

PUBLIC PROSECUTOR

v

JOSELITO VATU
JOHANES VATU

Date: 28 May 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr D. Boe
Defendant – Mr T.J. Botleng

SENTENCE

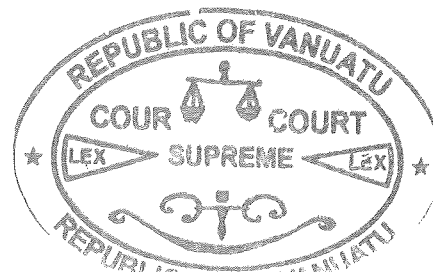
A. Introduction

1. Joselito Vatu pleaded guilty to one charge of inciting and soliciting commission of an offence (Count 1). Johanes Vatu pleaded guilty to one charge of intentional assault causing permanent injury (Count 3). They are convicted on their pleas and the admitted facts.

B. Facts

2. On 12 December 2020 at Beleru area on Santo, Joselito Vatu who was driving a white Toyota land cruiser motor vehicle chased the complainant Ken Maliau. He was about to hit Mr Maliau with the truck when Mr Maliau fell to the ground. He stopped the vehicle. Johanes Vatu exited the vehicle and assaulted Mr Maliau (Count 1).
3. Johanes Vatu punched Mr Maliau in the face and felled him. When Mr Maliau was on the ground, Mr Vatu, who was wearing shoes, kicked him in the side several times. Mr Maliau was rendered unconscious with heavy bleeding from his body (Count 3).
4. The next day, Mr Maliau's relatives assisted him to the Northern District Hospital. The medical report confirmed Mr Maliau's injuries as follows:

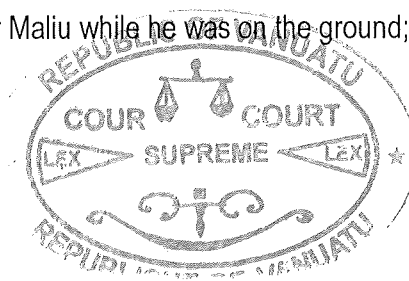
- a. Laceration of 2cm at left eye brow;
- b. Haemotpma at left lower eye lid;



- c. Painful and tender bilateral temporomandibular joint which result in inability to fully open his mouth;
 - d. Swelling at left hemi-thorax;
 - e. Painful and tenderness at left hemi-thorax; and
 - f. Multiple rib fractures at left hemi-thorax from 3rd-6th ribs.
5. Joselito Vatu admitted to the Police that he used his truck to chase Mr Maliu and that he assisted Johannes Vatu to assault him on 12 December 2020. Johannes Vatu openly admitted that he assaulted Mr Maliu, felled him and then kicked him several times on 12 December 2020.
 6. Dr Basil Leodoro's medical opinion dated 21 May 2021 sets out that based on Mr Maliu's medical reports, clinical notes and radiological findings, it is his professional conclusion that with the degree of blunt force trauma and multiple, segmental rib fractures (3rd-6th ribs) that he suffered, Mr Maliu will develop early osteoarthritis and experience chronic pain and discomfort at the levels of those rib fractures for the remainder of his life.
 7. Mr Botleng's submissions in relation to various medical reports and the extent of Mr Maliu's injuries did not assist me. After his clients entered their pleas, Mr Botleng on their behalf accepted the Brief of Facts as being true and correct. The facts were admitted. There was no longer any scope to argue factual matters.

C. Sentence Start Point and Personal Factors

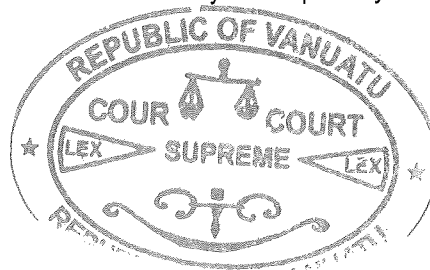
8. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
9. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
 - a. inciting and soliciting commission of an offence (s. 35) – 20 years imprisonment; and
 - b. intentional assault causing permanent injury (s. 107(c)) – 10 years imprisonment.
10. There are no mitigating factors of the offending.
11. The offending is aggravated by:
 - Unprovoked attack – Mr Maliu is alleged to have been involved in an assault on Joselito Vatu's son in November 2020 however that does not justify the Defendants taking matters into their own hands and inflicting violence;
 - The degree of force used including a punch to the face that felled Mr Maliu and then Johannes Vatu using his shoes to kick Mr Maliu in the side;
 - The repetition of kicks to Mr Maliu while he was on the ground; and



- The effect of the assault on Mr Maliu's health which he will suffer for the rest of his life.
12. The factors set out above require a sentence start point of 4 years imprisonment for Johanes Vatu and of 3 years imprisonment for Joselito Vatu.
 13. A 33% reduction is made for the Defendants' early guilty plea.
 14. Joselito Vatu is 43 years old. He is married and has 5 children all of whom attend school in Luganville. He has no previous convictions. Mr Vatu makes a living from sales of land, farming and selling agricultural crops at Luganville Market. He owns cattle and goats at Beleru, and employs about 30 people altogether in his farming business, which he self-manages. He operates a private kindergarten at Beleru which 28 children attend. Mr Vatu has the support of Chief Victor Andre Moltures at Beleru, who he is an assistant to. He is also the assistant spokesperson of their family over land tenancy at Beleru area.
 15. Mr Maliu refused the Defendants' offer to perform a custom reconciliation ceremony. Joselito Vatu is stated to have prepared fines of a pig, VT20,000 cash, 1 head of kava, 1 mat and 4 bundles of taro and remains willing to perform a reconciliation ceremony if Mr Maliu changes his mind. He is also willing to pay compensation to Mr Maliu for the injuries he sustained during the offending. For Mr Vatu's personal factors, I deduct 6 months from the sentence start point.
 16. Johanes Vatu is 26 years old. He is in a *de facto* relationship. He makes a living from planting kava, other garden produce and from a kava bar and retail store. Mr Vatu has previous convictions for harbouring an escaped prisoner and possession of cannabis. Mr Vatu is stated to be remorseful and knows that he committed a crime. He promised not to offend again in the future. That does not sit well with his previous convictions however Mr Vatu has prospects of rehabilitation given his relative youth and entrepreneurial ventures. He is willing to perform a custom reconciliation ceremony if Mr Maliu agrees. For Mr Vatu's personal factors, I deduct 2 months from the sentence start point.

D. End Sentence – Joselito Vatu

17. Taking all of those matters into account, the end sentence for Joselito Vatu is 18 months imprisonment for inciting and soliciting commission of an offence (Count 1).
18. I have the power to suspend a sentence in whole or in part. Joselito Vatu's fall from grace is in itself punishment. However, I reiterate that as a leader within the community at Beleru area, he has a responsibility to lead by example to solve disputes through dialogue, not violence. In view of his responsibilities to his children, business and employees, and prospects for rehabilitation, I suspend Joselito Vatu's sentence for 2 years. Mr Vatu must remain offence-free for the next 2 years or he will need to serve his sentence of imprisonment in addition to any other penalty that may be imposed on him for the further offending.



19. Through counsel's sentencing submissions, Joselito Vatu has offered to pay compensation to Mr Maliu. I am satisfied that Mr Vatu has the means and ability to pay the monetary compensation offered.

20. Joselito Vatu is to pay compensation to Mr Maliu for the amount of VT150,000, payable in monthly instalments as follows:

- | | |
|-------------------|----------|
| a. June 2021 | VT30,000 |
| b. July 2021 | VT20,000 |
| c. August 2021 | VT20,000 |
| d. September 2021 | VT20,000 |
| e. October 2021 | VT20,000 |
| f. November 2021 | VT20,000 |
| g. December 2021 | VT20,000 |

TOTAL VT150,000

21. In the event of default in relation to the sentence of compensation, Mr Vatu is to be remanded in custody for that failure and serve the sentence of imprisonment.

22. In addition, Joselito Vatu is ordered to complete 100 hours of community work and 12 months supervision.

23. End Sentence – Johanes Vatu

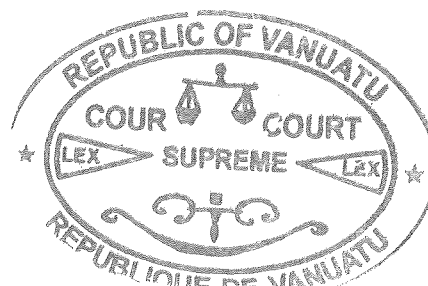
24. Taking the matters set out above into account, the end sentence for Johanes Vatu is 30 months imprisonment for intentional assault causing permanent injury (Count 3).

25. It would be entirely wrong to suspend this sentence in whole. However, I am prepared to suspend part of the sentence in view of Mr Vatu's relative youth, his responsibilities to his kava businesses and retail store and prospects of rehabilitation. Johanes Vatu is to serve 6 months of his imprisonment sentence. I suspend the remaining 24 months of Johanes Vatu's imprisonment sentence for 2 years. Mr Vatu is warned that if he offends again within the next 2 years, he will need to serve the remaining 24 months of this sentence in addition to any other penalty that may be imposed on him for the further offending.

26. Through counsel's sentencing submissions, Johanes Vatu has offered to pay compensation to Mr Maliu. I am satisfied that Mr Vatu has the means and ability to pay the monetary compensation offered.

27. I therefore impose a sentence of compensation as follows: after Johanes Vatu has served the 6 months imprisonment sentence, he is to pay compensation to Mr Maliu for the amount of VT150,000, payable in monthly instalments as follows:

- | | |
|------------------|----------|
| a. January 2022 | VT30,000 |
| b. February 2022 | VT20,000 |
| c. March 2022 | VT20,000 |
| d. April 2022 | VT20,000 |



e. May 2022 VT20,000
f. June 2022 VT20,000
g. July 2022 VT20,000

TOTAL VT150,000

28. In the event of default in relation to the sentence of compensation, Mr Vatu is to be remanded in custody for that failure and serve the remainder of his sentence of imprisonment.
29. Johannes Vatu is to serve 6 months imprisonment immediately to reflect the culpability of his offending and to denounce this serious offending. However, it is so limited so as to not jeopardise his means and ability to pay the compensation ordered.
30. In addition, after Johannes Vatu has served the 6 months imprisonment sentence, he is ordered to complete 12 months supervision.
31. The sentence is imposed to denounce the criminal conduct that the Defendants engaged in, to hold the Defendants accountable for their criminal conduct, to deter them and others from such offending and to protect the community. I trust the Defendants will in future choose not to engage in criminal conduct.
32. The Defendants have 14 days to appeal the sentence.
33. The Prosecution is to provide a copy of this sentence to Mr Maliu.

DATED at Luganville this 28th day of May 2021

BY THE COURT


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Viran Molisa Trief
Judge

