

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

**Criminal**

**Case No. 20/2938 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Waltersai Ahelmalahlah**  
Defendant

*Dates of Hearing:* 3 and 4 November 2021  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr P. Toailu for the Public Prosecutor  
Mr W. Ahelmalahlah self-represented.  
*Date for Verdict:* 13 December 2021

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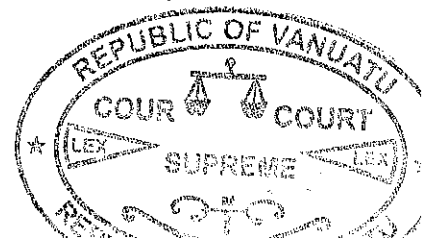
**Verdict**

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**A. Introduction**

1. Mr Ahelmalahlah was charged with:

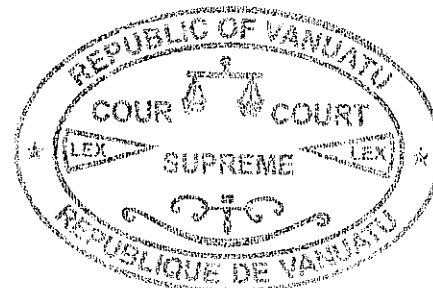
- (i) threat to kill, contained in a letter dated 4 May 2020 which became Exhibit 1,
- (ii) domestic violence, involving a stalking phone call on 2 January 2020, which caused fear,
- (iii) domestic violence, involving an intimidatory text on 24 January 2020, which caused fear, and became Exhibit 6A, and
- (iv) domestic violence, involving a further intimidatory letter dated 17 March 2020, which caused fear, and became Exhibit 3.



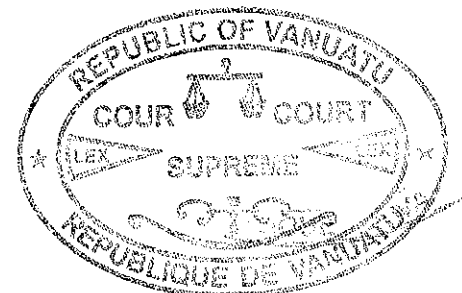
2. The complainant in each instance is Mr Vincent Lunabek, the Chief Justice of the Republic of Vanuatu ("Mr Lunabek").
3. Mr Ahelmalahlah pleaded not guilty to all the charges.
4. At the conclusion of the evidence, I indicated that I would reserve my decision and give reasons for my verdicts in respect of these charges today. These are my verdicts and the reasons for them.

**B. Law**

5. The prosecution has the onus of proving the charges, and the standard it must achieve in order to obtain any conviction is the criminal standard of proof, namely beyond reasonable doubt.
6. Mr Ahelmalahlah was not required to establish anything.
7. I reminded myself that each charge is to be considered in isolation, and that a separate decision is required in respect of each.
8. There are the following legal ingredients that must all be proved in respect of a charge alleging threat to kill:
  - The causing to receive, directly or indirectly, any (in this case) written threat to kill any person; and
  - The threat must be known to the defendant; and
  - The threat must be intended to be taken as real.
9. There are the following legal ingredients that must be proved in respect of a charge alleging domestic violence:
  - An intentional act against a member of a person's family. A member of a person's family is set out in section 3 of the Family Protection Act 2008 ("the Act"), and in this case is "any person (other than a spouse, child, parent, or sibling) who is treated by the person as a family member"; and
  - The intentional act may be any number of prescribed acts. In this instance, what is charged is "psychologically abuses, harasses or intimidates" and/or "stalks ... so as to cause ... apprehension or fear".
10. This case involved assessing the accuracy and veracity of the witnesses.



11. I consider there is no property in a witness. They can support both the prosecution and the defence cases.
12. Rather than focus on how a witness appears in the witness box, I looked for consistency within their evidence, and also when comparing their evidence with that of others, and with the exhibits. I further had regard for the inherent probabilities of the situation. In this manner I concluded which evidence to accept and what to not accept as true and correct.
13. I reminded myself that I was able to draw inferences, which are not guesses. Where two or more reliable facts informed a further inference, I concluded it was safe to draw that inference if it was the only available inference; and if there were several available inferences, if it was the most favourable inference that could be drawn from the defendant's point of view.
14. Much of the background that has led to these criminal charges being filed, was sought to be led as "propensity evidence". The prosecution tendered a number of authorities to support their application to lead this evidence. The propensity relied on was Mr Ahelmalahlah's tendency to use correspondence, delivered via a third person/messenger, to express his grievances with Mr Lunabek and to agitate for re-instatement and compensation. It was submitted that the pattern of behaviour so evidenced had evidential value which outweighed the prejudicial effect of the evidence being led.
15. However, I do not see the evidence as purely propensity evidence, which perhaps explains why the submissions also dealt with similar fact evidence. To me, the evidence of previous interaction between the complainant and the defendant was relevant, in its own right, as part of the lead up to the alleged offending. It not only set the scene, but it is integral to understanding the history between complainant and defendant. It is in my view relevant on that basis.
16. Further, it can be used as propensity evidence if it meets the test for inclusion as such evidence. I say this despite the lengthy but largely unhelpful discourse on the subject by Mr Ahelmalahlah, all of which submissions I reject. I have no doubt that propensity evidence is admissible in Vanuatu.
17. In this case it is submitted to assist in identifying whether or not some of the actions complained of were perpetrated by Mr Ahelmalahlah, as opposed to someone else. At the commencement of the trial, it was not clear which acts were those of Mr Ahelmalahlah. That only became clear after he had given evidence. There remains however, one aspect of the case where this evidence remains particularly relevant, namely the authorship of Exhibit 1, the letter of 4 May 2020.
18. Accordingly, I ruled the so called propensity evidence to be relevant and admissible in the trial.



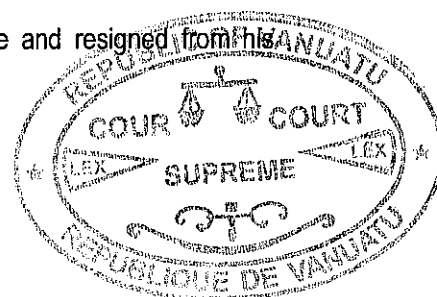
### **C. Prosecution Evidence**

#### **(i) Family Link**

19. Family connections in Vanuatu are complicated and varied.
20. Mr Lunabek advised that he was related to Mr Ahelmhalahlah as both his uncle and his nephew, due to Mr Lunabek's father having been concurrently married to two wives, the second being Mr Ahelmhalahlah's mother after Mr Lunabek was born. Mr Ahelmhalahlah did not want to accept being related to Mr Lunabek. He sought to distinguish those related by blood to those related by marriage. Mr Ahelmhalahlah was adamant that there is no blood connection between himself and Mr Lunabek.
21. However, he accepted that they share the same home village, Brenwei, in North West Malekula. He also accepted that they had grown up together in the same community. He is Mr Lunabek's Paramount Chief.
22. On the other hand, it was plain that Mr Lunabek regarded Mr Ahelmhalahlah as a member of his wider family group. He explained that he felt that, although large, the wider family was still close. He stated that he respected Mr Ahelmhalahlah as his Paramount Chief.

#### **(ii) Professional Link**

23. Mr Lunabek was appointed as Chief Justice of Vanuatu in February 2001. In his judicial role, he was instrumental in the appointments of Magistrates; and in 2010 he had appointed Mr Ahelmhalahlah to be a Magistrate at Isangel, Tanna.
24. Subsequently, on 6 May 2013, Mr Ahelmhalahlah resigned from his Magistrate's post, having been advised/told to do so by Mr Lunabek. The reason for his resignation was that Mr Ahelmhalahlah had been involved in some criminal activity – he had pleaded guilty to chopping down a supporting post to someone's house while in a possession of a chainsaw. He also had a .22 rifle to keep away those who might intervene. He was discharged without conviction.
25. Mr Lunabek's advice to Mr Ahelmhalahlah that he should resign rather than be dismissed was explained as an attempt to save his relative's legal career. If there had been no voluntary resignation, inevitably, Mr Ahelmhalahlah's legal career would have ended abruptly following a disciplinary hearing. The adverse publicity would have made it difficult for Mr Ahelmhalahlah to continue in the field of law. Mr Lunabek also frankly admitted that resignation would involve a much better outcome for the judiciary and preserve the reputation of the Magistrate's Court – matters of significant personal interest to him.
26. Mr Ahelmhalahlah accepted the advice/instruction given at the time and resigned from his position as a Magistrate. He was paid out all his due entitlements.



(iii) Interaction

27. Subsequently, after returning from several years overseas, Mr Ahelmalahlah appears to have had second thoughts, and he apparently attributes his fall from grace to the advice/instruction given to him, and the subsequent actions, of Mr Lunabek. Not only was that the view of Mr Lunabek, but it is supported by the following matters.
28. One night in 2016 - 2017, after Mr Lunabek returned home from work in the early evening, there was a visitation by a police officer William Amkori, an apu (grandparent) to Mr Ahelmalahlah, who wanted to give Mr Lunabek a letter in a white envelope. Mr Ahelmalahlah was not then present.
29. Mr Lunabek told William That (i) it was improper for him to deliver letters as a messenger while in police uniform, (ii) Waltersai was his nephew who knew where Mr Lunabek lived, and (iii) he could give the letter to Mr Lunabek himself. That letter was never in fact given to Mr Lunabek.
30. Mr Lunabek had appreciated the author to be Mr Ahelmalahlah. He pointed to the fact that Mr Ahelmalahlah never dealt directly with him, but always used an intermediary. Mr Lunabek had in fact correctly identified the author, as evidenced by Willie Amkori's statement to the effect that it was Mr Ahelmalahlah who had asked him to give it to Mr Lunabek. Mr Ahelmalahlah did not challenge this evidence, nor in his evidence did he counter it.

(iv) Letters

31. There were several other letters which did reach Mr Lunabek, as follows:

Exhibit 2 – an unsigned letter written in Bislama by Mr Ahelmalahlah to Kalbeau [Mr Lunabek's younger brother] and Vincent Lunabek dated 28 July 2017. This was, according to Mr Lunabek, given to Bradley Lunabek, the complainant's younger brother. However, Bradley Lunabek did not confirm that in his evidence. The letter reads, as translated by the Court Interpreter Ms J. Nicol, as follows, with the highlighted parts in bold my added emphasis (on this and the following exhibits referred to):

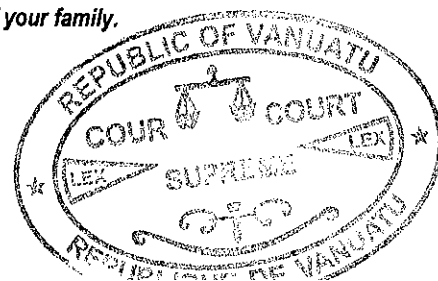
*"Letter from Paramount Chief to Kalbeau and Vincent Lunabek*

*Date 28/07/17*

*Dear Sirs,*

**RE.: WARNING**

***The chief wishes to acknowledge your happiness and hard work carried out on you own behalf for the future, serving your own personal interest and that of your family.***



**The chief wants to send a warning** about you to Chief Kaiberr of Unmet so that he is aware that you had a problem previously with your chief, after which you fled to become akin to visitors.

The chief has been dreaming about Mr. Vincent Lunabek many times at night from 2015 through until 2017. The chief has dreamt 18 times at night and sees that **Vincent Lunabek is standing in his way**. The chief has never dreamt about anyone like this so he asks himself the question "why is it that he has been dreaming about Vincent Lunabek all those 18 nights?"

The chief has been hearing about what your family has been saying, that the chief cannot find work because he has borrowed a small amount of money from Kalbeau Lunabek and not paid it back yet. When the chief finds some work then he will pay it back. It is the chief's intention to do so.

**It appears to the chief that you are looking for ways to blame the chief in your own personal interest.** Does not know about land or wants to associate with those who are causing problems in the community and give them power. The chief does not need to face you also in the community and you are not originally from T'nao (Amelaya, Unduwalo or Alemiasi), you are from Amok. If there is any false history that you are from T'nao, then you need to see the chief about this in the future if necessary.

**And the chief is warning Vincent Lunabek and preventing him from letting problems in the island (Village) interfere with cases before the Court because of his own personal interest believing that he can intervene as he wants out of his own personal interest and that of his family.**

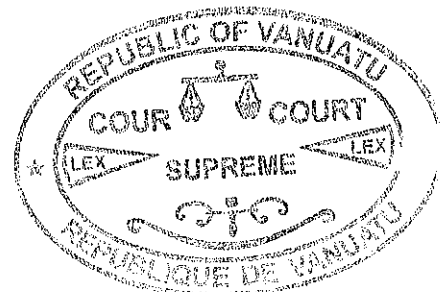
Thank you for your understanding and cooperation.  
From the chief  
Ta!!"

Exhibit 3 – a signed, hand-written letter in Bislama written by Mr Ahelmalahlah addressed to Vincent Lunabek dated 17 March 2018. This letter was given to Bradley Lunabek, the younger brother of the complainant, by Mr Ahelmalahlah with the instruction that he was to pass it on to Mr Lunabek, which is what he did. That evidence was unchallenged. The letter reads (as translated):

"Paramount Chief  
Waltersai Ahelmalahlah  
Beverlyhills Area  
Port Vila  
Republic of Vanuatu  
Mob: 5321208

Date: 17/03/18

To: Vincent Lunabek  
Family Lunabek



Port Vila

Vanuatu

Dear Sir/Madam,

**RE: EVICTION OF YOU, FAMILY LUNABEK, TO RETURN TO YOUR PLACE AT UNMET/AMOK**

**I, Paramount Chief Waltersai Hapsal, write to inform you and your family to move out of Brenwei Village and return to Unmet/Amok, where you come from.**

**The Paramount Chief asks you and your family to do the honourable thing and move out of Brenwei Village for the following reasons:**

- (1) You, Vincent Lunabek, have a Court case against Paramount Chief;**
- (2) You, Vincent Lunabek, some time last year, went with a network of yours on the island to see Wita at Levit Village in the night. He is someone of whom people say he has something to do with custom;
- (3) Paramount Chief has dreamt of seeing you 16 time over 16 nights and in those nightly dreams he saw that you were standing in the way of the path he wanted to follow;**
- (4) You told the Court that you would send Paramount Chief to the land of repose;**
- (5) You have problems with other members of your family;
- (6) You are interfering in land issues on the island and you are associating with people who want to cause disputes on the island;
- (7) You threatened the Paramount Chief and forced him to resign from his position as Magistrate;**
- (8) You are having problems with members of your family and the chief does not want to entertain any kind of problem-causing practices. He asked you and your family to go back to Unmet, stay there peacefully and settle your problems first, then the Paramount Chief might just call you again if you have nowhere to stay;
- (9) The Paramount Chief knows that you will complain and try to shift the blame to something else in order to protect yourself or to find a way of stomping on it);
- (10) The Paramount Chief knows that the act of adultery or taking a different woman is the action of a snake which is what church-goers pray against.

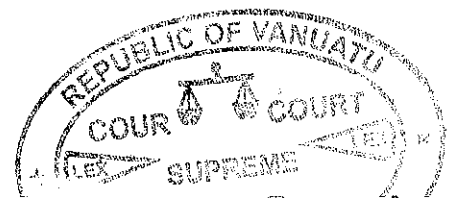
Thank you for your understanding and cooperation in your enjoyable times.

Yours truly,

Paramount Chief Waltersai

Copied to the list of people named on the last page'

Exhibit 4 - a signed letter, written in English, by Mr Ahelmalahlah addressed to the Hon. Chief Justice dated 24 January 2020. This letter was given by Mr Ahelmalahlah to Mr



Jimmy Wovan, Mr Lunbek's driver, with the instruction/request that he deliver it to Mr Lunabek, which is what he did. This evidence went unchallenged. The letter reads as follows:

*"Walter Ahelmalahlah  
Beverly Hills  
Port Vila  
VANUATU*

*Dated 24<sup>th</sup> January 2020*

*To Hon. Chief Justice  
Vincent Lunabek  
Supreme Court  
Port Vila  
VANUATU*

*Dear Sir;*

**RE. REINSTATE OF WALTERSAI AHELMHALAHLAH TO MAGISTRATE AND BACK DATED HIS SALARY PAYMENT FROM OCTOBER 2013 TO DATE OF THE YEAR EFFECTIVE HIS EMPLOYMENT SERVICE OR APPOINT HIM AS A CHIEF MAGISTRATE, CHIEF REGISTRAR, HRM, OR A JUDGE OF THE SUPREME COURT**

*No but, **Waltersai Ahelmalahlah seek reinstatement to Magistrate with full salary back dated payment from October 2013 to date** of the year effective his employment service OR appointed him to the position of a chief magistrate with half salary back dated payment from October 2013 to the year effective service of employment, or Human Resource Management (HRM) with a half salary back dated payment from October 2013 to the year effective service of employment or a Judge of the Supreme Court with no salary back dated payment.*

*No but there is no HRM for the Court's and it's going to be a tough year. The removal of the HRM officer previously has no much difference with the writer been removed. Just the in house crossed of twice the blockages from which difficulties finding jobs within the government offices despite being in bad reputation. Would be the concern of the courts but respect is the culture of Vanuatu where people will adhere to despite what the world hatred hearts might say so. People living in this world for a short period of time and they are here to help each other.*

*No not because, **the Writer has advantaged from his Civil Case No. 16/1937 on Defamation Claim and suffers Claim on Constructive Dismissal due to bad (Bias) Judgement made where it does existed.** Even though the Writer has been paying a lot of money to the Supreme Court for the particular hurt to this case. Perfectly and they are well of, the Supreme Court won otherwise this case **the writer suffers the consequences the way long no job allowed.***

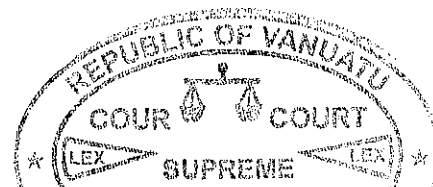
*For further information, contact the Writer on 5321208 or email; [walter.ahelm@gmail.com](mailto:walter.ahelm@gmail.com).*

*The Writer awaiting your response in due course.*

*Yours Truly*

*Waltersai Ahelmalahlah (MBM, PDLP, LLB & BA"*

**Exhibit 5 - a signed letter written in English by Mr Ahelmalahlah addressed to the Hon. Chief Justice dated 14 February 2020. This letter was given by Mr Ahelmalahlah to Mr**

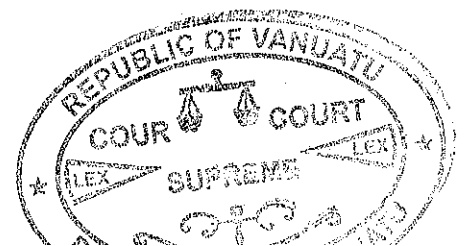




Robson Lapsai, an Island Court clerk, to pass on to Mr Lunabek, which is what he did. This evidence is unchallenged (the witness was called but not cross-examined). The letter reads identically to Exhibit 4, save for the change of date.

(v) Other Contact

32. As well as this correspondence, Mr Ahelmalahlah commenced ultimately unsuccessful litigation in the Supreme Court and the Court of Appeal seeking to achieve his re-instatement as a Magistrate and/or to be appointed in other judicial roles (as referred to in the previous 2 letters above).
33. On 22 November 2019, Mr Lunabek was working in his Supreme Court Chambers when he received a telephone call from his wife advising that Mr Ahelmalahlah was at their home with some kava. Unbeknownst to Mr Lunabek, Mr Ahelmalahlah had earlier been involved, behind the scenes, in getting his daughter Ms Laura Lunabek to meet her cousin Kalpie at the front gate of the Chief Justice's official residence. Laura described Kalpie as her "small daddy". Initially, there was a text message, ostensibly from Hellen, Kalpie's 1 year old daughter, (but actually from Kalpie) which was produced as Exhibit 6A and reads:
- "Ipaslihate vafai, Daddy wantem toktok wetem u..from Hellen  
Lalo Kal"*
34. This was followed by a phone call from Kalpie, leading Laura to the front gate, where Kalpie told Laura that Mr Ahelmalahlah was there (nearby) and wanting to see her father. Laura invited them into the house. That then led to the message being passed to Mr Lunabek by his wife.
35. When he received the message at his office, Mr Lunabek was pleased, as he anticipated an apology was finally forthcoming. He purchased kava himself, as a sign of respect to his Paramount Chief, and hastened home where he met with Mr Ahelmalahlah and nephew Kalpie Anpelmanau Hapsai George. However, there was to be no apology offered. Mr Ahelmalahlah was instead seeking the support of Mr Lunabek for his political aspirations to become a Member of Parliament. Mr Lunabek was not interested in supporting that endeavour.
36. In late 2019, Mr Lunabek lost both his father and mother in short order. He wanted to return to his home village during the Court end-of-year recess to pay his respects, and planned to go to Malekula on 3 January 2020. He then learnt, on 2 January 2020, that Mr Ahelmalahlah had been in contact with his daughter Laura Lunabek by telephone earlier that day, asking if her father was going to be in Malekula, and if so, when.
37. This caused Mr Lunabek great concern/alarm, and he took elaborate steps to enable the planned trip (now shortened) to go ahead. He used private transport to take him and his son to an area of bush near to some land he owns in north Malekula, and they slept the night there on leaves. The next day, they again took private transport to visit his parent's graves, before returning to



the bush for a second night. He and his son returned to Port Vila the next day. Mr Lunabek was on guard during the entire trip as a result of this contact.

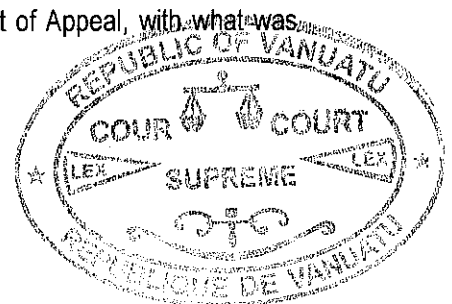
38. Laura Lunabek confirmed the 2 January 2020 phone call from Mr Ahelmhalahlah in her evidence. When she again told him he could not come and see her father, he had asked her if her father was going to the islands. She replied that she did not know.
39. Laura Lunabek was subsequently again approached by Mr Ahelmhalahlah, at some later time. He called her and said he wanted to meet her father again. However, Laura had, in the meantime, been instructed by Mr Lunabek to not again deal with Mr Ahelmhalahlah, and so she rebuffed his approach, saying that her father was still busy at work. Mr Ahelmhalahlah called again later the same night, but Laura told him outright that he could not come and visit her father.
40. On 24 January 2020, Laura received a text from Mr Ahelmhalahlah. She took a screenshot of the text and it became Exhibit 6B. It reads as follows:

*"Ipas Laura, talem lon uncle se no oli wokbaot crosem mi 2 taems lon haos blo blockem mi be work? Ta lalo jif Waltersai @ beverlyhills. No reply numba ia b digicel numba."*

41. Laura Lunabek was required for cross-examination, but the questions posed did not seek to undermine her veracity or her accuracy. There was no effective challenge to her account. Two questions related to the consumption of kava when Mr Ahelmhalahlah met with Mr Lunabek in November 2019, and the third to whether or not Lalo (mentioned in Exhibit 6A) was a cousin of hers. The questions and answers did not assist in determining any issues.
42. In relation to this text, Mr Lunabek stated that it concerned him, in that there was yet further contact from Mr Ahelmhalahlah, and it was with his daughter – with whom he should have held no grudge whatever.

(vi) Final Letter

43. On 4 May 2020, at around 10.45am, an unidentified male person "in his 30's" had hand-delivered a letter addressed to the Chief Justice to Ms Gloria Kalotiti, the receptionist at the Supreme Court Registry. It was in a sealed envelope, and the man explained that he had been asked to hand it in to the Registry.
44. Ms Kalotiti duly received the letter, and passed it on to Ms Evelyn Sawia, the Secretary to the Chief Justice. There was only one question put to Ms Kalotiti, but it and the answer were of no assistance to the Court.
45. Ms Sawia opened the letter to see what it related to, and then handed it on to the Chief Registrar of the Supreme Court. He drew the letter to the attention of Mr Lunabek immediately on his return to his Chambers at around 12 noon after sitting in the Court of Appeal, with what was described by Mr Lunabek as "obvious concern".



46. The unsigned letter in Bislama was produced at Court as Exhibit 1 and reads as follows (as translated):

"4<sup>th</sup> May 2020

To: Hon. Chief Justice  
Vincent Lunabek  
Court  
Port Vila  
REPUBLIC OF VANUATU

Dear Sir,

Re: **Watching and monitoring the nastiness and actions towards Waltersai Ahelmalahlah**

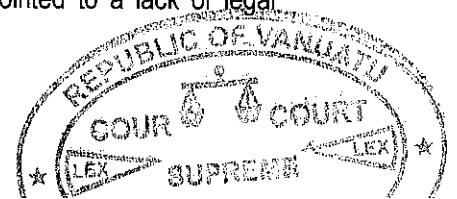
*We the grandparents of Waltersai Ahelmalahlah who is our Paramount Chief and that of Tauno, we wish to make it clear to you that **Waltersai Ahelmalahlah has not worked for the past 7 years. We believe this is linked to some disagreements you have with him leading to him receiving bad judgments in Court because of your unfair tactics and your dislike of him. We know that you have been against him for a long time and entertain nasty thoughts about him as if he were not your chief. In the old days, all the grandparents like us could simply shot a man with a rifle for such behaviour, but today, that is not possible. We are monitoring all his cases in Court closely because we too know the laws and now is not the time to hide behind or use another person (judge) to do wrong by him in his Court cases so he loses them and all his work. We are urging you to note that we have had enough of this kind of behaviour and you must cease immediately because we know about you. And who is that man Gill Daniel????***

Thanking you,

From the grandparents of Waltersai Ahelmalahlah

Republic of Vanuatu"

47. The letter sufficiently concerned Mr Lunabek that he reported the matter to the police. His concerns stemmed from the history of inter-action between Mr Ahelmalahlah and himself, as set out above. He further explained that he had previously personally witnessed Mr Ahelmalahlah, not only in possession of a 22. rifle, but he had seen him actually using it.
48. Mr Lunabek stated that he immediately recognised the style and structure of this letter as that of Mr Ahelmalahlah, as well as the phrases used. He considered the letter to be about threats to his life, his security as a person and as Chief Justice. He stated "most of the letter concerns shooting me with a gun". He was also concerned about the judges of the Supreme Court and Court of Appeal who had made determinations against Mr Ahelmalahlah. He considered the letter to relate to cases involving Mr Ahelmalahlah which had been determined, as well as cases still unresolved.
49. Mr Lunabek also stated that in his view Mr Ahelmalahlah was hiding behind others in this correspondence. While the letter was ostensibly from apus (grandparents) of Mr Ahelmalahlah, Mr Lunabek considered the real author was the Defendant. He pointed to a lack of legal

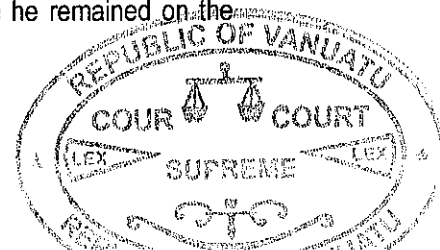


knowledge on the part of the apus, and pointed to the qualifications and experience of Mr Ahelmalahlah in contrast. Mr Lunabek considered this and all the previous letters to have been written by Mr Ahelmalahlah. In coming to that conclusion, the indirect manner Mr Ahelmalahlah had adopted in all his dealings with Mr Lunabek was of significance, as well as the style of writing adopted.

50. In the same vein, Mr Lunabek pointed to the use of others' telephones to text Laura as evidence of Mr Ahelmalahlah hiding behind others and remaining out of plain sight while engaging in his nefarious activity.
51. Mr Lunabek was cross-examined. As earlier recounted, it was put numerous times that Mr Lunabek was not related to the Defendant. That was consistently not accepted. Mr Ahelmalahlah suggested to Mr Lunabek that the kava session in November 2019 involved an approach by him for a loan with which to advance his political aspirations. That was denied. It was put that he had offered a loan, but again Mr Lunabek denied that. It was suggested that the text and phone contact with Laura concerned what was happening about the promised loan, but that was denied.
52. There was some questioning relating to how Mr Lunabek was able to identify the author of the 4 May 2020 letter (Exhibit 1). Mr Lunabek was consistent in responding that the subject matter, the style of writing or usage of similar phrasing, as well as the manner of delivery of the letter to him all impacted on that. It was suggested that the letter of 17 March 2018 (Exhibit 3) was merely advisory in nature, not intimidatory. That was rejected outright. It was further suggested that the letter of 4 May 2020 (Exhibit 1) was not threatening. That too was rejected outright.
53. Mr Lunabek was asked if he was aware of other Magistrates in similar positions to Mr Ahelmalahlah who were not asked to resign. He was, but distinguished the situations of the other Magistrates as wholly different to that of Mr Ahelmalahlah – they were not involved in any way with criminal conduct. Mr Lunabek took the opportunity while being asked about this to express that Mr Ahelmalahlah seemed to misunderstand the significance of what he had done in 2013 and the consequences that flowed from that, which inevitably meant he could not be re-instated.

(vii) Final Act

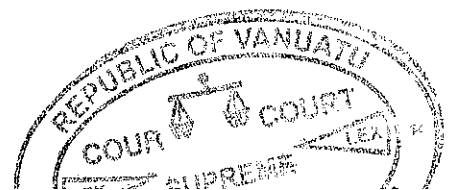
54. Mr Lunabek gave evidence of one final related and relevant act by Mr Ahelmalahlah. On 4 July 2021, Mr Ahelmalahlah approached Bruce Lunabek, another close relative of Mr Lunabek. He asked Bruce to set up a meeting between himself, Mr Lunabek and Laura Lunabek so that he could say sorry to them. Bruce attempted to do as asked, but was thwarted by Mr Lunabek rightly pointing out that the matter was *sub judice* with the trial due to commence in the near future. Mr Lunabek was not only concerned about the approach to Bruce Lunabek, and then to him, as being a breach of Mr Ahelmalahlah's bail conditions. He considered this final act yet more evidence of Mr Ahelmalahlah using others to front for him, while he remained on the sidelines.



55. Bruce Lunabek was cross-examined. It was put to him that it was his initiative to set up an apology meeting, but that was flatly denied. He denied wanting to get Mr Ahelmalahlah and Mr Lunabek together, to be reconciled. He denied that Mr Ahelmalahlah had told him to not make an approach, or that Mr Ahelmalahlah had suggested that it was not the right time. He insisted he was telling the Court the truth.
56. It was suggested that this particular part of the evidence was hearsay. However, I accepted the evidence from Mr Lunabek as Bruce Lunabek was to be called as a witness, and he duly gave evidence confirming what had occurred. Accordingly, the evidence was not hearsay.

**D. No Case to Answer**

57. Mr Ahelmalahlah had produced a multi-page submission prior to the trial commencing, challenging the prosecution case and seeking that the charges be dismissed. I discussed this document with him prior to the evidence being led. He was content for this to form the basis of a no case to answer to answer submission at the conclusion of the prosecution evidence. The written submissions were difficult to comprehend and traversed many subjects and referred to several overseas jurisdictions. I found them to be generally of no assistance in making my decision.
58. Mr Ahelmalahlah spoke to those written submissions at the appropriate time, and he raised the following essential points which are distilled from a much wider traverse of the evidence, the law and other not relevant matters:
- Exhibit 1 was unsigned. It was not shown to be from Mr Ahelmalahlah. It was not similar to the other previous letters produced. There was no evidence that Mr Ahelmalahlah had given the letter to the person who delivered it to the Supreme Court Registry. The letter does not evidence a threat;
  - Charges 2, 3 and 4 were not made out to the requisite standard as Mr Lunabek is not, and was not, shown to be a member of Mr Ahelmalahlah's family as required by the definition set out in section 3(a) of the Act. The Act was intended to only relate to household members.
59. The test for a case to answer is set out in section 164(1) of the Criminal Procedure Code, and has been explained by the Court of Appeal in the authority of *PP v Suaki* [2018] VUCA 23. The relevant test, in brief form, is as follows: Is there sufficient evidence produced, which if accepted, could enable a reasonable tribunal to convict? The test is apposite to all four charges, and cannot be amalgamated to cover the entire prosecution case.
60. I accept that Exhibit 1 is unsigned, and that there is no direct link to Mr Ahelmalahlah, save for the repeated mention of his name. The letter does however, follow on from earlier letters written



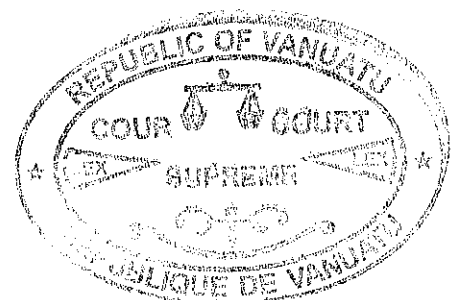
by Mr Ahelmalahlah, and address his unresolved issues with Mr Lunabek. The way the letters are set out is consistent. There is an available inference that Mr Ahelmalahlah, rather than any apus of his, wrote the letter – as suggested by Mr Lunabek in his evidence.

61. I reject entirely the submission that the letter does not evidence a threat. Not only do I consider it to contain an obvious threat, but so did Mr Lunabek and quite probably the Chief Registrar of the Supreme Court. To suggest otherwise, as Mr Ahelmalahlah did, flies in the face of the words used and their common meanings.
62. The fact that the letter was not delivered personally by Mr Ahelmalahlah merely fits into what Mr Lunabek described as his usual behaviour of getting others to do his bidding as intermediaries. If anything, I consider this point to add to the prosecution allegations.
63. I considered there was a case to answer in relation to Charge 1.
64. I reject entirely Mr Ahelmalahlah's interpretation of the Act. There is no indication that only members of a household were intended by Parliament to have the protections set out in the Act. Indeed, that suggestion misconstrues the actual wording of the subsection which is relevant to this case.
65. In my view, anyone who is treated by Mr Ahelmalahlah as a family member is included in the definition. I accept there may not be a blood relationship between Mr Ahelmalahlah and Mr Lunabek, but there is clearly a familial relationship, as well as a cultural connection as in Mr Ahelmalahlah being the Paramount Chief and Mr Lunabek being a member of the village/tribe. There was some evidence that Mr Ahelmalahlah treated Mr Lunabek as a member of his family.
66. Accordingly, I considered there was a case to answer in respect of Charges 2, 3 and 4.

#### **E. Defence Evidence**

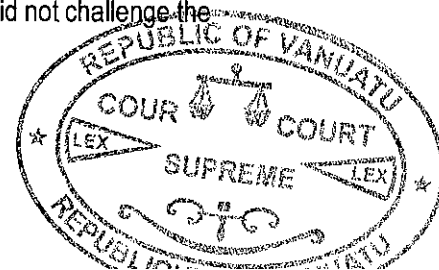
67. Mr Ahelmalahlah wanted to read a prepared statement, not previously disclosed to the Court or the prosecutor. I disallowed that. He then gave viva voce evidence in the usual way.
68. Mr Ahelmalahlah stated that he was not related to Mr Lunabek by blood. Mr Ahelmalahlah described the position as follows: "Because of the cousin brother relationship, he is my father's younger brother. I call him uncle, but he is not my real uncle."
69. Mr Ahelmalahlah admitted writing the letters of:

- 28 July 2017, Exhibit 2;
- 17 March 2018, Exhibit 3;
- 24 January 2020, Exhibit 4;



- 14 February 2020, Exhibit 5. He explained he sent it as there had been no response to the previous letter (Exhibit 4).
70. He admitted to writing the text of 24 January 2020, Exhibit 6A. He stated that it was done on another person's telephone as he had run out of credit on his own telephone, and so he had borrowed the phone. He was not able to recall whose phone he used. He explained that the fact he had borrowed another's phone is why he text that no reply should be sent.
  71. Mr Ahelmalahlah further stated that he had not written the text on 22 November 2019, Exhibit 6B. He explained this was done by Kalpie, his cousin, who was arranging for "us to meet his uncle" – his uncle being Mr Lunabek. He explained further that the purpose of the text was for Mr Ahelmalahlah to have kava with Mr Lunabek.
  72. Mr Ahelmalahlah stated that he had no knowledge about the letter of 4 May 2020, Exhibit 1. On that day, he further explained, he was not in Port Vila; instead, he was in Luganville as evidenced by Exhibit 11, a copy of his flight bookings to and from Luganville on 1 May 2020 to 15 May 2020.
  73. He agreed that he had drunk kava with Mr Lunabek on 22 November 2019. He stated that they had not seen each other for 6 – 7 years. Then Mr Lunabek's mother had died in August 2019 and, as Chief, he had gifted a bag of rice. He confirmed that he arranged for Kalpie to contact Laura Lunabek, and that this had led to him having kava with Mr Lunabek and Jimmy, the driver. They conversed in their own dialect so Jimmy was unable to understand them. He re-iterated that Mr Lunabek had agreed to lend him some money to help him get elected for Malekula. He confirmed that afterwards Jimmy took him home and dropped Kalpie off at his home – as Mr Lunabek had described.
  74. Mr Ahelmalahlah explained that there was no follow up on the offer of a loan. Hence he called Laura on 2 January 2020. He had no bad intentions in mind; he was simply following up on the promised loan. He translated the text of 24 January 2020, Exhibit 6A to read as follows:
 

"Hello Laura. Tell the uncle [Mr Lunabek] crossed me, walked across me twice and blocked me at work. Thank you. Chief Waltersai, Beverly Hills."
  75. Mr Ahelmalahlah gave evidence that he did not threaten, stalk or intimidate Mr Lunabek.
  76. He then related that in 2012 he owned a gun to shoot wild pigs. He further continued that he no longer has a gun. It was taken by the police on 6 June 2020 when executing a Search Warrant issued in relation to this case. He stated that he had the necessary licence.
  77. Mr Ahelmalahlah stated that the letters he had written were to give advice and/or guidance to Mr Lunabek, for reconciliation and peace in the community. I noted that he did not challenge the

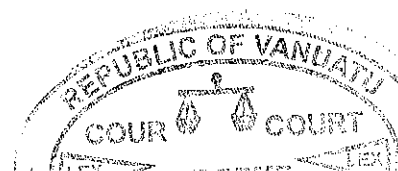


prosecution evidence as to how the various correspondence came to be delivered to Mr Lunabek, nor give any contrary account.

78. In cross-examination, Mr Ahelmalahlah confirmed that even though the letter of 28 July 2017 was headed "Warning", it was nevertheless only advice to Mr Lunabek. Similarly, the letter of 17 March 2018, although headed "Eviction", was also only advisory.
79. He agreed that he went to Mr Lunabek's home on 22 November 2019 as Mr Lunabek was an uncle to his cousin Kalpie; and because Mr Lunabek was a responsible person in the community. He continued that Mr Lunabek was from his village and they were agreed on the need for children from the village to be educated. He agreed that there was nothing in the text of 24 January 2020, Exhibit 6A, to indicate that it related to a loan. He explained that was as Laura knew nothing about a loan.
80. It was put that Mr Lunabek had not agreed to give a loan, which was denied. Mr Ahelmalahlah went on to say that Mr Lunabek had promised to send Jimmy the driver with the money – a fact not put to Mr Lunabek. He was asked about the reference in the text to blocking at work, and he explained that Mr Lunabek would know that this referred to money. He did not explain how that connection would be obvious. He denied the mention of work related to his previous employment as a Magistrate.
81. Mr Ahelmalahlah denied holding Mr Lunabek responsible for losing his position as a Magistrate with the associated housing benefits. He stated that he sought re-instatement as other Magistrates had not "...been forced out". When asked why he also sought enhancement, he replied: "It's an option". He denied warning the Chief Justice of the Republic of Vanuatu, but admitted having brought an action alleging that the Chief Justice had threatened him and made him resign. He agreed also that he blamed Mr Lunabek for losing his previous employment as a Magistrate.
82. He stated that he had sought re-instatement as he had not ever received a letter confirming that this was not possible. He confirmed that Mr Lunabek had threatened him and forced him to resign; and that he, as the Chief, wanted Mr Lunabek to leave Brenwei Village as a result. He denied his frustrations had accumulated and resulted in the letter of 4 May 2020, Exhibit 1.
83. In re-examination, he stated that he wanted a formal letter advising him that he would not be re-instated.

#### **F. Evaluation**

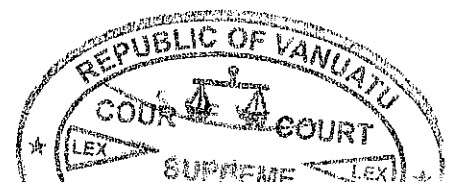
84. There were two crucial witnesses in this trial. Mr Lunabek gave his evidence without hesitation and in a forthright, confident manner. His evidence was consistent throughout the time (most of the morning) he was in the witness box. It was notable that he was not challenged as to any inconsistency between what he said in Court and what he previously reported to the police when lodging his complaint. I took that to indicate veracity and accuracy. The cross-examination did not undermine his credibility. His evidence was also consistent with the documentary exhibits





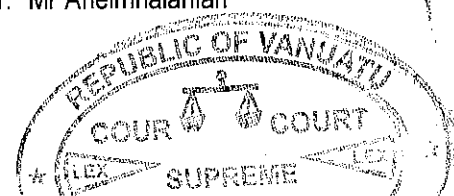
which were produced and dove-tailed with the evidence of other witnesses. I accepted his evidence.

85. Before dealing with Mr Ahelmalahlah's evidence, the evidence of Bruce Lunabek merits mention, although his evidence relates to only a small aspect. He dealt with what I have termed the final act. This evidence is important as evidencing an intention by Mr Ahelmalahlah to apologise to Mr Lunabek, which might be considered an admission against interest. However, the evidence has further value. It demonstrated the point, made several times by Mr Lunabek, of Mr Ahelmalahlah only approaching him through intermediaries. I am convinced that Mr Ahelmalahlah recognised the significance of this evidence as demonstrated by the fact that he cross-examined Bruce Lunabek in an attempt to distance himself from the consequences of his alleged approach.
86. The suggestion that Bruce Lunabek was attempting to reconcile the differences between Mr Ahelmalahlah and Mr Lunabek lacked veracity, and was completely and credibly denied by Bruce Lunabek. I accepted Bruce Lunabek was an honest and accurate witness. It appeared to me that he came to Court with a view of assisting the fact-finder, rather than with any pre-conceived motives of telling untruths for some personal satisfaction or gain. Certainly no motive for his account was put to him by Mr Ahelmalahlah. I accepted Bruce Lunabek's evidence in its entirety.
87. Mr Ahelmalahlah was what might be called a sly or calculating witness. He hesitated while he considered some questions. He answered some questions immediately, others he simply avoided. Many answers flew in the face of logic – for example, although his letter of 28 July 20-17, Exhibit 2, was headed "Warning" he insisted it was not that, it was only advisory. However, later in his evidence, he accepted he had been warning the Chief Justice. I concluded that he was an inconsistent witness. Accordingly, I determined it was not safe to rely on what he told me where it did not fit in what other witnesses had said and the plain language of the exhibits. In short, I did not believe Mr Ahelmalahlah to be a truthful witness. I concluded that he was attempting to extricate himself from a predicament he had himself created.
88. In respect of Charge 1, the threat to kill charge, the prosecution is required to prove beyond reasonable doubt that:
- Mr Ahelmalahlah had indirectly caused a written threat to kill Mr Lunabek to be passed onto Mr Lunabek; and
  - Mr Ahelmalahlah knew that the letter of 4 May 2020 contained such a threat; and
  - Mr Ahelmalahlah intended that Mr Lunabek take the threat as real.
89. I find it proved, by drawing the available inference, that Mr Ahelmalahlah wrote the letter of 4 May 2020 – I reject his denials. The letter was delivered to Mr Lunabek, in an indirect fashion; and it contained a threat that he would be shot. I am satisfied that in writing the letter in this



manner, Mr Ahelmalahlah intended for Mr Lunabek to take the threat seriously. As the author of the letter, clearly Mr Ahelmalahlah knew it contained a threat to Mr Lunabek's life. His grievances with Mr Lunabek, it appears, are not yet at an end. The fact that Mr Ahelmalahlah was likely in Luganville when the letter was delivered does not mean that he did not write nor cause the letter to be delivered to Mr Lunabek – that evidence is accepted, but it is inconclusive. The use of intermediaries on other occasions has been demonstrated, and was not challenged. I infer again from the surrounding evidence, that Mr Ahelmalahlah caused the letter to be delivered to Mr Lunabek.

90. In respect of Charges 2, 3 and 4, the prosecution is required to prove beyond reasonable doubt that Mr Ahelmalahlah treated Mr Lunabek as a family member. Despite denying a blood relationship, there is ample evidence that Mr Lunabek grew up in the same village and as part of the wider Ahelmalahlah/Lunabek family. Mr Ahelmalahlah is the Paramount Chief of Brenwei Village, Mr Lunabek's home village; and Mr Lunabek respected him as the Paramount Chief – he permitted his son to take part in Mr Ahelmalahlah's ordination as Chief. Mr Lunabek considered Mr Ahelmalahlah to be both his uncle and his nephew; and significantly, Mr Ahelmalahlah called Mr Lunabek his uncle. Their relationship is clearly closer than Mr Ahelmalahlah was prepared to concede. I am satisfied that it has been proved that Mr Ahelmalahlah treated Mr Lunabek as a member of the wider family. I make that finding in respect of Charges 2, 3 and 4.
91. In respect of Charge 2, the prosecution must additionally prove beyond reasonable doubt that Mr Ahelmalahlah intentionally intimidated Mr Lunabek by stalking him which then caused Mr Lunabek to be apprehensive or fearful. Mr Lunabek gave evidence that as a result of the telephone call, he took additional measures out of the need to be careful, evidence I accepted. Although there was but one telephone call, section 4 of the Act defines stalking and specifically states that a single act may amount to an act of domestic violence. As well, it is permissible to have regard to the previous interactions in determining if this was stalking – see section 4 (4)(b) of the Act. I reject Mr Ahelmalahlah's evidence that he was chasing up any promised loan. I find it proved that he was stalking Mr Lunabek, and that it caused Mr Lunabek real fear and apprehension.
92. In respect of Charge 3, the prosecution must additionally prove beyond reasonable doubt that Mr Ahelmalahlah intentionally intimidated Mr Lunabek by sending the text of 24 January 2020, which became Exhibit 6A, which then caused Mr Lunabek fear or apprehension. Mr Ahelmalahlah admitted sending the text, using another's telephone. There is no link between the words used in the text and any promised loan. Instead it harks back to Mr Ahelmalahlah's blaming of Mr Lunabek for the loss of his previous employment. The fact that it was sent to Laura Lunabek adds to the intimidation involved. I find that the text did cause Mr Lunabek concern, as it was further unwanted contact from Mr Ahelmalahlah, and aimed at him through his daughter, with whom Mr Ahelmalahlah should not have held any grudge.
93. In respect of Charge 4, the prosecution must additionally prove beyond reasonable doubt that Mr Ahelmalahlah intentionally intimidated Mr Lunabek by causing to be delivered the letter dated 17 March 2018, which became Exhibit 3 with a view to causing fear. Mr Ahelmalahlah



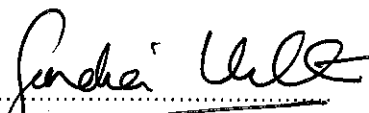
admitted writing the letter and did not contest that it was delivered, as requested by him via Bradley Lunabek, to Mr Lunabek. There can be no doubt that it was intended to cause Mr Lunabek alarm, dealing as it did with possible eviction of his entire family from his native village. The letter is clearly intimidatory.

**G. Result**

94. I find the charges Mr Ahelmhalahlah faces proved beyond reasonable doubt. Accordingly, I enter guilty verdicts on all 4 charges.
95. Sentencing will take place at Dumbea at 8.30am on 25 January 2022.
96. In order for that to occur a PSR is required by 4pm on 22 December 2021. The prosecution sentencing submissions are to be filed and served by 4pm on 12 January 2022. The defendant's sentencing submissions are to be filed and served by 4pm on 19 January 2022. Given the history of the defendant's voluminous and largely incomprehensible written contributions to this case to date, his submissions are to be confined to no more than 10 typed pages of font size 12.
97. I accept that these events occurred in early 2020 and prior. However, the concerns expressed are real, and appear to be continuing. Given my verdicts, there may well be a renewed appetite to re-agitate grievances on the part of Mr Ahelmhalahlah. As well, the evidence of Brian Lunabek is clear evidence of a breach of Mr Ahelmhalahlah's bail conditions. Further, given the nature of the charges, a custodial sentence appears highly likely. In the circumstances, his bail is now revoked and he is remanded in custody pending sentence.

**Dated at Port Vila this 13th day of December 2021**

**BY THE COURT**

  
Justice G.A. Andree Wiltens

