

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

Criminal
Case No. 23/866 SC/CRML

PUBLIC PROSECUTOR

v

WILLIE TULA

Date: 13 September 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms G. Kanegai
Defendant – Ms B. Taleo

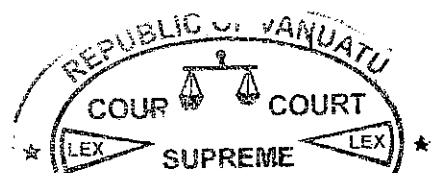
SENTENCE

A. Introduction

1. The Defendant Willie Tula pleaded guilty to threat to kill (Charge 1) and domestic violence (Charges 2 and 3) and was convicted on his own pleas and the admitted facts.

B. Facts

2. Mr Tula is the complainant Joslyn Merr's *de facto* partner. They have a 5-year old son together.
3. On 10 April 2023 night, Mr Tula and two other men consumed alcohol at his and the complainant's house. He entered the house drunk later in the night and woke their son. The boy saw that his father was drunk, cried and ran and hid himself in the dark. The complainant tried to assist Mr Tula to bed but he slapped her face with his hand and kicked her on the leg (Charge 3).
4. She tried to tell Mr Tula to sit still so she could wash his face with water to clear his head. In response, he swore at her and threw a laundry basket at her. In fear, she took their son and ran out to hide in the bushes. Mr Tula then took a machete and went around the yard looking for them saying, "Yutufala stap hide long mi beh yutufala



wantem mi cut cuttem ol samting insaed long haos?" ('The two of you are hiding from me but do you want me to cut up the things inside the house?') (Charge 2)

5. Mr Tula then went into the house and damaged the fridge with the machete, the plates and cups and said that if the complainant did not show herself that he would set the house on fire. He set the house on fire but the neighbours put out the fire before it could spread. Mr Tula told the complainant and their son that if they reported him to the Police, that he would kill them both dead upon his release (Charge 1).

6. Mr Tula admitted this conduct to the Police.

C. Sentence Start Point and Mitigation

7. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.

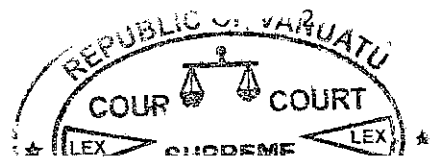
8. The maximum penalty for the offence of threats to kill a person is 15 years imprisonment and for the offence of domestic violence is 5 years imprisonment or a fine not exceeding VT100,000 or both.

9. It is an aggravating factor of the offending that the threat to kill was aimed at both the complainant and their child, the use of a lethal weapon namely a machete, that the offending occurred in the presence of the child, that it took place in the complainant's home where she is entitled to be safe, that there was a slap to the face as the head is the most vulnerable part of the body, and that there is a gross breach of trust involved in the offending.

10. There are no mitigating aspects of the offending. It is no excuse that Mr Tula was under the influence of alcohol when he committed the offending nor that he was angry when the complainant and his son fled the house because he was drunk and they were afraid of him.

11. The Prosecution submitted that sentence starting points of 5 years imprisonment for threats to kill and 2 years imprisonment for domestic violence were appropriate, citing *Public Prosecutor v Iakis* [1994] VUSC 14 and *Elson v Ayton* [2010] ACTSC 70 (15 July 2010) at 68-70. In the latter, the Supreme Court of the Australian Capital Territory noted that domestic violence committed in the presence of children not only increases the victim's humiliation and sense of powerlessness but is also likely to cause real psychological damage to the children and risk creating offenders of the children themselves, which is unacceptable and to be condemned as such. Ms Taleo submitted that the offending in the present matter was less serious than in *Public Prosecutor v Willie* [2022] VUSC 142 therefore a suspended sentence and community work should also be imposed on Mr Tula.

12. The facts differ from *Willie* however Mr Tula was armed with a lethal weapon, a machete, when he uttered to the complainant and their 5-year old son "if you report me to the Police, I will kill you both dead upon my release". He did so after the boy had

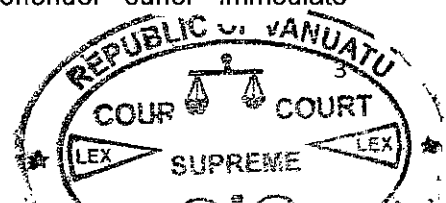


understandably fled the house in fear of his father and after he slapped the complainant in the face and kicked her leg resulting in her also fleeing in fear. There is no basis to Ms Taleo's submission that Mr Tula's words were empty threats. Mr Tula's reaction to then search for them while armed with a machete, to threaten to destroy property in their house, then to do so with the knife, then set the house on fire and at the end of all of that to say to them that if they reported him to the Police, that he would kill them both on his release constitutes serious offending which must be marked by an appropriately severe sentence: *Elson v Aytton* [2010] ACTSC 70.

13. The global sentence start point that I adopt, taking all matters into account, is 5 years imprisonment.
14. Mr Tula pleaded guilty at the first available opportunity. I am not convinced that this shows remorse, but it has spared the need for his de facto to give evidence. That warrants a reduction from the sentence start point of one-third.
15. Mr Tula is 32 years old, and has no prior convictions.
16. Mr Tula has carpentry skills. He is an RSE worker and would like to continue working in that seasonal work scheme to support his family. He attempted a custom reconciliation ceremony involving a mat, 1 kg chicken and VT5,000 but was not accepted by the complainant and her family. The complainant stated to the pre-sentence report writer that they were not sent word of any ceremony but were shocked to see Mr Tula and his mother at their gate with the items. He is stated to be remorseful and supported by his chief.
17. A further 10% is deducted from the sentence start point for Mr Tula's personal factors.
18. Mr Tula was in custody from 11 April 2023 to 25 April 2023, effectively a month and a half imprisonment. A further one and a half months is deducted from the sentence start point.

D. End Sentence

19. The sentencing principles applicable in this case are holding Mr Tula accountable for his conduct, to denounce the criminal conduct and emphasize public disapproval of such offending, to protect the community, and to deter him and others from acting in this manner in future.
20. Taking all of those matters into account, the end sentences imposed are as follows:
 - a. Threat to kill (Charge 1) – 2 years 8 months 2 weeks imprisonment; and
 - b. Domestic violence (Charges 2 and 3) – 2 years imprisonment.
21. The Court has a discretion under s. 57 of the *Penal Code* to suspend all or part of the sentence where it is not appropriate to make an offender suffer immediate



imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender."

22. Mr Tula's previous clean record, attempt to perform custom reconciliation ceremony and work prospects favour suspension of sentence. However, the seriousness of the offending and Mr Tula's lack of insight into the offending or remorse due to his explanation of the offending being the result of anger at his de facto partner and child leaving the house out of fear of him count against suspension of the sentences. On balance, I decline to suspend the sentences of imprisonment.
23. These sentences of imprisonment may not be enforced until the time of appeal against sentence has expired or Mr Tula earlier elects to begin serving his sentences: s. 50 of the *Penal Code*. The Manager of the Correctional Centre in Port Vila is to inform the Court if Mr Tula has failed to present himself by 4pm on 27 September 2023 to begin serving his sentences.
24. Mr Tula has 14 days to appeal.

**DATED at Port Vila this 13th day of September 2023
BY THE COURT**


Justice Viran Molisa Trief

