

**BETWEEN: Public Prosecutor**

**AND: Franso Iaunam  
Peter Nalau  
Willie Katar  
Iakenu Nocklam**  
*Defendants*

**Coram:** *Justice Aru*  
**Counsel:** *Mr. K. Massing for the Public Prosecutor*  
*Mr. R. Melsul for the Defendants*

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**SENTENCE**

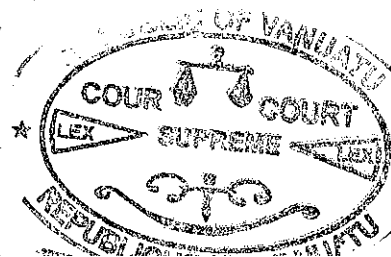
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**Introduction**

1. Franso Iaunam pleaded guilty to one count of malicious damage to property (count 1) and two counts of intentional assault (counts 2 and 3). Iakenu Nocklam pleaded guilty to one count of inciting and soliciting intentional assault (count 4). Peter Nalau and Willie Katar each pleaded guilty to one count of malicious damage to property. They are now appearing for sentencing.

**Facts**

2. On the morning of 28 May 2023 Franso Iaunam, Peter Nalau and Willie Katar went to the victim's gardens and damaged crops and vegetables grown by the victim. The fighting started when the victim went to enquire as to who might be involved in damaging their crops.
3. When the victim arrived at Lounik nakamal, the defendants had gathered together with others to drink kava as it was late in the afternoon. When asked about the damages, the defendants replied it was done upon the instruction of their chief Iakenu Nocklam. The defendants admitted that it was all of them who went and damaged the garden. The chief was not at the nakamal so one was sent to look for him. Before the chief arrived the defendants, particularly, Franso Iaunam was arguing with the victims about the land which the victims were using for gardening.
4. The arguments led to fighting when Welby Kamisak assaulted a member of the Lounik community with a piece of wood. Chief Iakenu Nocklam called out instructing the defendants in Bislama saying "yufala I kilim olgeta". That was when the defendants came running with knives, wood and stones throwing them towards the victims. In particular Tom Kamisal (Welby Kamisak's son) Welby Kamisak (father) Lito Kamisak (Welby Kamisak's son) and Joseph Jack (Welby Kamisak's nephew).



5. The defendant Franso Iaunam ran and took a knife and called out saying he was going to kill Welby Kamisak or his son Tom Kamisak. He tried cutting Welby Kamsiak with the knife but Welby Kamisak responded by trying to cut him as well. Franso Iaunam was able to cut Welby Kamisak. He also cut Tom Kamisak on the head. The victims were taken to Lenakel Hospital for treatment.
6. Their medical reports state that Welby Kamisak suffered a cut to the head (superficial laceration along frontal lobe of his skull). Tom Kamisak suffered cuts to his face (deep facial lacerations) and cuts to the area around his right ear (occipital region).
7. The defendants told the Police they will only talk in Court.

### **Sentence start point**

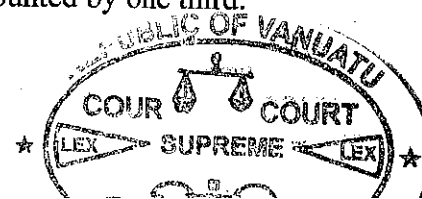
8. Malicious damage to property is punishable by a maximum sentence of a fine of VT5000 or imprisonment for 1 year or both. The maximum sentence for intentional assault where damage is of temporary nature is 5 years imprisonment. Inciting and soliciting intentional assault where damage caused is of a temporary nature is also punishable by a maximum sentence of 5 years imprisonment.
9. Aggravating factors of the offending are as follows:
  - There is an element of planning involved.
  - The offending was a joint enterprise
  - There were two victims and both suffered serious injuries
  - Weapons were used.

Franso Iaunam

10. The sentence start point for Franso Iaunam on a global basis is 3 years imprisonment. His Same Day Report states that he is a first-time offender and is the breadwinner of his family. He is also an active member of his community. Taking these factors into account, his sentence start point is reduced by 12 months. The defendant pleaded guilty as a sign of remorse therefore the sentence start point is further reduced by one third. He is sentenced to an end sentence of 15 months imprisonment. For malicious damage to property, he is sentenced to 3 months imprisonment to be served concurrently.
11. The prosecution submits that the sentence should not be suspended. When considering whether or not to suspend the sentence pursuant to s.57 of the Penal Code [CAP 135], I note that the circumstances of his offending are far more serious as he cut two victims with a knife leaving them both with very severe head injuries. A custodial sentence is warranted to serve as a deterrent to the defendant and the public at large.

Peter Nalau and Willie Katar

12. The sentence start point for each of them is 8 months imprisonment. Both Peter Nalau and Willie Katar are first time offenders. They told their probation officer that they have never been to school. That they live according to custom and make their living as subsistence farmers. For their personal factors their sentence start points are reduced by 2 months. For their guilty pleas their sentence start points are discounted by one third.



- Each of them is sentenced to an end sentence of 4 months imprisonment which is suspended for a period of 2 years. In addition, they will each perform 200 hours community work.

Iakenu Nocklam

- The sentence start point for Iakenu Nocklam is 3 years imprisonment. His Same Day report states that he is a first-time offender and has never been to school and earns his living by subsistence farming and raising pigs. He is an active member of his community. Taking these factors into account the sentence start point is reduced by 12 months.
- The defendant pleaded guilty as a sign of remorse therefore the sentence start point is discounted by one third. He is sentenced to an end sentence of 15 months imprisonment. The prosecution submits that the sentence should not be suspended. When I consider s57 of the Penal Code whether or not to suspend the sentence, the circumstances of the offending are that Iakenu Nocklam as chief instructed the defendants to damage the victims' crops and to assault the victims.
- As a result of his instructions, two victims suffered serious head injuries. The defendant is a chief and his people listen to him. He did not exercise his chiefly authority to prevent harm. A custodial sentence is warranted to serve as a deterrent to his future offending and to the public at large.
- As Franso Iaunam and Iakenu Nocklam have been on bail prior to this decision, they are to present themselves to the Centre Manager of the Correctional Centre in Vila by no later than 28 July 2023 unless they elect to begin serving their sentence immediately. Should they fail to comply, the Centre Manager may apply for a warrant for the Police to arrest and to convey the two defendants to the Correctional Centre to begin serving their sentence.
- The defendants have 14 days to appeal if they are not satisfied with the decision.

**DATED at Isangel, Tanna this 14<sup>th</sup> day of July, 2023**

**BY THE COURT**

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D. Aru  
Judge

