

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

**Criminal**  
**Case No. 25/343 SC/CRML**

**PUBLIC PROSECUTOR**

**v**

**IAN IATAMIANPEN POITA**

*Date of Plea:* 14<sup>th</sup> March 2025  
*Before:* Justice Josaia Naigulevu  
*Counsels:* Acting Public Prosecutor – Mr. Christopher Shern  
Defence Counsel - Mr. Regi Melsul

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**SENTENCE**

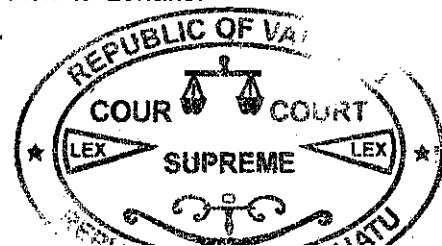
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**Introduction**

1. Mr. Iatamianpen Poita, you appear for sentence having entered a plea of guilty and accepted the summary of facts presented by the prosecution relating to the count of unintentional harm causing death contrary to section 108 (c) of the Penal Code.
2. You were duly convicted on your plea.

**Facts**

3. On the 14<sup>th</sup> June 2024, you drove a single cabin vehicle from Lenakel to Whitesands. A number of passengers were seated in the tray of the vehicle, including the deceased person.
4. When you reached the volcanic ash plain, the deceased informed you that his phone charger had accidentally fallen off the truck. You turned to retrieve the charger. However, after a short distance the deceased informed you that he had found the charger, and that it had not fallen off the truck as he had earlier thought. You stopped and turned the truck around so that you would head back to your original destination. At that moment the deceased was trying to return the charger inside his pocket. The movement of the truck must have caused him to lose his balance and fall off the truck, and onto the ground. You first drove him to Telekei hospital, and then to Lenakel hospital where he was admitted and died a day later of head injuries.



## Sentencing Guidelines

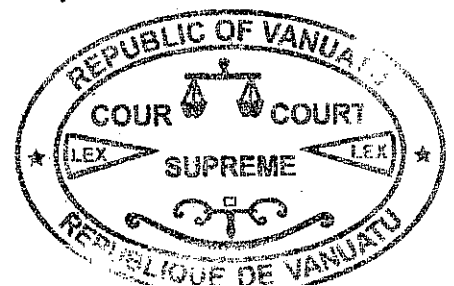
5. There are several principles that guide the sentence to be imposed on you. They include the proposition that you must be held accountable and must take responsibility for your action. Additionally, your action is the kind that is denounced by society and that similar future acts by and others must be deterred.
6. Equally important is that you must be given ample opportunity to rehabilitate and reintegrate.
7. The approach taken in the present case follows the guidance given by the Court of Appeal in the case *Philip v Public Prosecutor* [2020] VUCA 40.

## Starting Point

8. In assessing the appropriate starting point, I have taken into account the statutory maximum sentence, as well as the aggravating and mitigating factors of the offending.
9. The maximum penalty for the offence of possession of unintentional harm causing death is five years.
10. Both counsels referred the Court to the case *Public Prosecutor v Wilfred* [2019] 21, a case involving a passenger who fell off the tray of the vehicle and died, after the timber and cement bags he was sitting on slid off the tray because they were not adequately secured. Although acknowledging an element of contributory negligence the Court properly stated that the primary and ultimate responsibility to ensure the safety and welfare of passengers rested with the defendant owner/driver. In that case, the Court adopted a starting point of 3 years. Whilst the present case differs on the facts, you Mr. Poita still retained the ultimate responsibility for the safety and welfare of the 15 passengers in your vehicle that day. Even if you had made a "...good slow and big turn..." that you claimed you did to the probation officer who interviewed you, you could have exercised greater care and attention by checking and ensuring that all passengers were seated and were aware that you were about to manoeuvre your vehicle in the opposite direction.
11. On the facts of this case however, I accept that your culpability falls at the lower end of the scale. Accordingly, I adopt a starting point of 24 months.

## Guilty Plea

12. You pleaded guilty to this Court at the earliest opportunity. As a result, you are entitled to a discount of 8 months.



13. Mr. Poita, I have decided to grant you the full benefit of a third deduction. The period of 8 months is deducted from the starting point of 24 months.

### **Aggravating Factors**

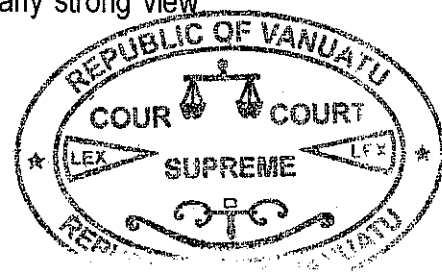
14. The following circumstances constitute the aggravating factors in the present case:
- a) Failure to ensure the safety of passengers at all times;
  - b) Failure to control and manoeuvre the vehicle with care and attention at the material time;

### **Mitigating and Personal Factors**

15. You are 29 years old, are married, have a son and are expecting a second child. At school, you reached year 13 French.
16. The probation officer who recorded your pre-sentence report wrote that your livelihood depended "entirely on gardening and transport business." He did not include in the record a store at Sulphur Bay that you told your counsel, nor the many family members that you claim to support.
17. You occasionally engage in voluntary work in the community and this sometime include the use of your personal assets.
18. Of note is that you performed a Kastom ceremony to the victim's family to seek their forgiveness. Also, you took responsibility for the cost of the deceased's coffin and the hire of two boats that conveyed his body and members of his family to Aniwa Island.
19. You are a first-time offender, and by your conciliatory actions have demonstrated your remorse.
20. The Court takes these into account. These factors reduce your sentence by a further 6 months.

### **End Sentence**

21. I have taken into account all these matters and impose an end sentence of 12 months.
22. Mr. Poita, your counsel has urged me to suspend your sentence, and in its place, impose alternative sentences. The prosecutions does not express any strong view against it.



23. I have considered the provisions of sections 57 of Penal Code, and in particular your character, the circumstances of this case and the nature of the offending, and have decided that this is an appropriate case in which to exercise my discretion to suspend the sentence in its entirety. I order accordingly for a period of 12 months.
24. In its place, it is ordered that you undertake 80 hours of community work pursuant to section 58 B of the Penal Code.
25. You have 14 days to appeal this sentence.

DATED at Port Vila this 17<sup>th</sup> day of April 2025  
BY THE COURT

