

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

Criminal
Case No. 20/2120 SC/CRML

PUBLIC PROSECUTOR

v

LEMON UHI

Date: 9 October 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr K. Massing
Defendant – Ms L. Bakokoto

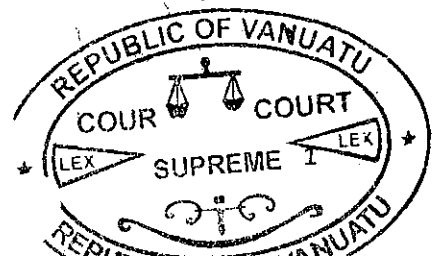
SENTENCE

A. Introduction

1. Mr Uhi pleaded guilty to one charge of unintentional harm causing death.
2. I convict Mr Uhi on his plea and the summary of facts.

B. Facts

3. On 27 August 2019, Mr Uhi drove vehicle registration number 12741 from North Efate to town to work. The vehicle belonged to Mr Uhi's employer, Dinh Trading Limited. It is a large white Isuzu cargo truck weighing 3-5 tonnes.
4. The deceased 11-year-old John Narua and some friends had collected raspberries for sale to the Switi Ice Cream Factory. They stopped a bus at the Klems Hill area on Efate to take them there. They crossed the road to the bus but John then went back to fetch a last container of raspberries.
5. As John was crossing the road, Mr Uhi was driving down the slope and hit him in the middle of the road. John fell under Mr Uhi's vehicle. He was dragged for approximately 35 metres down the road. Mr Uhi realised that he had hit John, swerved and parked on the side of the road.



6. Mr Uhi offered to take John to the hospital but the pedestrians present told him not to move the body but wait for ProMedical. Mr Uhi then drove to the Police station and reported the accident. He spent 8 hours in custody during which the Police attended the scene of the accident before releasing him.
7. Most Prosecution witnesses stated that Mr Uhi was travelling very fast when he hit John.
8. John died on impact. The medical examination of his body showed that he died of multiple injuries (open skull fractures, chest and abdomen injuries, and bilateral femur fractures) which he received as a result of the accident.

C. Sentence Start Point

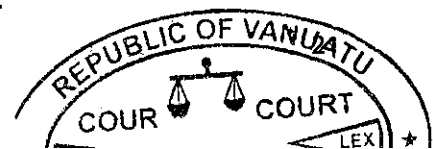
9. The sentence start point is to be assessed by considering the maximum sentence available and the aggravating and mitigating aspects of the offending.
10. The maximum sentence for unintentional harm causing damage to the body of another person, through recklessness or negligence, or failure to observe any law, if the damage so caused results in death is 5 years imprisonment.
11. There is no provision in the *Penal Code* for disqualification of drivers convicted of an offence involving a motor vehicle. I call on the Government and Parliament to enact the necessary amendments to provide for this.
12. The mitigating aspects of the offending is that Mr Uhi immediately stopped, offered to take the deceased to hospital and then took himself to the Police. The aggravating aspect of the offending is that Mr Uhi was travelling at a high speed and did not have any opportunity to stop his vehicle to avoid hitting the deceased. This was particularly dangerous to other road users as he was driving a very heavy vehicle that in the event of collision would cause greater damage than a smaller vehicle.
13. Taking these matters into account, I set the sentence start point at 3 years 6 months imprisonment.

D. Deduction for Guilty Plea

14. Given the guilty plea was entered at the first opportunity and Mr Uhi's immediate acceptance of responsibility, a one third deduction is warranted.

E. Personal Factors

15. There are no aggravating factors personal to Mr Uhi.
16. In terms of mitigating factors, the pre-sentence report writer states that Mr Uhi is very sorry for what happened. He did not mean it to happen and he is very sorry. His family have performed a custom reconciliation ceremony to John's parents involving a buluk, manioc, yams, bundles of banana, vegetables, rice, sugar, rolls of calico, a dress, 68 mats and VT50,000 cash. Mr Uhi did not attend the ceremony as he feared for his own safety and his heart was too heavy as John was a similar age to his own son and it reminded him too much of his own son. As already stated, Mr Uhi immediately accepted responsibility for his actions. I accept his remorse is genuine.



17. John's parents accepted the ceremony although both stated that it was too early and not really what they wanted. They told the pre-sentence report writer that they have lost a life that can never be replaced but seek compensation from Mr Uhi. Mr Dinh on behalf of Mr Uhi's employer confirmed that it would pay compensation from its insurance cover if ordered by the Court.
18. Mr Uhi assisted in buying food for John's family members who stayed with the deceased's body at the mortuary for 3 days. He also paid VT30,000 for John's coffin and VT11,000 for space at the Port Vila Cemetery. John's family chose to bury him at Klems Hill so Mr Uhi's wife gave the VT11,000 to John's family to use.
19. Mr Uhi is 39 years old, married and has one son. He lives at Siviri Village and commutes to Port Vila for work. He has no previous convictions. He is well supported by his wife, family and community. Mr Uhi is described as a humble and kind hearted man. Mr Uhi has been employed by Dinh Trading Limited for almost 15 years and I assume driving for as long.
20. Those factors warrant a deduction of nine months from the starting point.

G. End Sentence

21. The Court does not need to impose a deterrent sentence because Mr Uhi already understands the significance of what happened and will have the lifelong punishment of living with the fact that his actions caused the loss of a child's life.
22. Mr Uhi is to serve 19 months imprisonment.
23. The Court of Appeal stated in *Jenkinson v Public Prosecutor* [2000] VUCA 5:

In the case of a first offender with a long history of good driving, good character, good employment record and involvement in community affairs, it is a very serious step to send that person to gaol. Suspension of the sentence, which allows the best opportunity for rehabilitation, will often be the appropriate course.

24. Mr Uhi's sentence is entirely suspended. I accept there is genuine remorse. He had pleaded guilty immediately. He has no previous convictions and has excellent prospects of rehabilitating within the community. He has a young family to care for, and will have to live with the knowledge that he caused the needless loss of the deceased's life and the pain and grief caused to John Narua's family. The suspension of sentence is to run for 2 years. Mr Uhi needs to remain offence-free to avoid having to serve the sentence.
25. Ms Uhi is further sentenced to 12 months of supervision and must serve 100 hours of community work.
26. Finally, I impose a sentence of compensation that Mr Uhi pay John's parents VT500,000. Mr Uhi's employer has confirmed it can do so on Mr Uhi's behalf.
27. In the event of default in relation to the sentence of compensation, Mr Uhi is to be remanded in custody for that failure and serve the sentence of imprisonment.

28. Mr Uhi has 14 days to appeal this sentence if he disagrees with it.

**DATED at Port Vila this 9th day of October 2020
BY THE COURT**

VM Trief
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Viran Molisa Trief
Judge

