. After the Prosecution had adduced its evidence from witnesses and closed its case, defence counsel indicated he would made a no-case submission. I therefore adjourned the hearing to 11<sup>th</sup> October.



3. On 11<sup>th</sup> October Ms Tasso informed the Court the Prosecution had withdrawn all three charges against defendants George Alick, Willie Fred, Willie James and Pakoa Willie.
4. The Court recorded the withdrawal and acquitted the four accuseds of all three charges.
5. Mr Tasso then proceeded with the no-case submission in relation to the three remaining accuseds namely Toara Kalia, Robea Siri and David Daniel.
6. After considering all submissions made orally, I found the Prosecution had established prima facie evidence against all three accuseds.
7. Defendant Toara Kalia had pleaded guilty to the charge of intentional assault in Count 2. I found there was evidence against him in relation to criminal trespass and kidnapping requiring him to make his defence.
8. As for Robea Siri Samson and David Daniel I found there was prima facie case established against them in relation to the all the charges in Counts 1, 2 and 3 requiring them to make their defences.
9. Each of them gave oral evidence. They adduced evidence from three other witnesses namely George Alick, Willie James and Pakoa Willie.
10. I heard counsel orally in relation to closing addresses and submissions. Ms Tasso submitted orally that the Prosecution had discharged its legal and evidential burden of proof required under section 8 of the Penal Code Act [Cap. 135] by proving all the 5 elements of –

(a) Criminal trespass which are:

- (i) Person
- (ii) Entering into property of another person



- (iii) With intent
- (iv) To intimidate, insult or annoy
- (v) Lawful possession of property by another person.

(b) Intentional assault, which are:

- (i) A person
- (ii) With intent
- (iii) Assault another person.
- (iv) On the body
- (v) Causing injury.

(c) Kidnapping which are:

- (i) Person
- (ii) Conveying another person
- (iii) By force compel or indice
- (iv) Without consent
- (v) Without lawful excuse.

11. The Prosecution relied on the evidence given by –

- (a) Kalmak Kalomala Charlie, the complainant
- (b) Rubby Charlie, complainant's sister
- (c) Ziekel John
- (d) Peter Thomas.

12. The three defendants each gave oral evidence in their defence denying they entered the property of the complainant. Robea Siri and Daniel Daniel denied assaulting the complainant. They denied kidnapping him and forcing him into the bus.

13. I summarise each Prosecution's relevant evidence only briefly as follows –

(a) Kalmak Kalomala Charlie.

He remembered an incident in August 2016. It was a Saturday. He got drunk.

He went to the store and met Robea and Tuman. Tuman was not present in



Court with the defendants. Tuman fought him. He wanted to fight Tuman but instead Tuman fought him and he fell down on the coaltar. They went into a bus and went to Epule.

(b) Rubby Charlie.

On 14 August 2016 she was in the house with her brother Kalmak Charlie when the boys approached her and asked for her brother. She told them he was on the other side of the road at his pig's fence. Then they went and assaulted him there. She saw Robea very angry when he entered their property. She said Robea assaulted Kalmak. She said the first, third and fifth defendants did not assault Kalmak. But the second, fourth, sixth and seventh defendants assaulted her brother by throwing punches as she said Kalmak was at a shed or shelter when they assaulted him. The shelter is located on the other side of the road and it belongs to them. Then after the assault they pulled him onto a bus. She said the person who pulled Kalmak into the bus was not present in the group in Court. She said Kalmak did not want to follow them in the bus. Whether he fought back, she said "no".

(c) Ziekel John –

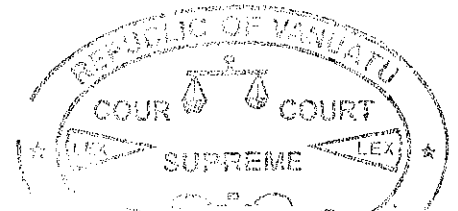
He denied making any statement to the police. He followed a police truck to Takara to see a fight. When they got there, the fight was over. He was shown a statement but denied it was his statement. Parts of the statement were read to him but he denied making them.

(d) Peter Thomas –

On 14 August 2016 he went with Toara Kalia on his bus to Takara. There were others in the bus. At Takara the bus stopped and the boys went down. He tried stopping them. He said he did not see the second accused or the fifth or any of them fight as there were many people there. And he remained in the truck. After they assaulted Kalmak they took him to the truck and went to Epule.

In cross, he said he saw Kalmak on the left side of the road. He said that when the truck stopped only Toara Kalia went down for Kalmak and hold him tightly. He did not see any of the other defendants.

14. For the defence evidence I summarise only the relevant parts as follows –



(a) Toara Kalia –

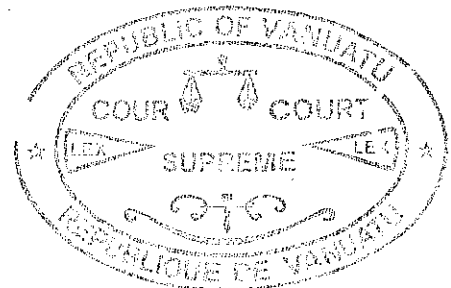
On 14 August 2016 he was at Epule at a funeral. Tuman, his brother returned with his bus with a bloody nose. He said his bus was damaged and reported to him that Kalmak was responsible. This made him angry. He got into his bus and went to Takara. He saw Kalmak on the road going back to his house. He stopped his bus and assaulted Kalmak. As Kalmak was drunk he wanted to run. He kicked his legs and he fell down. He got up again and he wanted to kick him again when Robea came and stopped him. He was so angry he could not stop so Robea wanted to assault him. He then stopped after Kalmak realized his wrong doing and apologized. He was sobbing. He told Kalmak to go into the bus so they could go to Epule to explain his actions to his father and mother there. Kalmak's father is their village pastor and chief and should be told about his son's behavior. At Epule it was Robea who handed Kalmak over to his father.

(b) Robea Siri Samson –

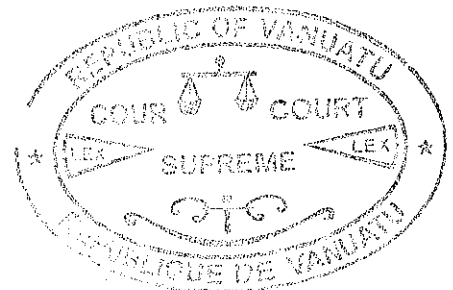
He was at Epule at the time of the incident. He was cooking. He asked Toara Kalia for his bus to go shopping at Takara. At the shop Tuman was with him. Kalmak came over and fought Tuman on his face. Tuman retaliated and fought Kalmak on his mouth. He stopped them. They returned to Epule and then went back with Toara Kalia to bring Kalmak back to his father and mother. On the return trip he went with Toara Kalia, and Peter Thomas. At Takara they stopped on the road. He saw Kalmak standing on the road. Toara Kalia went down while he remained in the bus. When he saw Kalmak reacting he went down to assist. He saw Toara assault Kalmak. He ran and Toara kicked his legs and he fell down. He stopped Toara from further fighting the complainant as he was so angry. He did not know there was a pig's fence and denied going onto Kalmak's property.

(c) David Daniel –

He was at Epule on 14 August 2016. He went to Takara on a different truck, a hilux. At Takara the truck stopped on the road. He did not see any action as the fight was over by then. He did not take part in anything that happened.




15. From all those evidence it was clear to me that there was no evidence proving guilt against David Daniel in respect of the offence of criminal trespass, intentional assault or kidnapping. He simply did not take part in anything that occurred. For those reasons and finding, I returned the verdict of not-guilty on David Daniel on all three charges.
16. For defendant Robea Siri Samson the evidence of Kalmak Charlie was blurred due to his being very drunk. The evidence is that Kalmak was drunk on yeast (home brew). He had been drinking whole day Saturday into Sunday. And 14 August 2016 was a Sunday, not Saturday as stated by Kalmak in his evidence. His evidence was that the person who pulled him into the bus was not present in Court.
17. His only other witness who evidence was of help was Rubby. But Rubby saw Robea very angry and said Robea assaulted Kalmak. But the court should be cautious about this evidence standing alone without corroboration. This witness was inconsistent in her evidence in cross when she was not sure if the defendants assaulted the complainant. At one point she answered "yes" and at another she answered "no". Her evidence lacked credibility.
18. The Court preferred the evidence of the defendants and of their three witnesses as being credible and believable.
19. For those reasons, I returned verdicts of not-guilty against Robea Siri and David Daniel and acquitted both of them on all the three charges.
20. I was satisfied the Prosecution had not proved their guilt beyond reasonable doubt. As a trier of fact I had so much doubt in my mind as to their guilt in light of the inconsistencies of the statement of Rubby Charlie. The evidence of Peter Thomas was in favour of the defendants rather than the Prosecution in a limited part. The rest were unreliable.



21. As for Toara Kalia, I was not satisfied beyond reasonable doubt he had committed trespass and/or kidnapping. His actions fell short of the elements of kidnapping and trespass. He was acquitted of those charges having been found not-guilty of them.
22. As for intentional assault, he is guilty on his own plea. His sentence is adjourned to 19 November 2018 pending a pre-sentence report and written submission.

**DATED at Port Vila this 12<sup>th</sup> day of October, 2018.**

**BY THE COURT**

  
.....  
**OLIVER A. SAKSAK**

**Judge**

