

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

Criminal
Case No. 19/2476 SC/CRML

BETWEEN: Public Prosecutor

AND: Tommy Nipio
Defendants

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

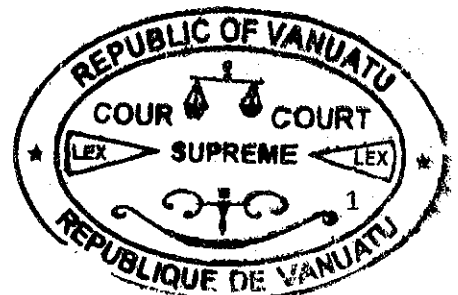
SENTENCE

A. Introduction

1. Mr Nipio pleaded Guilty ('I tru') to the charge in the Information and Brief of facts filed on 9 October 2019 of intentional assault causing permanent injury. The maximum sentence available for this offence is 10 years imprisonment.

B. Facts

2. On Family Day night last year, Steve Nakat was at his house at Lounapkiko village on Tanna when his wife Evelyn Tom and her brother Mr Nipio came to the house. Ms Tom called Mr Nakat outside. When he came out, Mr Nipio was standing there swearing at him.
3. Mr Nipio was standing behind his older sister with a big knife in one hand and a small knife in the other hand. Mr Nipio seemed drunk.
4. Mr Nakat did not see when Mr Nipio lifted up a knife and cut his left eye. He bent down and Mr Nipio slapped a knife into him.



5. A medical report dated 27 December 2018 at Lenakel Hospital confirmed that there was a deep cut on Mr Nakat's left eye lid and a fracture of the left orbital plate (eye satchet). Mr Nakat has lost vision in his left eye. The loss of vision is permanent.

C. Offending Starting Point

6. This offence is serious which is reflected in the maximum sentence of 10 years imprisonment.
7. Mr Nipio used weapons. He arrived at Mr Nakat's house with two knives in hand. This alone was threatening. He used one or both knives to assault and injure Mr Nakat.
8. There was breach of trust as Mr Nakat is Mr Nipio's brother-in-law. Mr Nakat is his elder sister's husband.
9. Mr Nakat is left with a serious permanent injury and disability. He has lost vision in his left eye.
10. The aggravating factors set out above require a starting point of two and a half years imprisonment. As the Court of Appeal held in *Moli v Public Prosecutor* [2011] VUCA 26 at para. 17:

Where an assault involves unprovoked violence and causes permanent serious injury an immediate custodial sentence is appropriate.

D. Factors Relevant to the Offender

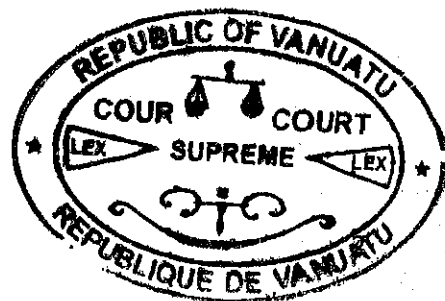
11. Mr Nipio was provoked by his anger and upset at Mr Nakat's treatment, including long-time domestic violence, against his sister and three children. This of course does not justify Mr Nipio taking the law into his own hands by attacking and injuring Mr Nakat. However it provides the context for Mr Nipio's offending against his own brother-in-law. This requires an uplift of six months.
12. Mr Nipio was 17 years old at the time he committed the offence. His youth is a mitigating factor. The pre-sentence report provided states that he showed remorse for his offending. He has performed a custom ceremony in relation to his offence by presenting kava and a pig to Mr Nakat. I hope that with the passage of time and increasing maturity that Mr Nipio realises that taking the law into his own hands and committing violence is not the answer to problems he will face in life.
13. Mr Nipio lives with his girlfriend and his mother. His mother is unwell and currently admitted at Lenakel Hospital. He is the sole provider for his family. Mr Nipio has no prior convictions.
14. Those factors warrant a deduction of twelve months from the starting point.

E. Deduction for Guilty Plea

15. The guilty plea was entered at the first opportunity. Mr Nipio is therefore entitled to the maximum discount available for a prompt plea of one third.

G. Sentence

16. Mr Nipio is sentenced to 12 months imprisonment.



H. Suspended Sentence

17. In view of the circumstances, and in particular the nature of the crime and Mr Nipio's character and youth, I consider that it is not appropriate to make him suffer an immediate imprisonment. I order the suspension of the execution of the imprisonment sentence on the condition that Mr Nipio commits no further offence within the next 12 months.
18. Although Mr Nipio will not have to go into Correctional Services' custody today, I must warn him that if he commits an offence in the next 12 months and is convicted, that he will be required to serve this sentence of 12 months imprisonment in addition to any other penalty that may be imposed on him for the further offending.
19. Mr Nipio has 14 days to appeal his sentence if he so chooses.

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

..... V.M. Trief
Judge

