

PUBLIC PROSECUTOR

v

PHILIMON ESAU

Date: 9 May 2022
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms L. Lunabek, for Ms G. Kanegai
Defendant – Mr E. Molbaleh & Ms A. Sarisets

SENTENCE

A. Introduction

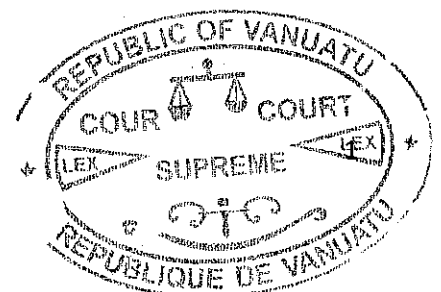
1. Mr Esau pleaded guilty to threat to kill.

B. Facts

2. On 2 May 2018 at Pangpang, Forari area on Efate, Mr Esau trespassed onto lease title no. 12/0741/007 which is owned by the complainant Freddy Boblang and others. Mr Boblang and his workmen were there bulldozing an access road.
3. Mr Esau verbally threatened to kill Mr Boblang by pointing his finger towards him and telling him that he would take his rifle in Vila and blow Mr Boblang's brains out. This caused Mr Boblang to fear for his life.

C. Sentence Start Point

4. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.
5. The maximum sentence provided in s. 115 of the *Penal Code* [CAP. 135] is 15 years imprisonment.
6. There are no mitigating aspects of the offending.
7. The offending is aggravated by:
 - The use of a weapon in the threat made;



- The entry and trespass into the complainant's property to commit the crime; and
 - The effect upon the complainant.
8. The factors set out above require a sentence start point of 3 years imprisonment.
- D. Personal Factors
9. Mr Esau pleaded guilty but not at the first opportunity. His guilty plea is a sign of remorse and has saved further Court time and expense. I deduct 20% from the sentence start point for the guilty plea.
10. Mr Esau is 63 years old. He is a father and grandfather.
11. He has no previous convictions.
12. The offending occurred on 2 May 2018. The Police interviewed Mr Esau in relation to the offending on 16 May 2018. He was formally charged on 26 July 2021. There has not been other offending since despite the 3 year delay in the prosecution.
13. The complainant declined Mr Esau's offer for a custom reconciliation ceremony.
14. For Mr Esau's personal factors, I deduct 6 months from the sentence start point.

E. End Sentence

15. Taking all of those matters into account, the end sentence imposed is 1 year 11 months imprisonment.
16. The sentence is imposed to deter Mr Esau and others from such offending, to hold Mr Esau accountable for his criminal conduct and to protect the community.
17. The sentence is suspended for 2 years. Mr Esau is warned that if he offends again within the next 2 years, he will need to serve the sentence in addition to any other penalty that may be imposed on him for the further offending.
18. In addition, Mr Esau is to complete 60 hours of community work.
19. Mr Esau has 14 days to appeal.

**DATED at Port Vila this 9th day of May 2022
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

