

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

Criminal Case No.03 of 2015

PUBLIC PROSECUTOR

-V-

RAY OBED, TOM JOHN FRED, KAPE  
MASITOTO, KALMATUK FRANK,  
ENDRE VEA, MARCEL NELSON,  
ELIPSON THOMAS, RODNEY KALTAU,  
ROLLAND COLLIN, JOHNTAS THOMAS,  
KALOMAL FRED, TALI NOKI  
*(12 Defendants)*

*Corum:* V. Lunabek, CJ

*Counsel:* Mr Ken Massing for the Public Prosecutor  
Mr Lent Tevi for the Defendants

*Date of Hearing:* 14 April 2015

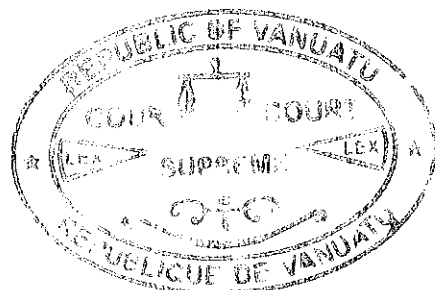
*Date of Sentence:* 16 April 2015

## SENTENCE

### INTRODUCTION

The twelve above named accuseds appear for sentence. They pleaded guilty to a charge that on 14 November 2014 at Akhamb Island on the Southern part of Malekula, Vanuatu, they unlawfully assembled together with the intention to commit criminal offences under s.69 of the Penal Code and that five of the accuseds, namely Ray Obed, Tom John Fred, Kape Masitoto, Kalmatuk Frank, Endre Vea pleaded guilty to the charge that on 14 November 2014 at Akhamb Island, Malekula, Vanuatu, they intentionally caused the death of two persons, namely, Songi Samuel and Simeon Bahavus (the deceaseds) under s.106 (1) (b) of the Penal Code.

There was one other accused (Henry Tom) who was committed for the same crime however, at the time of the pleas with these twelve accuseds, he entered a not guilty plea on a charge of inciting and soliciting intentional homicide under ss. 35 and 106 (1)



(b) of the Penal Code. His case was adjourned to next sittings of the court in Luganville, Santo for trial.

So out of seventeen (17) accuseds initially indicted, the prosecution applied for nolle prosequi in respect to four (4) accuseds under s.29 of Criminal Procedure Code. Thirteen accuseds remain charged of who twelve are now sentenced and one will be tried.

## **BRIEF FACTS**

The brief facts are provided by the prosecution. They are agreed and accepted by the accuseds and their counsel. The offence occurred on the 14<sup>th</sup> of November 2014 on Akhamb Island on the Southern part of Malekula. A complaint was made against the above accuseds for the offences of intentional homicide and unlawful assembly.

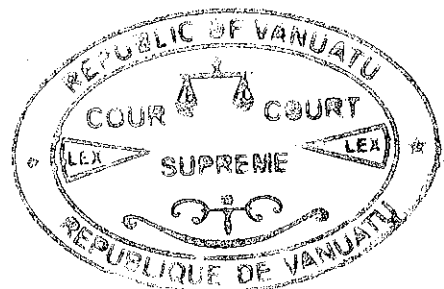
### ***The Origin of the offending***

The Chiefs and community of Akhamb area have decided that they should conduct a meeting to find out the people who are practicing witch craft on the particular area and who are suspected to have caused the death of three persons.

Three meetings were held on different occasions dealing with deaths of three different people at Akhamb area. The first meeting was held on the 23<sup>rd</sup> of June 2014 for one different death that occurred on Akhamb Area. Another meeting was held again on the 28<sup>th</sup> of October 2014 to 31<sup>st</sup> of October 2014 for another death that also occurred on Akhamb. The third and final meeting was held on the 13<sup>th</sup> of November 2014 to 14<sup>th</sup> November 2014 for another different death. It was this meeting that ended up with the death of two innocent victims who lose their lives.

The two deceaseds Songi Samuel and Simeon Bahavus were the main persons who were being treated badly by the accuseds in the two first meetings. They were also accused of practicing witch craft.

The three meetings were conducted by the chiefs of Akhamb area and the participants are the village people.



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## ***The Actual Event***

On the date of the third meeting which begins on the 13<sup>th</sup> of November 2014, again the two deceased were the main subject persons being accused. The meeting was conducted by the chiefs at the village community hall.

On the second day of the meeting on 14<sup>th</sup> of November 2014, the chiefs began the meeting as usual. The meeting was interrupted by the accused Henry Tom as he could not control his anger and he ordered other accuseds to kill the two deceased persons. The accuseds whom carry out the orders of the accused Henry Tom are Ray Obed, Tom John Fred, Kape Masitoto, Endre Vea and Kalmatuk Frank.

Upon acting on the accused Henry Tom's instruction, the above five accuseds went and tied up the two deceased persons on their neck with ropes and tied them to the rafter of the community hall. As most of the Prosecution witness statements confirmed that the hanging of the two deceaseds occurred at around 3-5pm in the afternoon.

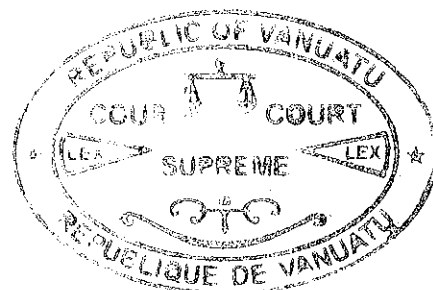
However, the other remaining accuseds were also part of the incident. They assembled with the other six accuseds prior to the killing of the two deceaseds. All the accuseds unlawfully assembled as the accused Henry Tom interrupted the meeting. It was when all the accuseds assembled that they decided to kill the two deceased persons.

Additionally, during the interruption of the meeting the chairman who conducted the meeting was afraid and fled the meeting site. The people was called back to attend the dining hall by one of the villagers who is a filed assistant at the Vanuatu Cultural Centre. But the meeting does not proceed on that basis as those who lead the meeting cannot control the anger and actions of the accuseds and the public.

The two deceaseds' bodies were then removed from the community hall and returned to their respective families for the funeral.

## **ANTECEDENT REPORT**

The pre-sentence reports filed in respect to each and all the accuseds indicate that each and all the twelve (12) accuseds are first time offenders. They have no prior conviction.



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## ALLOCUTUS

In allocutus the accuseds made brief statements as follows.

Ray Obed said, "This is my first time in court. I never appear in court before. I now know and realize that what I did was wrong. This is my first and last time I committed this wrongdoing."

Tom John Fred said, "This is my first time in court. I ask the court to forgive me for what I did."

Kape Masitoto said "I want to say sorry for the crime I have committed. I is a wrongdoing. I say sorry for what I did."

Kalmatuk Frank said, "This is the first time I commit this type of crime. I say sorry for what I did."

Endre Vea said, "I want to say sorry for my crime. It is not my intention to commit these offences. What happened was it was the intention of the community for us to commit these crimes."

Elipson Thomas said, "I have nothing to add."

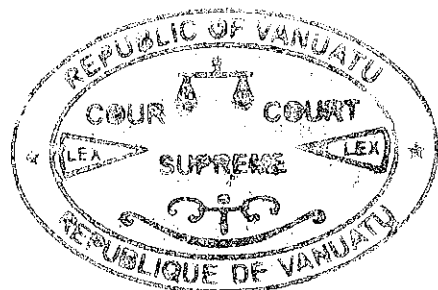
Rodney Kaltau said, "I am a primary school teacher while I am here in court in Luganville, I leave my students and I ask the court to release me so that I can go back to my students. I feel sorry for what I did."

Rolland Collin said, "I have nothing to say."

Johntas Thomas said, "I say sorry for what I did."

Kalomul Fred said, "I was involved in this case because the chiefs used me to talk to the defendants. At the time of the meeting when I find out that my name was also on the list of the persons to die, I slapped the old man Songi Samuel outside."

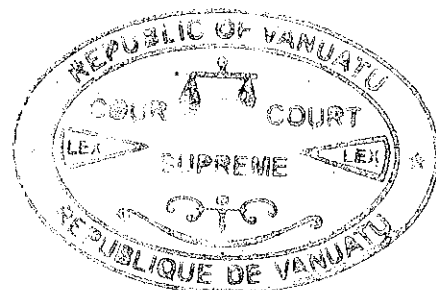
Tali Noki said, "I have nothing to say."



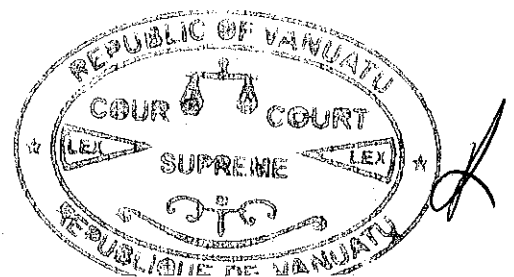
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## PERSONAL PARTICULARS OF EACH ACCUSED

1. Ray Obed is 23 years of age from Tisman Island, south east of Malekula. He is married. He resides with his wife who is from Akamb Island and their six children in Arun village in Malekula which is located opposite of Akhamb Island. He has lived there for the past eight years. He has good relationship with his immediate family members and the general community members. He is a class four leaver of Tisman Primary School. He holds a position of a deacon in the Neil Thomas Ministry (NTM) in the village where he resides. He sustains his living through the sale of copra and kava. He said he is an asthmatic person although no medical report was provided during the interview on his health status. He was also accused of practicing witchcraft at the time of offending.
2. Tom John Fred is 23 years old and resides at Lohorvor village in Malekula. He has previously lived on the Akhamb Island but because of the high population growth rate, his family decided to move to the main land. He comes from a family of four children and he is the last born in his family. He has two brothers and a sister. He has a good relationship with his family and his community members. He is a committee member of the Presbyterian church youth group. His ambition is to build his Christian life. He is a class 5 primary school leaver. He decided to stop attending school after he was wipped by his teacher. He sustains his living through the sale of kava and copra. He says he is in good health. He does not consume alcohol and drugs and does not smoke tobaccos. He was also accused of practicing witchcraft at the time of offending.
3. Kape Masitoto is 30 years old from Toman area located south of Malekula. He is married to a woman from Akhamb. He has two children. His relationship with his wife is fine. He has good relationship with members of his community and participates well in the community activities. He is a member of the Presbyterian Church. He attends church activities regularly. With reference to his education, he made it to class two in a French primary school on Toman Island. He has skills in gardening and building of locally made houses. He earns his income to sustain his livelihood through the sale of kava and alcohol. He smokes tobacco. He was also accused of practicing witchcraft at the time of offending.

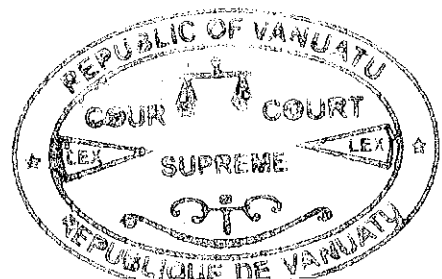


4. Endre Ve'a is 51 years of age from Akhamb Island. He marries a woman of Malvakal village on the main land of Malekula and now lives with his wife in her village. He has two children, a boy and a girl. He is a year six school leaver. He has skills in gardening, carpentry, diving and hunting. His aim is to strive for his son to further his education in order to gain a good job in the future. He is a local subsistence farmer whose main income is from copra produce to sustain him and his family financially. He is a member of Presbyterian Church who attends church services occasionally. He was also accused of practicing witchcraft at the time of offending.
5. Kalmatuk Frank is 42 years old and was divorced from his wife. He is the only child in his family and is now looking after his old parents along with raising his adopted son of seventeen (17) years who is now attending Epule Secondary School on North Efate (Vanuatu). He was a class six (6) school leaver from his local primary school in his village. He has undergone some training of agriculture at Malvakal training centre. He has some bartending skills, gardening along with copra making. He sustains his living with the sale of copra. He is an active member of the Presbyterian Church. He is physically fit but has some issues with his eyes. He was given a medical treatment when he is remanded in custody. He was also accused of practicing witchcraft at the time of offending.
6. Marcel Nelson is of 27 years old from Mararua village on Akhamb Island. He is the third child in his family of six (6) children. He is currently living in a defacto relationship with a woman and has a new born baby recently. He was a grade six (6) school leaver from his local primary school. He does gardening, copra and fishing to earn a living. He has some mechanical and farming skills. He has an ambition of becoming a church leader one day. He is undertaking work overseas as a regional seasonal worker, working in New Zealand to sustain his family. He was on leave in his village when he ended up offending. He is a noticeable member of the Presbyterian Church in his village. He was the church youth leader from 2010 to 2011. He is a fit and healthy person.
7. Elipson Thomas is a single 21 years old man from Akhamb Island. He is a year twelve (12) leaver school from Rensari College in 2011. He undertook the safety and security requirement course at Maritime College in Luganville in 2012. He



was engaged in a job with MV Christellie for one year, then quitted his job and relocated back in his home island. He is well his with family members. He acquired skills in gardening, constructions, fishing and soccer playing. His greatest desire now is to further his courses at Maritime College and become a captain. In the meantime, he sustains his livelihood through the sales of kava and copra. He is the most and well educated of his family. He is helpful and a quite person, cooperative towards the community and church activities. He suffers from chest pain. He consumes kava and smokes cigarettes.

8. Rodney Kaltau is a single man of 21 years of age from Lijongjong Village of Akhamb Island. He is the secondth of his other three siblings from his biological family. He is a quiet person and supportive to community works. He is a temporary primary teacher. He is the treasurer of his tribe (nasara) and has a good working relationship with his chief and the people of his community. He was a year 12 school leaver at the Matevulu College in 2012. He has undertaken other teacher's workshops while on the job. His ambition is to pursue his formal education of teaching at Vanuatu Institute of Eduation in Port Vila in the coming years. As to his livelihood, his forthnight wages sustain his domestic needs and a small house he is building. He sells kava occasionally to supplement for his living. He is a physical fit person despite occasional headaches. He is a youth member of the Presbyterian Church.
9. Rolland Collin is 32 years old from Turak Village of Akhamb Island. He is part of a family of 7 whom he is the 5<sup>th</sup>. He is married to a woman from Melip village and has two sons. He is a year 6 school leaver. He has skills in construction and joinery. He is the handyman of Pre-schools association within the southern coast of Malekula. He is self employ to support his nuclear family including his parents. He has a solid relationship with his community. He is the chief of his tribe (nasara). He is a fit person. He has question as to when he would be able to have another medical examination after having his appendix amputated. He is an active member of the Presbyterian Church. He was also elected nominee of the man's fellowship Treasurer.
10. Johntas Thomas is 18 years of age from Akhamb Island. He quitted his secondary education at year eight (8) level due to his father's illness which



prevents him from furthering his education. He has acquired skills in diving, gardening, carpentry and soccer and sales kava to sustain his livelihood. He is the second last born child of his family. He is a member of the Presbyterian Church. He participates well in youth activities of his village. He is a patient of Asthma. He drinks kava and smokes cigarettes occasionally.

11. Kalomal Fed is 32 years old from Akhamb Island. He is married, has two years old daughter. He lives with his wife and his parents at Akhamb Island for the past five years. He is a class six leaver of Vila City Primary School. He was unable to continue with his education because of school fee problems. He has skills in gardening and carpentry. He is an ordinary member of the community. He is always prepared to undertake orders from the chief whenever they needed him. He sells kava in Port Vila to sustain him with his family. He has a good health condition.

12. Tali Noki is a young man of 20 years old from Turak village, Akhamb Island. He is single and lives with his parents. He helps his parents with gardening and cuts copra to sustain him and his parents. He has two (2) elder brothers who are living away from home making him responsible for looking after his old parents. He was a class six (6) leaver. He has acquired skills in gardening, fishing and copra making to earn a living. He has a dream of becoming a church elder in the future. He is a regular Presbyterian Church member. He is physically a fit person.

### **SUBMISSIONS BY DEFENCE**

Mr Tevi on behalf the accuseds provides written and oral submissions. He says that all accuseds had pleaded guilty to one count of unlawful assembly, contrary to s.69 of Penal Code and five of these accuseds also pleaded guilty to intentional homicide, contrary to s.106 (1) (b).

He says the accuseds accept the brief facts provided by the prosecution. He confirms there were three meetings held by the chiefs of Akhamb Island in relation to the deaths of three persons alleged to have been caused by acts of witchcraft or sorcery. He says at these three meetings held by the chiefs at Akhamb on 23 June 2014, 28-30 October 2014, and 13-14 November 2014, the following five accuseds : Ray Obed, Tom John Fred, Kape Masitoto, Kalmatuk Frank and Andre Vea were also accused of practicing



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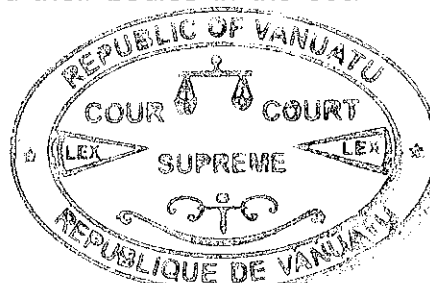


acts of witchcraft or sorcery along with the two deceaseds, Songi Samuel and Simeon Bahavus. At these meetings, these five above named accuseds admitted they practiced acts of witchcraft or sorcery with the two deceaseds but the two deceased denied their involvement in the practice of acts of witchcraft or sorcery in the Akhamb area. He added that on 14 November meeting; these five accused were seated in front so that people could see them. This meeting of 14 November 2014 was interrupted because more weapons getting into the meeting hall. He said from his instructions, accused Henry Tom gave the accuseds bush knives, axes and ropes to use on the two deceaseds. He also says that with the pressure from the members of the community present in the meeting, accused Roy Obed tied up a rope on the neck of deceased Songi Samuel and accused Tom John Fred tied up a rope on the neck of the deceased Simeon Bahavus. They hang the two deceaseds at the rafter of the community hall and with the help of the members of the community; they pulled the ropes to the death of the two deceaseds.

In his written submissions, he says, the accused had being advised and aware that the offences they had committed are very serious offences as a result of the two deaths. He says the circumstance of the offending in the present case is different from any other case. He referred the court to two cases:

The first is the case of Public Prosecutor –v- Tupun [2003] VUSC 62, where 14 accuseds were charged with a number of offences arising out of the intentional killing of a woman when it was believed that the woman was using magical stones or was using acts of socery to cause the death of Tupun’s brother. The evidence after trial did not show who killed the woman but Tom Tupun was convicted of aiding and abetting the intentional homicide and was sentenced to 8 years imprisonment. Nine of the accuseds were guilty of unlawful assembly and were sentenced to 8 month imprisonment. The Court of Appeal confirmed the sentence of the Appellant Tupun in the Supreme Court in Tupun v Public Prosecutor [2003] VUCA.

The second case is that of Public Prosecutor –v- Dala [2010] VUSC 351, were a trial took place and the court found all accuseds guilty of unlawful assembly and found Patrick Uli, Malcolm Wele, Basil Sale and Joshua Aru guilty of intentional homicide. This case involves the accuseds travelling by boat from Maewo to Ambae, assaulted two deceaseds to their deaths and then later drowned their bodies in the sea. The



accuseds only convicted for unlawful assembly are sentenced to 6 years and 4 months (sic). The accuseds convicted of intentional homicide were sentenced to 14 years imprisonment.

He submitted that the court should reduce the head sentence of the accuseds to 1/3 for their early guilty pleas, remorse and contrition; some allowance for their good behavior and first time offenders. Further allowance should also be given for custom ceremonies performed by the chiefs and leaders of Akhamb Island while the accuseds are waiting for their sentence.

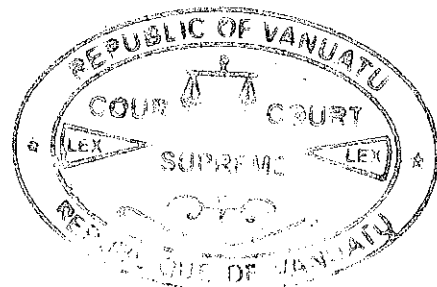
He finally submitted that the court should impose an end sentence of 15 years on the accuseds convicted for unlawful assembly and intentional homicide and a suspended 3 years imprisonment for accuseds convicted for only unlawful assembly with alternative community sentences imposed.

### **SUBMISSIONS BY STATE**

In his submissions, the prosecuting counsel, Mr Massing refers the court to *Tupun case and Dala case* referred to earlier by the Defence counsel. In addition, Mr Massing refers the court to the two other cases:

*The first is the case of Massing –v- Public Prosecutor [2008] VUCA 23 where the accuseds were charged and convicted for intentional homicide. This case arose out of a dispute of land. The accuseds armed with bush knives went looking for the deceased for two hours. When they found him they stabbed him to death. The Supreme court took a starting point of 20 years imprisonment for the 7 accuseds with an end sentence of 18, 14 and 10 years imprisonment according individual accused's culpability in the offending. On appeal, the Court of Appeal quashed the Supreme Court sentence and imposed an end sentence of 13 years and 4 months, 10 years and 8 months and 8 years to respective accuseds.*

*The second is the case of Tabi –v- Public Prosecutor [2010] VUCA 40. The appellant murdered his wife and tried to conceal his crime by burning her body. The Appellant was sentenced to 43 years imprisonment by the sentencing Judge. On appeal, his sentence was reduced to 27 years imprisonment.*



With reference to the above cases, Prosecutor Mr. Massing submitted that the present case was far more serious than the others considering the circumstance of its occurrence. There were two deaths. They were two innocent victims, who were beaten up, were hang on the rope struggling, the accuseds and community members watching them struggling until they died.

He submitted the following aggravating factors exist in the present case:

- (a) Two innocent lives were lost (death)
- (b) Joint criminal enterprise
- (c) Pre-meditation (degree of planning)
- (d) Treatments the two deceaseds suffered before death.
- (e) The emotional harm caused to the victims' families and loved ones.

He says the only mitigating factor is the early guilty pleas of the accuseds. The prosecutor submitted that a starting point sentence of 20 years imprisonment (inclusive of aggravations) should be appropriate for the five (5) accuseds convicted of intentional homicide and unlawful assembly and an end sentence of range between 15-16 years imprisonment would be appropriate. The sentence should be run concurrently.

In relation to the charge of unlawful assembly, a starting point of 3 years with aggravations would be appropriate in this case for all the accuseds. And an end sentence range between 1-2 years imprisonment would be appropriate in this case.

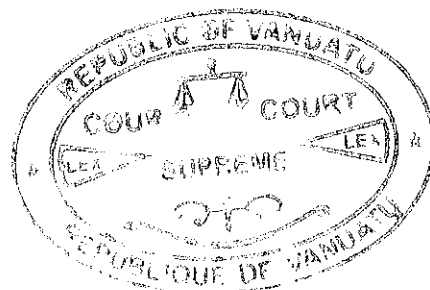
I now turn to consider the sentencing principles and the sentencing of each accused based on their involvement and culpabilities in the offending.

## **COURT CONSIDERATIONS**

### **Offences**

ss. 68, 69, 106 (1) (b) and 109 of the Penal Code Act are the relevant statutory provisions.

Section 68 (1) (2) defines what is an unlawful assembly. It provides:



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## **UNLAWFUL ASSEMBLY... DEFINED**

*"68. (1) When three or more persons assembled with intent to commit and offence, or, being assembled with intend to carry out some common purpose, conduct themselves in such a manner as to cause nearby persons reasonably to fear the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonably occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.*

*(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with common purpose in such as aforesaid."*

Section 69 is the offending provisions. It says:

***"69. No person shall take part in an unlawful assembly.***

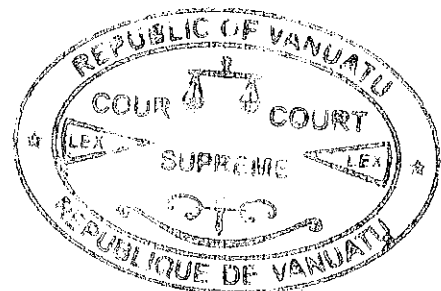
***Penalty: Imprisonment for 3 years."***

Section 109 provides for circumstances of causes of death. It says:

## **CAUSING DEATH DEFINED**

"109. A person shall be deemed to have caused the death of another person although his act is not the immediate or sole cause of death in any of the following cases-

- (a) If he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;



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- (b) If he inflicts bodily injury on another which would not have caused death if the injured Person had submitted to proper surgical or medical treatment or had observed proper precautions As to his mode of living;
- (c) If by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means avoiding such violence which in the circumstances would appear natural to the person whose death is caused;
- (d) If by any act or omission he hastened the death of a person suffering under any decease or injury which apart from such act or omission would have caused death;
- (e) If his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

Section 106 (1) (b) prohibits premeditated homicide. It provides:

**INTENTIONAL HOMICIDE**

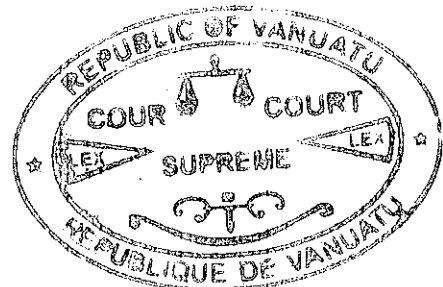
***“106. (1) No person shall by any unlawful act or omission intentionally cause the death of another person.***

***Penalty: (a) If the homicide is not premeditated, imprisonment for 20 years;***

***(b) If the homicide is premeditated, imprisonment for life.***

***(2) For the purpose of subsection (1), premeditation consists of a decision made before the act to make a homicidal attack on a particular person or on any person who may be found or encountered”.***

Section 69 provides for a maximum penalty of 3 years imprisonment and section 106 (1) (b) provides for a maximum penalty for life imprisonment. The penalties reflect the seriousness of the offences committed by the accused on 14 November 2014 on Akhamb Island.



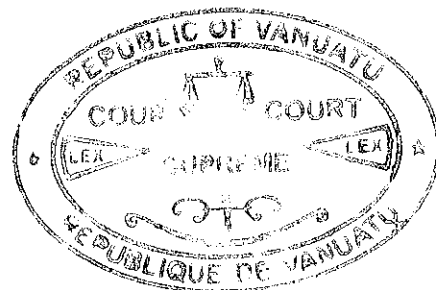
The five accuseds convicted for intentional homicide are each liable for life imprisonment for the s.106 (1) (b) offence. The seven other accuseds convicted for unlawful assembly are each liable for 3 years imprisonment for the s.69 offence.

When I consider the sentencing of the accuseds I take into account the submissions made on behalf of the Public Prosecutor for the state. I take into consideration the submissions made by the Defence counsel on behalf of each and all the accuseds. I also take into account of the accuseds allocutus and individual particulars. I further take into account of the pre-sentence reports filed by the probation officers in relation to individual accused.

There was no Post Mortem conducted for the two deceaseds and therefore there was no medical report provided. However, Mr Massing refers and invites the court to get some assistance to the pictures taken by the police officers of the crime scene, of the bodies of deceaseds, the wounds, cuts, injuries on the bodies of the deceaseds, blood and blood stains and drops found at the crime, the items such as ropes, axes and bush knives. These pictures were by police officers after the deaths and before the bodies of the two deceaseds were returned to their respective families for funeral. There were wounds, cuts and injuries on the bodies of both deceaseds. The rounded black marks on the necks of both deceaseds. The white ropes used to hang the two deceaseds were shown. There were axes, bush knives and razors exhibited. There were blood and blood stains and drops in the community hall and on the bodies, also on the rafter of the community house also shown. I can infer from the above that the cause of death of both deceaseds must be strangulation coupled with massive loss of blood.

The present case is a very serious case. The seriousness of the offending are aggravated by the following factors:

1. Public and barbaric execution of two innocent victims.
2. The loss of two innocent lives
3. Joint criminal enterprises
4. This was a pre-planned and pre-meditated killing
5. Serious injuries sustained on the bodies of deceaseds
6. Use of weapons, (ropes, axe, knives and razor)



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7. The emotional harm caused to the families of the two deceaseds and loved ones.
8. The killings are executed by those also accused of practising acts of witchcraft or sorcery like the two deceaseds.

When I sentence the accuseds in the case, I note that *section 151 of the Penal Code Act [Cap 135] prohibits and sanctions the practice of witchcraft. It says:*

**WITCHCRAFT**

*"151. No person shall practice witchcraft or sorcery with intent to cause harm or detriment to any other person.*

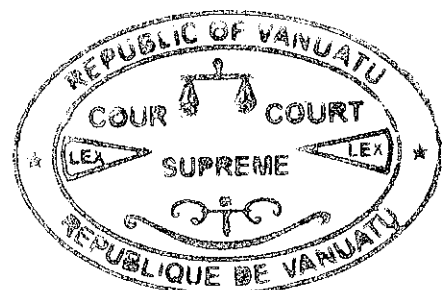
*Penalty: Imprisonment for 2 years.*

The accuseds and any villager for that matter who believed or thought that the deceaseds were practicing sorcery or witchcraft and were responsible for the killing of the three people at Akhamb Island should have complained to the relevant authorities. Instead they decided to impose their own system of justice on the two deceaseds and the accuseds had no right to do that. The accuseds have no justification whatsoever to do that. The chiefs and leaders of the community involved in this barbaric execution but not charged in this case, had no right to do that either. They have no justification whatsoever to do thateither.

The offendings in the present case amount to arrogance and a complete disregard for the constitution, the law and the sanctity of life that God gave and no one has the right to take away prematurely.

The reports show that the accuseds are not well educated and are simple villagers. However, the same reports show also that they are members of Presbyterian Church at Akhamb Island and area and therefore, they are Christians. I believe that as members of Christian churches, they would understand that killing is wrong, and a sin which violates one of the Ten Commandments in the Holy Bible.

Furthermore, whilst they may be illiterate villagers, I consider that they are not primitives and not from remote areas of the country where Government and Christian influence



are lacking. I do not think that they are unsophisticated and illiterate to the extent that they did not know that what they did was wrong or a crime.

The present case is a very serious premeditated and barbaric killing. Killing someone is against the law and the courts have a responsibility in demonstrating through the penalties they impose that the prevalence of a crime like this must be a public deterrence and retribution. The punishment must also show that the law does not approve of killing of sorcerers no matter how much people believe in sorcery.

In this case the nature and seriousness and aggravating circumstances of the offending justify a term of 24 years imprisonment as a starting point for the offence of premeditated intentional killing of the two deceaseds at Akhamb island on 14 November 2014. A starting point of 3 years imprisonment is appropriate for the offence of unlawful assembly.

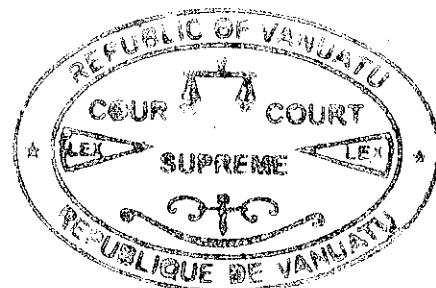
I consider and accept the following mitigating factors:

- Early guilty pleas
- First time offenders and no prior convictions
- Youth (when relevant)
- Custom ceremony performed on their behalf by the chiefs, youth and leaders of Akhamb island community

In balancing between the aggravating and mitigating factors, each accused is entitled to 1/3 reduction on his head sentence (starting point).

I give an allowance of 4 months deduction for the custom reconciliation ceremonies performed on their behalf on Akhamb Island by the chiefs, youth and leaders of their community on Akhamb Island.

I give a further allowance of 6 months for being a first time offenders and other mitigating factors. The reduction of the sentences and deductions allowed apply to each accused and in respect to both offences of intentional homicide and unlawful assembly.





**The end sentence of each accused upon conviction and the sentence to serve are these:**

1. 15 years imprisonment for accuseds Ray Obed, Tom John Fred, Kape Masitoto, Kalmatuk Frank and Endre Vea for intentional homicide; and
2. 1 year imprisonment for the offence of unlawful assembly.
3. The sentences are to be served concurrently. I take into account also of the time each of the five accuseds had already spent in custody and apply to their final sentence.
4. Ray Obed, Tom John Fred, Kape Masitoto, Kalmatuk Frank and Endre Vea, your respective sentence of 15 years imprisonment is deemed to start on 23 November 2014 to take account of the time you have already spent in custody.
5. **Following accuseds:**
  - (i) Marcel Nelson, Elipson Thomas, Rodney Kaltau, Rolland Collin, John Tas Thomas, Kalomal Fred and Tali Noki receive an end sentence of 1 year imprisonment for unlawful assembly which is suspended for a period of 2 years.
  - (ii) In addition, I impose a sentence of 80 hours of community work on each of you and 6 months probation on religion education to be conducted by the leaders of your churches.

Each of the accused has 14 days to appeal his sentence if he is unsatisfied with it.

**DATED at Luganville, Santo this 16<sup>th</sup> day of April 2015**

**BY THE COURT**

  
**Vincent LUNABEK**  
**Chief Justice**

