



**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU**  
*(Criminal Jurisdiction)*

**Criminal**  
**Case No. 18/356 SC/CRML**

**PUBLIC PROSECUTOR**

**VS**

**ELMO JOSEPH**

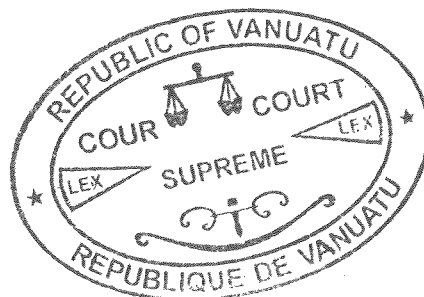
***Date of Plea:*** 3-4 October 2018  
***Date of Verdict:*** 21<sup>st</sup> November 2018  
***Date of Sentence:*** 6<sup>th</sup> December 2018  
***Before:*** Justice Oliver Saksak  
***In Attendance:*** Michelline Tasso for Public Prosecutor  
Jack Kilu for the Defendants

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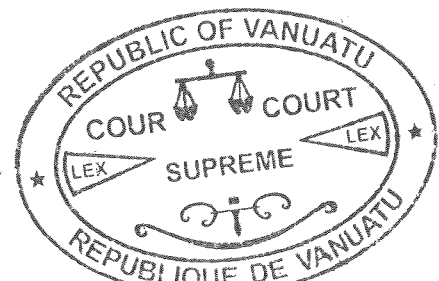
**SENTENCE**

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1. Mr Elmo Joseph you are for sentence today. After a 2 days trial the Court found you guilty of one Count of Threats to kill ( section 115) and of one Count of carrying a firearm with criminal intent ( section 28-Firearm Act).
2. The maximum penalty for the offence of threats to kill is 15 years imprisonment and for carrying a firearm with criminal intent is a fine not exceeding VT 500.000 or imprisonment not exceeding 10 years.
3. On 11<sup>th</sup> January 2015 at Takara, North Efate the complainants were cleaning Patrick's fence. You drove by in a G-vehicle. Your private vehicle followed you. You saw these complainants and stopped. You threatened to shoot them with a rifle. Then you went to your private vehicle, remove the rifle from behind the driver's seat, pointed it at them all and threatened to shoot them with it. This made them very frightened. They reported the incident to their chief who reported to the police the same day.



4. The aggravating features of the case were that there were at least 5 men and a woman whose lives were threatened. Your threats were real, oral and direct. You had a rifle. You held the rifle and pointed it at the complainants. You are a chief. You drove a G-vehicle at the time. You were a Government officer at the time. You took the law into your own hands. The contention that the rifle was unloaded does not matter.
5. I consider that your starting sentence should be as follows, for threats to kill, 3 years imprisonment and for carrying a firearm with criminal intent, 2 years imprisonment. I therefore convict and sentence you accordingly. I order that the 2 years sentence be served concurrently with the 3 years imprisonment.
6. In mitigation you are entitled to a reduction only for the customary reconciliation ceremony you performed, showing remorse. I reduce your 3 years imprisonment term by 1 year leaving the balance of 2 years imprisonment. You are not entitled to 1/3 reduction.
7. I now consider whether your sentence should be suspended. I have noted your explanation in your evidence that you had met these complainants in the past and argued with them about them trespassing onto your land for fishing in breach of a custom tabu. Further the threats you made to the complainants was not immediate but on condition that if they did not stop trespassing into your property, you would carry out your threats. Further the substantial custom ceremony you performed was made on the clear understanding that the complaint would be withdrawn or that the chief of the complainants would inform and notify them about it or share the proceeds of the ceremony with them. This was not done. Finally for the delay in laying of formal charges on 16<sup>th</sup> November 2017, more than 2 years later.
8. For those reasons I consider that your sentence of 2 years should be suspended for a period of 2 years from the date of sentence. Accordingly I so order
9. Your suspension is made under section 57 of the Penal Code Act on condition that you must not reoffend or commit of any criminal offences within a period of 2 years. If you do, you will go to prison for 2 years.



10. I do not accept the prosecution submission that you should be sentenced to an additional sentence of community work for the reasons the threats you made did not materialise at the time or at any subsequent time after 15<sup>th</sup> January 2015.

**DATED at Port Vila this 6<sup>th</sup> day of December 2018**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

