

PUBLIC PROSECUTOR

-v-

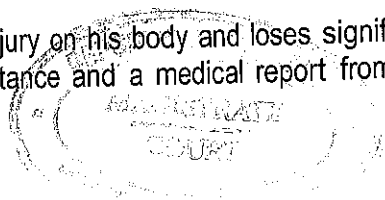
**DIDIER LUKAI
FABIEN MAUONG**

Coram: Moses Peter
Court Clerk: Florina Ephraim

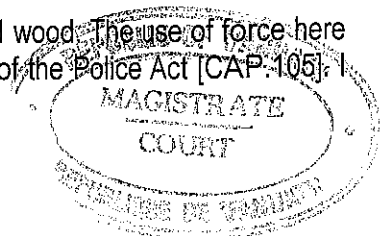
Appearances: Betina Ngwele for the State
Henzler Vira for Defendants
Defendants appear in Person

SENTENCING

1. Mr. Didier Lukai and Mr. Fabien Mauong, you first appeared in court on 26th October 2015 and pleaded guilty on the charges of Intentional Assault contrary to section 107 (b) of the Penal Code Act [CAP.135].
2. Today you appear for sentencing on the charge after time was allocated for a pre-sentence report to be submitted by Probation Officer in the Correctional Service, and sentencing submissions to be filed by both counsels.
3. The brief facts of the case has it that on 26th February 2015, the defendant was asked to come to the police station and make a statement concerning an assault he and his friends were involved in at Number 2 Area. The victim of that assault was you Fabien Mauong.
4. Inside the CID room in the Police Station, the Complainant was first assaulted by Fabien Mauong using your fist. Fabien Mauong, the Complainant said you also kicked him with the shoes you are wearing and you also used a wood to assault him with.
5. The Complainant said you then took him to the photograph room where Didier Lukai then further assaulted him.
6. Consequent to the assaults, the Complainant sustained injury on his body and loses significant amount of blood. The Complainant sought medical assistance and a medical report from the doctor confirmed the following:

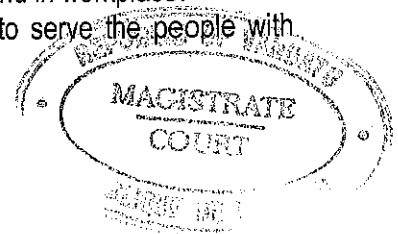


- Swelling on left and right eye lid
 - Bruises on left side of eye
 - Swelling and bruises on lips
 - Bruises on forehead
 - Bruises and swelling on both hands
 - Severe pain on both arms.
7. On 3rd of March 2015, you were cautioned by the police over the allegation and you admitted the allegations.
 8. The Complainant sought medical attention and a medical report confirmed he has swell on his face and eye and a bleeding nose.
 9. The maximum penalty for Intentional Assault causing temporary injury is 1 year imprisonment.
 10. In the case of **Public Prosecutor v Morris [1995] VUMC 5 CR 466**, the Court imposed three (3) weeks imprisonment but suspended for one (1) on David Morris, taking into account the victim he assaulted was his legal wife and that he was employed as a mobile force officer.
 11. In **Public Prosecutor v Willie Ben & Ors VUMC**, the Defendants were fined VT 3,000 each with cost of VT 2,000 for assaulting the Complainant at Au Bon Marche Manples.
 12. In **Public Prosecutor v Kalpukai Ronandie VUMC**, defendant assaulted Complainant and he sustained bruise on his face, wrist and damaged left ear drum. Court fined him VT 6,000 including cost.
 13. Ms. Ngwele submitted that appropriate sentence to impose is VT 10,000 fine and a prosecution cost of VT 1,000.
 14. Mr. Vira on your behalf submitted that a fine of VT 2,000 and VT 1,000 prosecution is proportionate to your offending as alternative to his submission that you should both be discharged without conviction pursuant to section 55 of the Penal Code Act [CAP.135].
 15. The Court is is appreciative of each of your presentence report and character references submitted by Superintendent Jackson Noal Katenga and Chief Inspector Clera Seth for Didier Lukai.
 16. In you presentence report and character reference report you realized your mistakes and fully understood the consequences it may have on your work as a police officer and your family as they rely heavily on your employment for daily sustenance.
 17. I find your case different from other police officers charged on assaults happening outside your place of employment. The Police Act authorizes police officers to use reasonable force in order to prevent a crime or to assist in effective lawful arrest of a person who commits a criminal offence. You have no excuse of using reasonable force in this situation because the Complainant has voluntarily entered your Station for the purpose of interrogation on an assault complaint by presumably you Fabien Mauong.
 18. Whilst in your custody, you assaulted him using your fist, shoes and wood. The use of force here is excessive and does not satisfy the reasons stated in section 36 of the Police Act [CAP.105].



call this assault to payback for the assault the Complainant and his friend did on you Fabien Mauong at No.2 Area.

19. The Criminal Justice system begins with the police arresting offenders upon lodging of complaints and investigation of offences. When the case reaches the court, only the court is empowered by law to punish the offender upon finding him or her guilty.
20. The Police officers have no right whatsoever to assault the accused when in their lawful custody, because if they are seen to be offering some sort of punishment by using excessive force on the accused, then that defeats the whole purpose of the court having the power to impose punishments on criminal offenders.
21. Our system of governance upholds rule of law which means irrespective of our status in the society, we are subject to the law of our country.
22. I have seen accuseds brought into my court with swells on their faces. I asked them to explain their ordeal, and they said they have been assaulted by the police when in their custody.
23. I believe after many years of this unacceptable attitude by police officers, this is the first time that a complaint has finally reaches the court.
24. A sentence I will impose on each of you is to mark the seriousness of your offence and to set as an act of deterrence to each of you and to your colleague police officers.
25. Given the nature of your offence, I consider that the starting point for you shall be 4 month imprisonment.
26. The aggravating factors taken into account are:
 - Police Officers assaulting an accused when in your lawful custody.
 - Accused sustained injury from the assault.
 - You abused your powers as Law Enforcement Officers.
 - The assault occurred where people relied on for safety and protection.
 - You assaulted accused using your fist, shoes and wood.
 - There was two of your assaulting the accused with no evidence of provocation from accused.
27. In considering the aggravating factor, I uplift this by 1 month making a total sentence of imprisonment to 5 months.
28. The mitigating factors taken into account from your presentence report and character reference from your superiors are:
 - You are a first time offender
 - You are remorseful for your actions.
 - Willing to reconcile with the victim but he refused to accept it.
 - You are person with good fame and character in community and in workplace.
 - Committed yourself to make amendments in your life and to serve the people with dignity and respect.



29. You are entitled to one third reduction of the sentence because of your guilty plea and that is 7 weeks reduction which now leaves you with a balance of 13 weeks imprisonment. I deduct another 2 week for showing remorse for your action and that you are willing to participate in any custom ceremony with the victim as a sign of forgiveness.
30. You are left with a balance of 11 weeks of imprisonment
31. In considering whether or not to suspend your sentence, I considered your character and dedication to your work and the respect given to you by your supervisors and family members, I have accepted to suspend your sentence for 18 months, however, in the event that you are further convicted for any other offences, this sentence will automatically be activated and you will serve the full sentence together with any other sentences imposed on you for your reoffending.
32. For completeness, you are ordered to perform custom reconciliation with the victim as a sign of forgiveness for the wrong done to him.
33. The Probation Officer at the Correctional Centre shall facilitate to reconciliation ceremony and shall produce a report to the court in 31 days from the date of this order.
34. You have 14 days to appeal to the Supreme Court if you are not satisfied with this sentence.

DATED at Port Vila this 4th day of May 2016

BY THE COURT


.....
MOSES PETER
Senior Magistrate

