

PUBLIC PROSECUTOR

v

KAWI KILIMA

Date: 25 November 2022
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr G. Simeon
Defendant – Mr R. Melsul

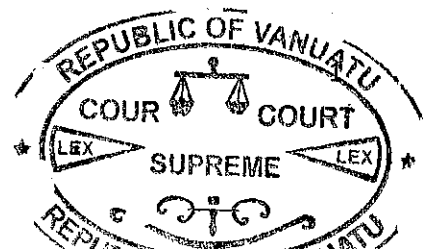
SENTENCE

A. Introduction

1. The Defendant Kawi Kilima pleaded guilty and accepted the brief facts relating to intentional assault (Charge 1) and threat to kill (Charge 2). He is convicted on his own pleas and the admitted facts.

B. Facts

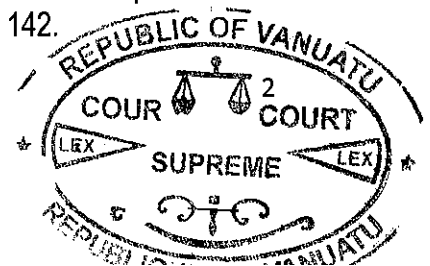
2. At the time of the offending, the complainant Nakwewen Philimon was 75 years old and Mr Kilima 32 years old. Both live on Tanna.
3. On 24 July 2021, Mrs Philimon left her daughter's house to go swim at a hot water spring some distance away. She was alone. On the way, she met Mr Kilima on the road. She greeted him but he grabbed her right hand roughly and said words to the effect that he would now rape her, she was alone so what could she say and he would pull her into the bush to do so ("*Bae mi fuckem yu naoia, yumitu nomo naoia bae yu talem wanem, bae mi pulum yu ko lo bush naoia mi fuckem yu*").
4. She responded to the effect that 'grandson, I do not want you to talk like that to me' ("*Hey apu, mi no wantem yu talem toktok olsem long mi*"). She was terrified. There was no one else on the road.



5. Mr Kilima ignored what she said. He pulled her by her right hand and dragged her body on the road and ground. She tried to be as still and as heavy as possible. As he dragged her, the stones on the road cut her left leg. He did not care and continued to drag her. He only stopped when he heard 2 men talking as they approached. He let go of Mrs Philimon to talk to them and she escaped and hid in the bush (Charge 1).
6. While dragging Mrs Philimon's body across the road and when she resisted, Mr Kilima said that as she did not want him to rape her, then he would stone her to death ("Yu no wantem mi fuckem yu, bae mi stonem ded yu naoia"). She was terrified, she felt pain from her injuries, she felt humiliated thinking about how the community would view her as Mr Kilima was from her village and even sometimes visited her at her home and ate from her kitchen. She did not ever expect such treatment from Mr Kilima (Charge 2).

C. Sentence Start Point

7. The sentence start point is assessed having regard to the offending, its aggravating and any mitigating features, the maximum sentence set by Parliament and guidance provided by earlier cases.
8. The maximum penalties for the offending are:
 - Threat to kill – 15 years imprisonment; and
 - Intentional assault causing temporary injury – 5 years imprisonment.
9. There are no mitigating aspects of the offending.
10. The aggravating factors include:
 - Breach of trust as they are close relatives – they call each other "apu" (grandchild/grandparent);
 - The level of force used – the Defendant held the complainant by the hand and dragged her along the road and ground. He had no regard for the safety and wellbeing of the 75 year old complainant;
 - The Defendant accosted the complainant in an isolated area. He knew she could not escape. But for the arrival of the 2 men, he would have made good his intentions to have sexual intercourse with the complainant and/or stoned her to death; and
 - The psychological effect on the complainant.
11. The Prosecution submitted that a global sentence starting point of between 4-5 years imprisonment was appropriate, citing the cases of *Public Prosecutor v Walker* [2007] VUSC 63 and *Walker v Public Prosecutor* [2007] VUCA 12 in respect of the threat to kill and *Public Prosecutor v Kalatei* [2016] VUSC 174 and *Public Prosecutor v Combe* [2016] VUSC 187 in respect of the intentional assault. Mr Melsul submitted that Mr Kilima's offending was less serious than in those cases and that the Court should adopt the same sentence start point as in *Public Prosecutor v Willie* [2022] VUSC 142.



12. Taking all matters into account, the global sentence start point adopted is 4 years imprisonment.
13. Mr Kilima is not a first time offender. An uplift of 3 months is therefore added to the sentence start point.

D. Mitigation

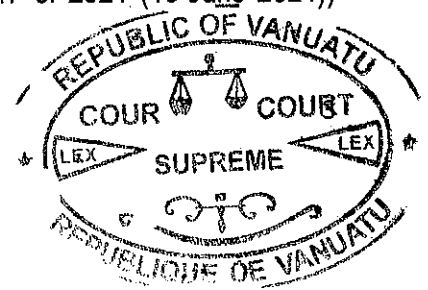
14. Mr Kilima pleaded guilty a year after he first entered pleas to the charges against him. That said, he has saved the Court the time that would be taken up with a full trial and spared the complainant the ordeal of giving evidence. I deduct 20% for the guilty pleas.
15. Mr Kilima is 33 years old, married and has 4 children. He is a subsistence farmer.
16. He performed a custom reconciliation ceremony to Mrs Philimon involving a pig worth VT100,000, 4 stems of kava, 4 bundles of calico, 8 mats and some local food crops, which were accepted by Mrs Philimon and the chief at Imakipin nakamal. I deduct 6 months for Mr Kilima's personal factors.

E. End Sentence and Time Served

17. Taking all of those matters into account, the end sentences imposed concurrently are:
 - a. Threat to kill (Charge 2) 2 years 11 months imprisonment; and
 - b. Intentional assault causing temporary injury (Charge 1) 2 years imprisonment.
18. Mr Kilima was held in custody from 2 August 2021 to 29 July 2022 (almost a year) which is an effective sentence of 2 years imprisonment. Accordingly, he has already served his sentence for the intentional assault.
19. A further 2 years is deducted from the sentence for threat to kill (Charge 2) therefore he has only 11 months imprisonment to serve of that sentence.
20. The effective end sentence for Mr Kilima is:
 - a. Threat to kill (Charge 2) 11 months imprisonment.
21. This sentence of imprisonment may not be enforced until the time of appeal against sentence has expired or Mr Kilima earlier elects to begin serving his sentence in accordance with s. 50 of the *Penal Code*.

F. Activation of suspended sentence for prior conviction

22. In addition, Mr Kilima must now serve his sentence for the earlier offending (see *Public Prosecutor v Iata* [2021] VUSC 138; Criminal Case No. 847 of 2021 (16 June 2021)) consecutively to the sentence imposed today.



G. Suspension

23. The sentencing purposes of denunciation of the criminal conduct, deterrence of Mr Kilima and others, protection of the community and to hold Mr Kilima accountable for his actions require an immediate custodial sentence. The offending is too serious and occurred within 2 months of being sentenced for the earlier offending for this sentence to be suspended.
24. Mr Kilima has 14 days to appeal.

**DATED at Isangel, Tanna this 25th day of November 2022
BY THE COURT**

VM Trief
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Justice Viran Molisa Trief

