

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

Criminal
Case No. 19/1932 SC/CRML

BETWEEN: Public Prosecutor

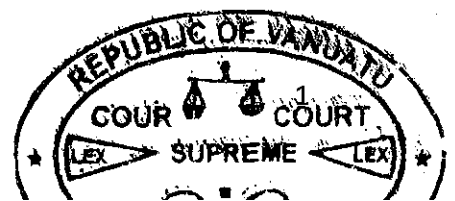
AND: Iata Nako
Ialulu Nako
Wea Nako
Willie Ialulu
Jack Wea
Kapalu Karap
Defendants

Date: 20 December 2019
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms L. Lunabek
Defendants – Mr H. Rantes

SENTENCE

A. Introduction

1. All six defendants pleaded Guilty ('I tru') to the two charges against them in the Information and Brief of facts filed on 17 December 2019. The maximum sentence available for these offences is:
 - 1.1 10 years imprisonment for kidnapping contrary to s. 105 of the *Penal Code* [CAP. 132]; and
 - 1.2 5 years imprisonment for intentional assault on the body of another person, where the damage of a temporary nature is caused, contrary to subs. 107(b) of the *Penal Code*.



B. Facts

2. On 18 June 2014 at Konamas Area on the island of Tanna, the defendants by force compelled Saniel Henry and Nauka Napau into a bus. They had an ongoing dispute over a vehicle and were meant to go to the police station to sort out the issue. Instead, the bus stopped at Ikauras Nakamal.
3. The defendants pulled Mr Henry and Mr Napau out of the bus, surrounded them and started punching and kicking them.
4. Mr Henry was punched in the head and Mr Napau sustained a skin laceration close to his eye from being poked with a pencil.

C. Kapalu Karap

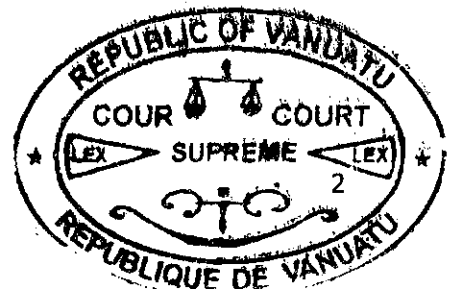
5. The pre-sentence report provided for Kapalu Karap stated that he is from Ikauras village, West Tanna. He is 55 years old, married and living with his wife and their four children. Mr Karap is a subsistence farmer. He never attended school. Mr Karap describes himself as a custom person and is not affiliated with any Christian denomination. Mr Karap told the report writer that he has pleaded guilty to an offence he never committed but has done so as his family's view is that he simply accompany his fellow family member co-defendants as they are family. He spent two nights in the remand centre. Mr Karap added that he is uneducated and his rights were not well considered.
6. The Court raised this with counsels today and gave time for Mr Rantes to take instructions in relation to the information now before the Court. Mr Rantes confirmed that his client had pleaded guilty to offences that he did not commit. He accepted that he had due to his low level of education and knowledge of the law but that he was not part of the offending that occurred.
7. In the circumstances, there will be a miscarriage of justice to allow a conviction against Mr Karap. Accordingly, after inquiry into the circumstances of the case, the Court discharges Mr Karap without conviction pursuant to subs. 55(1) of the *Penal Code*. This discharge is considered an acquittal in accordance with subs. 55(2) of the *Penal Code*.

D. Offending Starting Point

8. The defendants besides Mr Karap have committed serious offences, reflected in the maximum sentences of 10 years and 5 years imprisonment.
9. There was planning and premeditation by the five defendants besides Mr Karap. They planned their actions as a group and then followed through by kidnapping Mr Henry and Mr Napau and then assaulting them. The violence was by a group of five men against the two complainants. It was a joint criminal enterprise. Mr Henry and Mr Napau both suffered injuries as a result of the assault. Both complainants were in real danger of being more severely injured considering the head is the most vulnerable part of the body.
10. I consider that the aggravating factors set out above require a starting point of two years' imprisonment for kidnapping and 12 months imprisonment for intentional assault to run concurrently.

E. Factors Relevant to the Offender

11. There are no aggravating factors personal to the five defendants.



12. In terms of mitigating factors, the pre-sentence reports provided state as follows:

12.1 Iata Nako

Iata Nako is from Ikauras village, West Tanna. He is 52 years old, married and living with his wife and two children both attending school. He is a subsistence farmer. He finished class six at school. Mr Nako stated that he failed to be patient to await the course of justice to prevail according to the Court Order issued in his favour in a civil case. He asked his four family member co-defendants to help him remove the vehicle on 18 June 2014. He stated it was an over-reaction on his part.

12.2 Ialulu Nako

Ialulu Nako is from Ikauras village, West Tanna. He is 40 years old, married and living with his wife and four children. Two children are in primary school, one in kindergarten and one still at home. He is a subsistence farmer. He finished school in class six. Community leader Mrs Matha Wea stated that Mr Nako is a resourceful person within his community and hard working both at home and in his nakamal. Mr Nako stated that he is closely related to all four co-offenders. He is related to Iata Nako as uncle and he offended to assist his uncle to claim back refunds in relation to the vehicle.

12.3 Wea Nako

Wea Nako is from Ikauras village, West Tanna. He is 34 years old, married and has two children but is now living in a de facto relationship. He finished school in grade four. Mr Nako is a subsistence and livestock farmer. He is closely related to his co-offenders.

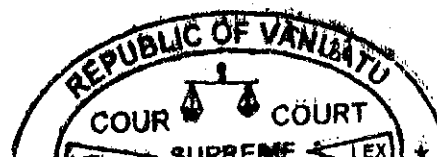
12.4 Willie Ialulu

Willie Ialulu is from Ikauras village, West Tanna. He is 33 years old, married and living with his wife and their four children. Two children are in primary school and two still at home. He is a member of the New Zealand RSE scheme. He finished school in grade three. He depends a lot on the RSE scheme to improve his living as well as being a subsistence farmer. Mr Ialulu stated that he participated in the offending to assist his uncle Iata Nako to gain back refund of monies in relation to the vehicle.

12.5 Jack Wea

Jack Wea is from Ikauras village, West Tanna. He is 25 years old, married and living with his wife and their three children. He is a member of the New Zealand RSE scheme. He is employed by a family member as a public transport driver. He finished school in grade three. He depends a lot on the RSE scheme to improve his living and on his public transport job. He is a hard working member of his church. Mr Wea stated that he participated in the offending to assist his uncle Iata Nako to gain back refund of monies in relation to the vehicle.

13. All five defendants besides Mr Karap have no prior convictions, are remorseful and have accepted responsibility for their offending. They have performed custom reconciliation ceremony



with the complainants and police officers who accepted the ceremonial items given. They offended in 2014 and while on bail, have not committed any other offence to the present.

14. Those factors warrant a deduction of 12 months from the starting point.

F. Deduction for Guilty Plea

15. The defendants entered their guilty plea at the first opportunity. They are therefore entitled to the maximum discount available for a prompt plea of one third.

G. Sentence

16. Each of the five defendants besides Mr Karap is sentenced to 8 months imprisonment.

H. Suspended Sentence

17. In view of the circumstances, and in particular the nature of the crime and the defendants' character, I consider that it is not appropriate to make them suffer an immediate imprisonment. I order the suspension of the execution of the imprisonment sentence on the condition that the defendants Iata Nako, Ialulu Nako, Wea Nako, Willie Ialulu and Jack Wea commit no further offence within the next 12 months.

18. Although each of those defendants will not have to go into Correctional Services' custody today, I must warn each one that if he commits an offence in the next 12 months and is convicted, that he will be required to serve this sentence of 8 months imprisonment in addition to any other penalty that may be imposed on him for the further offending.

19. The defendants have 14 days to appeal their sentence if they so choose.

I. Result

20. Kapalu Karap is discharged without conviction pursuant to subs. 55(1) of the *Penal Code*.

21. Iata Nako, Ialulu Nako, Wea Nako, Willie Ialulu and Jack Wea are each sentenced to 8 months imprisonment, suspended for 12 months.

DATED at Isangel, Tanna this 20th day of December 2019
BY THE COURT


V.M. Trief
Judge

