

PUBLIC PROSECUTOR

V

MOSES OBED

JORDIE YARU

MAXIME JEFFREY (NAKAU)

Before: Justice Oliver A. Saksak

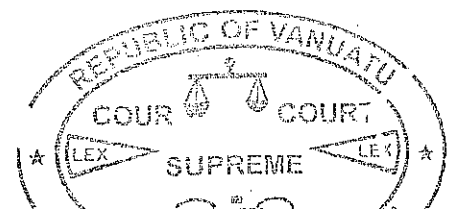
*Counsel: Simcha Blessing for Public Prosecutor
Gregory Takau for the Defendants*

Date of Plea: 13th April 2017

Date of Sentence: 7th June 2017

SENTENCE

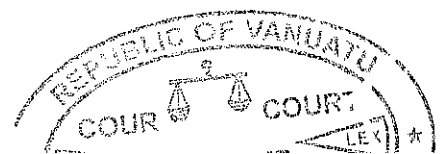
1. Moses Obed on 13th April 2017 you pleaded guilty to Count 1 Disturbance in a Public Place contrary to section 12 of the Public Order Act Cap 84, Count 2: Threats to Kill, section 115 of Penal Code Act [CAP 135] (the Act), Count 3: Extortion, section 138(f), Count 4: Theft, section 125(a), Count 5: Robbery, section 137, Count 6: Act of Indecency Without Consent, section 98, Count 7: False Imprisonment, section 118 and Count 8: Endangering Transport, section 119(b) of the Act.
2. You Jordie yaru pleaded guilty also on 13th April to Count 1: Disturbance in a Public Place, section 12 of the Public Order Act, Court 7: False Imprisonment, section 118 and Count 8: Endangering Transport, section 119 of the Act.



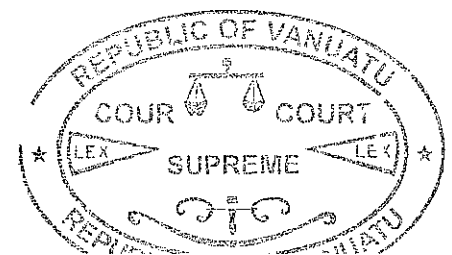
3. You Maxim Nakau pleaded guilty to Count 1: Disturbance in a Public Place, section 12 of Public Order Act, Count 2: Threats to Kill, section 115, Count 3: Extortion, section 138(f) Count 4: Theft, section 125(a), Count 5: Robbery, section 137. Count 7: False Imprisonment and Count 8: Endangering Transport, section 119 of the Penal Code Act.

4. All three of you must understand that you have committed very serious offences. These carry maximum punishments or penalties as follows –
 - (a) Disturbance in a Public Place – 3 years imprisonment or VT300,000 fine or both.
 - (b) Threats to Kill – 15 years imprisonment.
 - (c) Extortion – 14 years imprisonment.
 - (d) Theft – 12 years imprisonment.
 - (e) Robbery – 25 years imprisonment.
 - (f) Act of Indecency without consent – 7 years imprisonment.
 - (g) False Imprisonment – 10 years imprisonment; and
 - (h) Endangering Transport – 14 years imprisonment.

5. Following are the relevant facts obtained from the Prosecutions Brief of Facts. At approximately 12.45 am in the morning of 26th December 2016 some hard working nurses had ended their shifts at the Vila Central Hospital and were being dropped off at their homes in a Van. Michel was the driver. In the Van were Mary (the complainant), Joan, Harriet, David, Michelle, Pascal, Morris, Guenollita and Fiona. At Teouma Fiona was dropped off. The Van took a dirt road back to the main road. You were all standing in the middle of the road with tusker bottles. You were drunk.

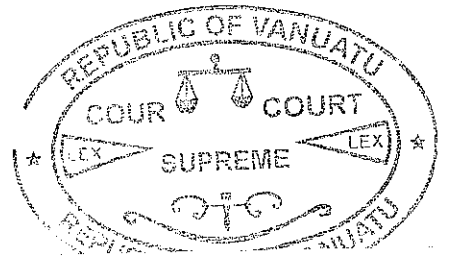


You stopped the Van from passing through. You demanded that you be given a lift to Dominique's fence at Maomao. Mary the complainant intervened by speaking to you in language and trying to explain their situation but she was not successful. Moses accused them of travelling in a government vehicle and asserted that as a voter you too were equally entitled. Moses became violent and opened the door of the van and removed the keys from the ignition. The complainant begged Moses for the return of the keys to no avail. You then demanded that Mary come out of the vehicle before you returned the keys. You then told the nurses you would have sexual intercourse with Mary and threatened to kill all the others and burn the van. You Maxim Nakau otherwise known as Jeffrey asked or demanded for money in return for the keys. When it did not happen you told Moses and Jordie to collect coconut leaves to burn the van. On hearing this, Mary was frightened and gave Maxim VT1,000. The keys were not returned. Maxim demanded a further VT1,000 and Mary gave him the money. Moses demanded another VT5,000 but the complainant had no money left on her. Moses then demanded that Mary kiss him but she refused. Moses became persistent on his demands. Mary cried. Moses pulled her violently towards him and started kissing her. He demanded a second kiss but Mary refused. At that moment another van came to the scene. All the defendants attention were focused on that van and Mary and her colleagues saw their chance of escape. Mary grabbed the keys off Moses' hand, gave it to Michel who started the van and drove away as quickly as they could. They went directly to the Police Station to report the incidents to the Police. A formal complaint by Mary was lodged on 10th January 2017. The Police arrested all three of



you on 7th January 2017 and interviewed you under caution on 19th January 2017. You have all accepted these facts.

6. Your actions were unlawful and uncalled for. These nurses did not deserve to be treated in this manner. These nurses did not appoint themselves to their positions as indeed all public servants. They are selected and appointed on merits and they have certain benefits and privileges. To accuse them out of sheer jealousy is unwarranted and is out of character. Your actions cannot be tolerated and must be condemned in the strongest terms by the Court as a deterrence to the three of you and to others who might who have the tendency to act in the way you all did.
7. As at yesterday 6th June 2017 when this sentence was written I had not received any written submissions from the Prosecutor or the defence counsel. Therefore I have to make the assessment of appropriate punishments without their assistance and as best as I possibly could to ensure a sentence is pronounced today. We have had one adjournment because there were no Pre-Sentence Reports. These were submitted only on 1st June 2017. On 2nd June 2017 both counsels agreed to an adjournment in order to prepare and serve submissions to assist the Court to assess appropriate punishments to be handed down on 7th June 2017. And I am not prepared to grant any more adjournments for the purpose of filing submissions.
8. I am grateful for the Pre-Sentence Reports. I find them helpful in consideration of mitigating sentences.
9. I will begin with you Jordie Yaru. On your own admissions I convict you and sentence you as follows –



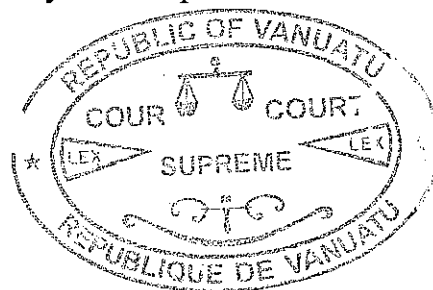
- (a) For Count 1 – Disturbance in a public place – 2 years imprisonment as the starting point.
- (b) For Count 7 – False Imprisonment – 1 year imprisonment concurrent.
- (c) For Count 8 – Endangering Transport – 1 year imprisonment concurrent.

For all three offences you are sentenced to a total of 2 years imprisonment as a concurrent sentence.

10. In mitigation you are entitled to 1/3 reduction for early guilty plea. 8 months are deducted from your 2 years sentence leaving the balance at 1 year and 4 months. There will be no further reductions as I do not see any other mitigating factors warranting it. Your sentence of 2 years imprisonment is effective immediately as of today.

11. For you Maxim Nakau you admitted guilt to 7 counts for which you are convicted and sentenced as follows –

- (a) For Count 1 – Disturbance in a public place – 1 year imprisonment concurrent.
- (b) For Count 2 – Threats to Kill – No separate sentence.
- (c) For Count 3 – Extortion – 6 years imprisonment (as lead offence).
- (d) For Count 4 – Theft – 2 years imprisonment concurrent.
- (e) For Count 5 – Robbery – No separate sentence.
- (f) For Count 7 – False imprisonment – 3 years imprisonment concurrent.



(g) For Count 8⁶ – Endangering Transport – 4 years imprisonment concurrent.

You are therefore sentenced to 6 years imprisonment as a concurrent sentence for all 7 counts. I have treated the offence of Threats to Kill and Robbery only as aggravating features as the facts do not show you actively took part in committing these offences.

12. But I now consider mitigating your sentence. The only mitigating factor to be allowed is early guilty plea for which 1/3 is allowable. That means 2 years are deducted from 6 years leaving the balance of 4 years imprisonment as your end sentence. There will be no further deductions as I do not see any other relevant mitigating factors.

Your sentence of 4 years imprisonment is effective immediately as of today.

13. Finally for you Moses Obed, you were the main perpetrator and the most violent of the three of you. You are sentenced and convicted as follows –

(a) For Count 1 – Disturbance in a public place – 3 years concurrent.

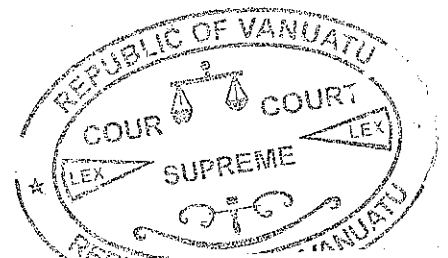
(b) For Count 2 – Threats to Kill – 8 years imprisonment (as lead offence).

(c) For Count 3 – Extortion – 3 years imprisonment concurrent.

(d) For Count 4 – Theft – 3 years imprisonment concurrent.

(e) For Count 5 – Robbery – 7 years imprisonment concurrent.

(f) For Count 6 – Act of Indecency without consent – 4 years imprisonment concurrent.



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(g) For Count 7 – False Imprisonment – 7 years imprisonment concurrent.

(h) For Count 8 – Endangering Transport – 7 years imprisonment concurrent.

For all 8 counts you are sentenced to imprisonment for 8 years as a concurrent sentence.

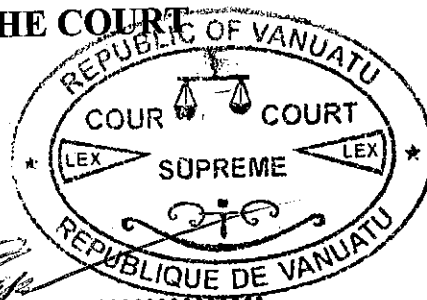
14. But you are entitled to mitigation of sentence due to your early guilty plea for which 1/3 is allowed. That means 2 years and 8 months are taken out from the 8 years leaving the balance as an end sentence of 5 years and 4 months. There will be no other deduction as I do not see any other mitigating factor that warrants it.

Your end sentence of 5 years and 4 months imprisonment is effective immediately as of today.

15. Each of you has right of appeal against your sentence if you do not accept it, in which case you should file and appeal within 14 days.

DATED at Port Vila this 7th day of June, 2017.

BY THE COURT



OLIVER A. SAKSAK

Judge