

BETWEEN: Public Prosecutor

AND: Tom Kamisak
Defendant

Date of Plea: 24th June 2025
Date of Sentence: 27th June 2025
Before: Hon. Oliver A Saksak
Counsel: Mr Paul Tarikwisi for Public Prosecutor
Mr Richie Melsul for Defendant

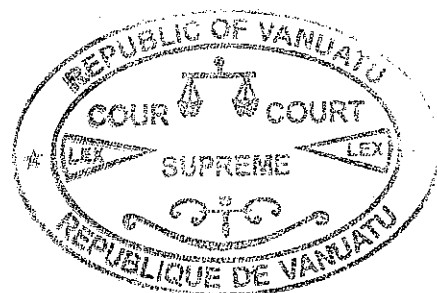
SENTENCE

Introduction

1. Tom Kamisak pleaded guilty to one charge of unintentional harm causing death contrary to section 108 (c), Penal Code Act [Cap 135], and not guilty to the alternative charge of causing death by reckless driving contrary to section 12 of the Road Traffic (Control) Act [Cap. 29]. Prosecutions entered nolle prosequi in relation to the alternative charge and the defendant was discharged of the charge accordingly.
2. He is for sentence only in relation to the charge in Count 1.

The Law

3. Section 108 provides:
"108. Unintentional harm
No person shall unintentionally cause damage to the body of another person, through recklessness or negligence, or failure to observe any law.
Penalty: (a) if the damage so caused is purely temporary, imprisonment for 3 months;
(b) if the damage so caused is permanent, imprisonment for 2 years;
(c) if the damage so caused results in death, imprisonment for 5 years."



Facts

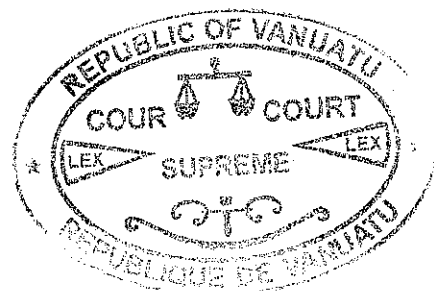
4. An accident occurred at Bethel area, South Tanna in the afternoon of 1st October 2024. The defendant drove a public transport vehicle, a white Isuzu double cabin truck and crashed onto an electric pole. The defendant was drunk and drove under the influence of liquor. The accident caused physical injuries to the victim Johnny Naumua, aged 38 years. The defendant also sustained bodily injuries. They were both taken to the Lenakel Hospital by another driver who drove by that moment. The victim was however pronounced dead on arrival.
5. The defendant was witnessed travelling at high speed and that he had been drinking alcohol in the whole morning of 1st October, until the accident.
6. The defendant made no statements to the Police. However he pleaded guilty on the plea date. He has accepted the facts as presented by the Prosecutions.

Defendant's Explanations

7. In the defendant's Same Day Report he explains that he has a valid driving licence and a valid public transport permit. He explains also that on the day of the accident he was hired by the deceased to move some building materials from the shops and a vessel to his workshop. He also explains that he was drinking alcohol that day and driving the victim around to do his job. He explains that they had lunch together after which they were returning home when he lost control of his vehicle and crashed onto an electric pole. He explains also that the contributing factors to the crash was his excessive speed at a sharp corner which resulted in him losing control and crashing.

Discussion

8. From the defendant's explanations he has accepted he drove at excessive speed at sharp corner where he was supposed to have slowed down to avoid the crash or hitting another driver and truck coming from the opposite direction. Clearly his actions and omissions demonstrate recklessness on his part and his failure to observe the law. As the obvious result, he caused the accident resulting in bodily injuries to the victim, which eventually caused his death. He is clearly responsible for causing the death, although he did not do it intentionally.
9. There is therefore no mitigating circumstances for his offending.
10. Further more the defendant was drinking alcohol in the course of his employment. He put the lives of his customers that day to great risks. And innocent family has now lost a father of 5 children and their source of livelihood. These are the aggravating features of the defendant's reckless driving.
11. In assessing the defendant's sentence I have had regard to the defendant's Same Day Report, the Prosecution submissions filed on 26/6/25 and the defence submissions filed on 26th June 2025.



12. I note in particular the cases of PP v Naiwa [2010] VUSC 52, PP v Bony [2025] VUSC 162, Newell v PP [1998] VUCA 2, Jenkinson v PP [2000] VUCA 5 and PP v Isaiah [2021] VUSC 335 referred to by Prosecution. I note also the cases of PP v Nawia [2010] VUSC 52, Nampo v PP [2018] VUCA 42, PP v Iauko [2024] VUSC 68 and PP v Moli [2018] VUSC 89 referred to by defence Counsel.
13. All of these cases were different on their facts and circumstances, however the principles of sentencing in traffic cases of this nature are clearly expressed in those cases and the Court must apply them for consistency. The Court of Appeal cases of Newell and Jenkinson lay down the clear guidelines to be followed in this cause.
14. Taking the seriousness of the offence together with the aggravating factors without any mitigating circumstances and the sentencing principles in Newell and Jenkinson cases, it is my view that the appropriate sentence for the defendant is to be a custodial sentence.

Start Sentence

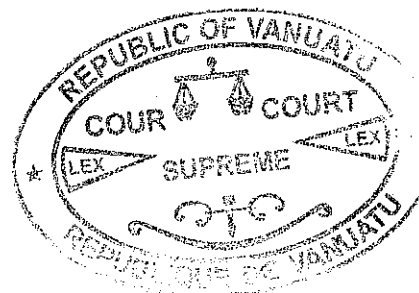
15. I therefore sentence the defendant, Tom Kamisak to a start sentence of 3 years imprisonment for the offence of unintentional harm causing death.

Mitigation

16. In mitigation, first I deduct the start sentence by 1/3 for guilty plea. The balance is 2 years imprisonment.
17. Next, I note the defendant's history and personal factors, in particular the substantial custom reconciliation made to the deceased's family, his contributions to his community, and his responsibilities to his family and children. I allow a further reduction of his sentence of 2 years by 10 months, leaving his end sentence to be 14 months imprisonment.

End Sentence

18. Tom Kamisak you are now convicted and sentenced to an end sentence of 14 months imprisonment. This sentence is made concurrent with your sentence of 14 months in CRC 24/963.
19. This now is your second conviction in a Court of law. Although this is a traffic offence unrelated to the intentional assault charge in Criminal Case No. 24/963 in which you have been convicted and sentenced also to 14 months imprisonment and which sentence has been suspended. That suspension is made conditional on the sentence of the Court on you in this case. And this second offending of yours occurred some 16 months after your first offending on 28 May 2023. That is why you are to serve a custodial sentence today.
20. Because of the concurrent nature of the sentences in the two cases, your total concurrent sentence shall be 14 months imprisonment to be served at the Correctional Centre at Isangel, Tanna.



21. Your sentence is with immediate effect as of today, but you have a right of appeal against the sentence if you wish, within 14 days.

DATED at Isangel, Tanna on 27TH day of June 2025

BY THE COURT


Hon. Oliver A Saksak

Judge

