

**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: 18 February 2022

By: Justice G.A. Andrée Willens

Counsel: Mr T. Karae for the Public Prosecutor (unable to attend due to hospitalisation, no response when OPP contacted to see if another counsel was attending)

Mr D. Yawha for the Defendant.

Sentence

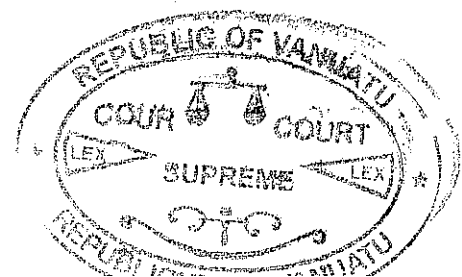
A. Introduction

1. Mr Ahelmalahlah was found guilty, after trial, of charges alleging threat to kill (Charge 1), and 3 charges of domestic violence, as below:

Charge 2: intentionally intimidated Mr Lunabek by stalking, causing him to be apprehensive or fearful;

Charge 3: intentionally intimidated Mr Lunabek by sending a text on 24 January 2020, causing him fear or apprehension; and

Charge 4: intentionally intimidated Mr Lunabek by causing a letter dated 17 March 2018 to be delivered, with a view to causing fear.



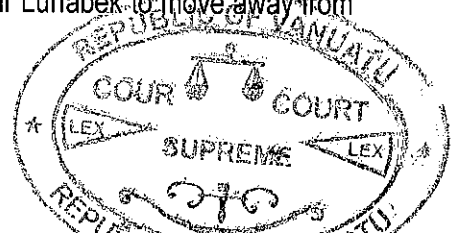
2. Time-tabling orders were made, post verdict, regarding sentencing. During that intervening period, Mr Yawha filed an application to re-open the trial, with an accompanying sworn statement by Mr Ahelmalahlah. The basis for the application was that the letter supporting charge 1 was not authored by Mr Ahelmalahlah, but by another member of his village who has come forward and admitted such. A sworn statement to that effect was appended.
3. It was explained to Mr Yawha that his application could not be granted as there was no provision for such procedure known to the criminal law once verdict has been delivered. The available avenue to take that matter further was to file an appeal on the basis of the fresh evidence. Mr Yawha acknowledged the position, and that sentencing should proceed.

B. Facts

4. Mr Ahelmalahlah is both uncle and nephew to Mr Lunabek, as well as his Paramount Chief at their home village, Brenwei, in North West Malekula.
5. As Chief Justice of Vanuatu, Mr Lunabek had appointed Mr Ahelmalahlah to be a Magistrate at Isangel, Tanna in 2010.
6. On 6 May 2013, Mr Ahelmalahlah resigned from his Magistrate's post, having been advised/told to do so by Mr Lunabek due to Mr Ahelmalahlah's involvement in criminal activity which involved a .22 rifle.
7. Subsequently, after returning from several years overseas, Mr Ahelmalahlah had second thoughts, and he attributes his fall from grace to the advice/instruction given to him, and subsequent actions by Mr Lunabek.
8. One night in 2016 - 2017, after Mr Lunabek returned home from work in the early evening, there was a visitation by a police officer related to Mr Ahelmalahlah, who wanted to give Mr Lunabek a letter from Mr Ahelmalahlah. Mr Lunabek refused to accept the letter.
9. Thereafter several more letters were sent by Mr Ahelmalahlah, which all reached Mr Lunabek by circuitous means:

Exhibit 2 – an unsigned letter written in Bislama by Mr Ahelmalahlah addressed to Mr Lunabek and his younger brother dated 28 July 2017. It was a "warning" letter. It recorded that "Vincent Lunabek is standing in his [Mr Ahelmalahlah's] way." It accused Mr Lunabek of looking for ways to blame and/or interfere with Mr Ahelmalahlah due to Mr Lunabek's personal interests, and it intimated bias on the part of Mr Lunabek in cases before the Courts.

Exhibit 3 – a signed, hand-written letter in Bislama written by Mr Ahelmalahlah addressed to Vincent Lunabek dated 17 March 2018. This letter was headed "Eviction of Family Lunabek". Mr Ahelmalahlah gave notice to Mr Lunabek to move away from



Brenwei Village for a number of stated reasons, including that Mr Lunabek had a Court case against Mr Ahelmalahlah, and that Mr Lunabek had threatened Mr Ahelmalahlah and forced him to resign from his position as Magistrate (both statements being incorrect).

Exhibits 4 and 5 - a signed letter, written in English, by Mr Ahelmalahlah addressed to the Hon. Chief Justice dated 24 January 2020, and a subsequent identical letter save that it was dated 14 February 2020. The letter sought Mr Ahelmalahlah's reinstatement as a Magistrate and back-payment of salary from 2013; or alternatively, to promote Mr Ahelmalahlah to Chief Magistrate, Chief Registrar or Supreme Court Judge.

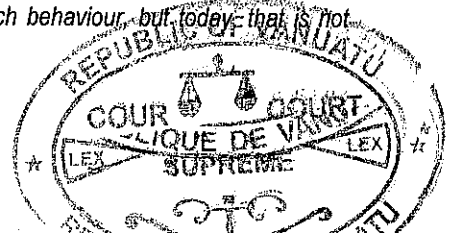
10. As well as sending Mr Lunabek letters, Mr Ahelmalahlah commenced ultimately unsuccessful litigation challenging the actions of Mr Lunabek in the Supreme Court and the Court of Appeal, and seeking his re-instatement as a Magistrate and/or to be appointed to other judicial roles.
11. In late 2019, Mr Lunabek lost both his father and mother in short order. He intended to return to his home village, where both are buried, on 3 January 2020 to pay his respects. He then learnt, on 2 January 2020, that Mr Ahelmalahlah had been in contact with his daughter Ms Laura Lunabek, asking if her father was going to be in Malekula, and if so, when. This caused Mr Lunabek great concern/alarm. He took elaborate steps to enable the planned (but shortened) trip to go ahead. Mr Lunabek was on guard during the entire trip as a result.
12. Laura Lunabek was subsequently again approached by Mr Ahelmalahlah. He telephoned her and said he wanted to meet her father again. However, she rebuffed his approach, saying that her father was still busy at work. Mr Ahelmalahlah called again later the same night, but Laura told him outright that he could not come and visit her father.
13. On 24 January 2020, Laura Lunabek received a text (Exhibit 6A) from Mr Ahelmalahlah who was using another's telephone:

"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."

14. On 4 May 2020, at around 10.45am, Mr Ahelmalahlah caused an unsigned letter in Bislama to be delivered to Mr Lunabek (Exhibit 1). It was stated to be from the grandparents of Mr Ahelmalahlah, but in my verdict of 13 December 2021 I found that Mr Ahelmalahlah was the actual author. It relevantly reads:

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 shoot a man with a rifle for such behaviour, but today that is not

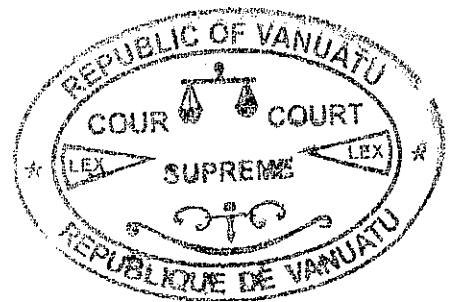


possible. We are monitoring all his cases in Court closely because we too know the laws and now is not the time to hide behind or use another person (judge) to do wrong by him in his Court cases so he loses them and all his work. We are urging you to note that we have had enough of this kind of behaviour and you must cease immediately because we know about you.

15. 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. He further explained that he had previously personally witnessed Mr Ahelmalahlah, not only in possession of a 22. rifle, but actually using it. He considered the letter to threaten his life, and 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.
16. Mr Ahelmalahlah was interviewed following his arrest. He denied the alleged offending at interview.

C. Sentence Start Point

17. The sentence start point is to be assessed by having regard to the maximum penalty available for the offending and factoring in the aggravating and mitigating aspects of the offending.
18. The maximum sentence for threat to kill is 15 years imprisonment. The maximum sentence for each domestic charge is 5 years imprisonment.
19. There are no mitigating aspects to the offending. There are however aggravating factors which include:
- The standing in the community of the complainant. He is a pillar of the community with an unblemished reputation. As well, Mr Lunabek has been the Chief Justice of Vanuatu for over 20 years. The offending affected Mr Lunabek and his family members personally, but was also an assault on the Supreme Court, the Court of Appeal and the judges attached to those Courts;
 - The position of Mr Ahelmalahlah. He is a Paramount Chief of his local village. He was a Magistrate with experience and training in the law. It is aggravating that a person with this background has acted in this fashion;
 - There was pre-meditation and significant planning involved. Great care was taken for Mr Ahelmalahlah to distance himself from the offending. For example, he used others to deliver the letters, he used other peoples' phones to make calls and send texts, he approached Laura Lunabek and gained access to Mr Lunabek through her, and he hid behind his grandparents as the authors of the final letter. I reject Mr Yawha's submission that by so distancing himself, Mr Ahelmalahlah's conduct was reduced in effect on Mr Lunabek;



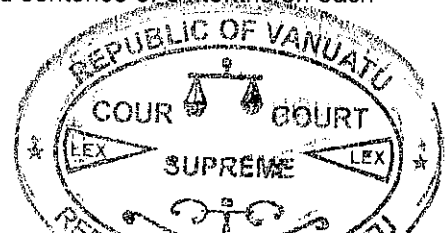
- The effect on the complainant. Mr Lunabek's evidence, which I accepted, was that he held genuine fear, as evidenced by the steps he took when visiting his parents' graves – they are set out in the verdict. Those fears were clearly warranted given the escalation of the threats, in both number and seriousness;
 - The repeat nature of the offending; and
 - The 3-year span of offending.
20. The sentence start point I adopt is 3 years imprisonment on a global basis, taking the 4 offences into account concurrently. I consider the authority of *PP v Walker* [2007] VUCA 7 to be a useful authority in relation to the charge of threat to kill, and I accept that imprisonment is frequently warranted where such offending is perpetrated. Mr Yawha's submissions addressing the mischief of this type of conduct did not persuade me that the offending was at the lower end of the available range for the offending. I regarded it as more serious than that.

D. Mitigation

21. Mr Ahelmalahlah is now 39 years old, married, with 2 children, both still in school. At the time of this offending, he was involved in teaching administration, and politics. He is said to have good relations with his wider family and his community.
22. He shows no remorse, advising the PSR writer that he disagrees with the Court's findings. He does however acknowledge the difficult position he has left and children in.
23. There has been no custom reconciliation ceremony. Mr Ahelmalahlah says that Mr Lunabek declined to participate, but that is incorrect. An approach was made to Mr Lunabek, but as Mr Ahelmalahlah was continuing to deny the allegations the matter was sub judice, and Mr Lunabek appropriately declined to participate. Following sentencing, however, that may well change. I note that Mr Ahelmalahlah maintains he is willing to take part in such a ceremony.
24. As part of his submissions in mitigation, Mr Ahelmalahlah has produced testimonial letters from Albert Kalhpath and Erickson Paul. Those letters give every impression of having been written by Mr Ahelmalahlah himself and simply signed without being first read by the supposed authors. The letters are written in Mr Ahelmalahlah's style and they are repetitive in their expressions. I find them to be of little assistance.
25. For Mr Ahelmalahlah's personal circumstances, the sentence start point is reduced by 2 months.
26. Mr Ahelmalahlah has previously been found guilty of criminal offending. He appears to have learnt little from that experience and the sanctions then imposed. However, I note those allegations were quite some time ago, and consider there does not need to be an uplift to reflect this fact.

E. End Sentence

27. The end sentence I impose is 2 years 10 months imprisonment. I impose that on the threat to kill charge. For the domestic violence charges, I impose an end sentence of 6 months on each



such charge. The sentences will all run concurrently. Mr Ahelmalahlah has been incarcerated for this offending since 13 December 2021. Accordingly, to preserve his parole rights, his sentence will commence to run as from that date.

28. In certain circumstances the Court can suspend all or part of the sentence.

29. I specifically tasked Mr Yawha to make submissions on this aspect. In support of suspension, he submitted the following were relevant considerations:

- The offending is not the most serious;
- Mr Ahelmalahlah has no previous convictions; and
- Mr Ahelmalahlah has good family and community support.

30. However, factors that militate against suspension include:

- the offending is more serious than counsel accepts;
- the repetitive and escalating nature of the offending, especially taking into account Mr Ahelmalahlah's previous criminal offending (acknowledging that it is not a previous conviction);
- the continuing lack of remorse;
- the fact the offending took place over a 3-year period; and
- my assessment that the prospects of rehabilitation are not good, given the previous sanctions imposed appear to have not had a positive impact on Mr Ahelmalahlah's subsequent conduct.

31. Accordingly, I decline to exercise my discretion to suspend any/all of the sentence in Mr Ahelmalahlah's favour.

32. Mr Ahelmalahlah has 14 days to appeal the sentence.

Dated at Port Vila this 18th day of February 2022

BY THE COURT

.....*G.A. Andrée Wiltens*.....
Justice G.A. Andrée Wiltens

