

PUBLIC PROSECUTOR

V

OBED KANAS

Coram: Justice O. Saksak

Counsel: Mr Christopher Shem for the Public Prosecutor
Ms Linda Bakokoto for the Defendant

Date of Plea: 22 October 2021

Date of Sentence: 30 November 2021

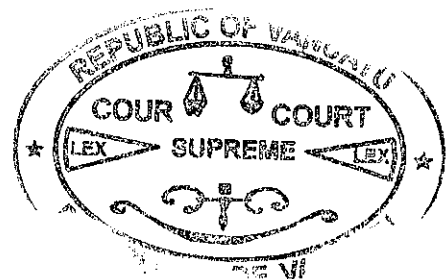
SENTENCE

Introduction

1. Obed Kanas is for sentence having pleaded guilty to one charge of criminal trespass – Section 144 (a), (Count 1), one charge of unlawful entry – Section 143 (1), (Count 2), and one charge of intentional assault – Section 107 (b) of the Penal Code Act.
2. These are serious offences. Trespass is punishable with 1 year imprisonment as the maximum penalty. Unlawful entry is punishable with 20 years imprisonment as the maximum and intentional assault carries the maximum penalty of 5 years imprisonment where injuries caused are only of a temporary nature.

Facts

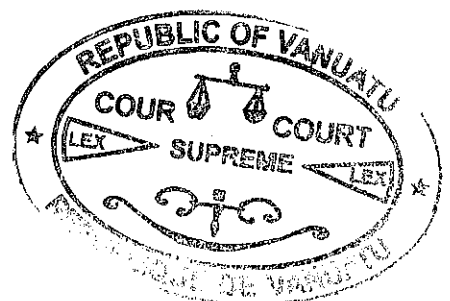
3. On 5 October 2018 at Siviri Village between 2-3.00 am the defendant went into the complainant's yard and entered into his house while he was still sleeping. He shone a torch at the victim's face and demanded some explanation and affirmation of his contribution to the death of Kelvin by means of black magic.



4. The defendant then forced the victim and his family to move out of their house. He struck the victim on his neck causing him to fall over. He then got hold of his T-shirt and dragged him outside. While outside the defendant took a piece of kasis wood and hit the victim directly on the chest. While the victim was on the ground the defendant took a stone and wanted to throw it at the victim but stopped when his wife called to him to stop. He dragged the victim to the grave of the deceased and continued to demand an explanation as to his involvement. He hit the victim again there with the kasis wood all over his body. The victim, a 66 year old man could not defend himself.
5. The defendant has accepted those facts.
6. The 3 separate offendings were committed at the same time, on the same date and on one and the same victim. They were committed in a package. As such the sentences will be concurrent.
7. The head offence is unlawful entry – Section 143 (1) with a maximum penalty of 20 years imprisonment.
8. There is no mitigating circumstances warranting the Commission of these offences.

Aggravating Features

9. You took the law into your own hands. You acted on unfounded and suspicious information, without evidence. You could have reported to the Chief of the Village to call a meeting or report to the Police. You did not do that – instead you took on the role of being an investigator/policeman, prosecutor and Judge.
 The victim is 66 years old, some 19 years older than you. He is an elder and a relative of yours. There was a breach of trust and respect. You not only trespassed onto his compound, you intruded into his house and disturbed him in his sleep including his family. You forced them out of their house between 2-3.00 am. You assaulted the victim on his neck causing him to fell over. You then grabbed him by his T-Shirt and dragged him outside his house. You then took a big kasis wood and hit him on the chest. You then picked up a stone and was about to throw it at him when your wife called out at you to stop. You then dragged him to the grave and demanded that he admit killing your nephew, Kelvin. You then took another piece of kassis wood and assaulted him again all over his body. The victim suffered much pain and injuries to his shoulder and low left loin.
10. Your offendings warrant custodial sentences to mark the seriousness of the offendings, public disapproval of your actions, to serve as a deterrence for you and others, to protect the elderly and vulnerable, and to punish you adequately.



Sentence

11. I therefore convict and sentence you as follows:-
 - (a) for unlawful entry (count 1) as the lead offence – a sentence of 3 years imprisonment;
 - (b) for intentional assault (Count 3), a sentence of 2 years imprisonment, concurrent;
 - (c) for criminal trespass (Count 1), a sentence of 6 months imprisonment, concurrent.

12. You are therefore sentenced to a total concurrent sentence of 3 years imprisonment.

Mitigation

13. For guilty plea – 1/3 reduction = 12 months or 1 year. The balance of your sentence is 2 years imprisonment.

14. For reconciliation showing remorse, being a first time offender with no previous criminal record and other personal factors, I reduce your balance of the sentence by a further 12 months.

15. Your end sentence is 12 months imprisonment.

16. I reject defence submission that your sentence should be suspended. There is therefore no suspension of sentence.

17. Your sentence takes immediate effect as of today.

18. You may appeal against the sentence within 14 days if your wish.

DATED at Port Vila, this 30th November, 2021

BY THE COURT

**Oliver.A.Saksak
Judge**

