

PUBLIC PROSECUTOR

V

JARA MOLI

**Coram:** Chief Justice Lunabek

**Counsel:** Mr. D. Boe for the Public Prosecutor  
Mrs. J. Tari for the Defendant

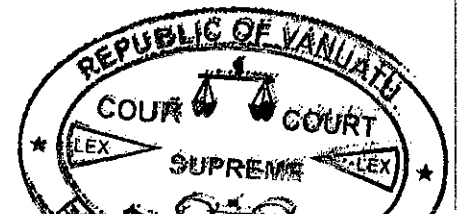
**Date of Sentence:** Friday 8<sup>th</sup> June 2018

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SENTENCE

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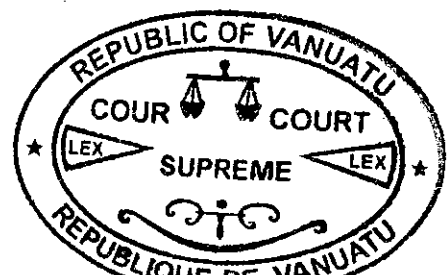
1. Jara Moli, you were initially charged with one count of Causing Death by Reckless Driving, contrary to section 12 of the Road Traffic Act [CAP 27] and one count of Unintentional Harm Causing Death contrary to section 108 (c) of the Penal Code Act [CAP 135].
2. On Monday 4 June, you entered a not guilty plea to the offence of causing death by reckless driving and a guilty plea on the count of unintentional harm causing death.
3. The Prosecution decides not to proceed any further with count 1 of causing death by reckless driving contrary to section 12 of the Road and Traffic Act [CAP 29]. And Mr. Boe applies for nolle prosequi under section 29 of the Criminal Procedure Code Act [CAP 136] to be entered. That application is entered and you were discharged and acquitted of that charge.
4. Mr. Jara Moli, you are now only sentenced for unintentional harm causing death, contrary to section 108 (c) of the Penal Code.
5. The facts are contained in the prosecution's brief of facts. They are set out as follows:-
  - a) You and deceased (Lui Sumbe) are from the same Village on the Island of Malo.
  - b) you are 35 years old at the time of this offence and you were a driver of transport truck on Malo Island.



- c) The offence occurred sometimes in the early hours on 30<sup>th</sup> of March 2018 on a junction road between Avanaleleo and Amapelao Village.
- d) On the afternoon of 29<sup>th</sup> March 2018, you were asked to drop off the deceased and his other 11 friends at Sea on South Malo. There were in total 13 young boys who went for diving. On their way they brought with them homebrew in a plastic bottle and a plastic bottle of kava.
- e) When they arrived at the dive scene some of the boys went diving and others remain on the sea shore. Those remaining on shore drank kava and homebrew.
- f) When you arrived at the place the boys get more alcohol liquor in a local shop at red corner area on Malo Island.
- g) When you transported the boys to shop, you bought three bottles of alcohol liquor. Another boy also bought a bottle of liquor. You took the boys back to their village when you and others consumed alcohol. One of the passengers asked you to drive slowly. When you arrived at a junction road where it divides the road to Avanaleleo and Amapelao Village, you could not control the vehicle and your vehicle hit a tree (Nakatambol) then crashed.
- h) The deceased was outside at the trunk of the vehicle when the accident occurred. The deceased was thrown out by the force of the crash and then hit himself on the ground. After the crash, the deceased was laying on the ground unconscious he was then taken to Northern District Hospital.
- i) At the time of the accident, you were very drunk as you were part of the drinking party that night. Your transport truck was also un-road worthy.
- j) The deceased was taken to Northern District Hospital where he was pronounced death the very same day 30<sup>th</sup> of March 2018. The death certificate confirmed the death as a result of radio respiratory arrest to trauma (confusion) to the head and chest.
- k) You were arrested cautioned and interviewed. You admitted committing the offence.

6. Section 108 (c)) is the offending section. It provides:-

***"Unintentional harm***



*No person shall unintentionally cause damage to the body of another person, through reckless or negligence or failure to observe law.*

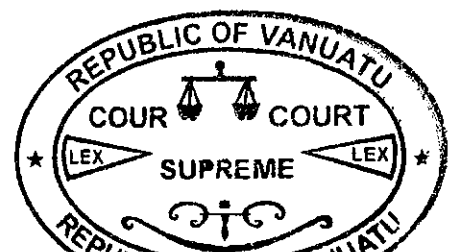
*Penalty:*

*(a) ...*

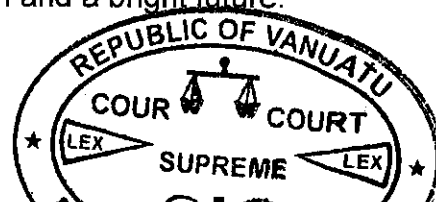
*(b) ...*

*(c) if the damages so caused result in death, imprisonment for 5 years."*

7. When I sentence you, I consider the same day report provided by the probation office. I also consider the submissions of the Prosecution and submissions filed by your lawyer on your behalf.
8. The prosecution submits and refers the Court to cases involving unintentional harm causing death such as **Public Prosecutor v Nakat [2014] VUSC 121; Public Prosecutor v Poilapa [2012] VUSC 20; Public Prosecutor v Bob [2007] VUSC 13; Public Prosecutor v Livo [2014] VUSC 9; Public Prosecutor v Moli [2017] VUSC 58 and Public Prosecutor v Yatibu [2018] VUSC 28.**
9. The prosecution makes specific reference to the case of **Public Prosecutor v Yatibu [2018] VUSC 28** where the Defendant is charged with one count of unintentional harm causing death pursuant to s.108 (c) of the Penal Code by reckless driving and causing death contrary to section 12 of the Road and Traffic Act [CAP 29]. The prosecution decides not to continue with the second charge under the Road and Traffic Act. The Court took the starting point of 3 years imprisonment and an end sentence of 22 months imprisonment and suspended. The prosecution says the circumstances of that case are almost similar as the Defendant is a qualified driver as in this present case.
10. The prosecution submitted that the following aggravating circumstances are present in this case:
  - You were not taken reasonable care to carry load which is reasonable for his truck to carry.
  - You were drunk.
  - You were reckless, although you had no intention to cause the death of the victim boy, you caused the death through your recklessness.
11. The prosecution submits that based on the case authorities, an appropriate starting point sentence here should be 3 years with necessary reduction on mitigation and an end sentence of 18 months imprisonment to be suspended for 12 months.



12. Your Defence lawyer summarised the facts and circumstances of this case. She points to the culpability of the Defendant in general in this type of offending where the Defendants have the choice whether to continue driving the vehicle under the influence of alcohol or to stop. It was a reckless decision to continue driving the vehicle under the influence of alcohol. Your lawyer also says that in this case you were disturbed by other passengers who were also drunk at the time of the incident (see same day report).
13. Your lawyer also refers to the case authorities referred to by the prosecution and in particular submit that this Court should use the case of **Public Prosecutor v Yatibu [2018] VUSC 28** as a guide sentencing in this type of offending. Your lawyer submitted that a proper starting point sentence will be 3 years imprisonment as per Yatibu case with an end sentence between 18-22 months and to be suspended.
14. I agree with the prosecution and your lawyer that **Public Prosecutor v Yatibu [2018] VUSC 28** can be used as a guide in this type of offending. In the present case, the following aggravating circumstances of this offence are present:
  1. You were not taken reasonable care to carry load which is reasonable for your truck to carry.
  2. You were drunk.
  3. You were reckless, although you had no intention to cause the death of the victim boy, you caused the death through your recklessness.
15. I sentence you to 3 years imprisonment as a starting point sentence inclusive of the aggravating features.
16. In mitigation, you plead guilty at the first time opportunity given to you. You are entitled to 1/3 deduction. Your sentence is reduced to 2 years.
17. The following mitigating factors are present in your case:
  1. You are a first time offender with a clean past record.
  2. you are a married man with 2 children permanently residing on Malo Island.
  3. You are the sole bread winner of your family and you earn money through providing Public Transport and you support your children as you want them to have a good education and a bright future.



4. You pleaded guilty at the first given opportunity and you are entitled to 1/3 reduction and also as a sign of contrition and remorse on your part.
5. You cooperated with the police by crossing over from Malo Island to report the accident yourself.
6. You performed a public customary reconciliation to the Victim deceased and his surviving family with a pig, heap of Yams, one bag of 18kg rice and amount of VT5, 000 cash. You had also contributed to the boat fares to and from Malo transporting the victim to the hospital and back to Malo. Also you made some contribution (in kind) to the family during the funeral of the victim deceased.
7. The Pre- sentence report said you are a good person. The accident shocked your close relatives and the community as a whole as they did not expect that to happen to you. You are year 7 leaver but you can be seen to be a hardworking man and a responsible man. You managed to get yourself a transport to earn money and support your family. You want your children to have good education and a bright future. As a husband, your wife tells of how you are helpful at home and respectful and does not involve you in any trouble. Apart from occasional stomach aches, you are said to be in good health and are physically fit.
8. You spent 1 month (01<sup>st</sup> April -02<sup>nd</sup> May 2018) which is equivalent to two months imprisonment, in custody before being released on bail.
18. I give you an allowance of 6 months to reflect these further factors.
19. Your sentence is reduced further to 1 year and 6 months.
20. You have an end sentence of 18 months imprisonment. Such term shall be suspended for a period of 12 months on the circumstances of this case.
21. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Luganville this 8<sup>th</sup> day of June, 2018**

**BY THE COURT**



.....  
**Vincent Lunabek**  
**Chief Justice**

