

BETWEEN: Public Prosecutor

AND: Welby Kamisak, Tom Kamisak
Defendants

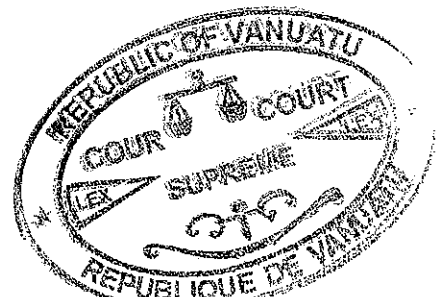
Date of Rearrangement: 24th June 2025
Date of Sentence: 27th June 2025

Before: Hon. Oliver A Saksak

Counsel: Mr Tristan Karae for Public Prosecutor
Mr Juliette Kaukare for the Defendants

SENTENCE

1. Welby Kamisak pleaded not guilty initially to intentional assault contrary to section 107 (b) on 29 November 2024. And Tom Kamisak pleaded not guilty to intentional assault contrary to section 107 (b) and to one charge of threatening language contrary to section 114 (A) of the Penal Code Act [Cap 135].
2. The matter was adjourned for trial which was fixed for 26 June 2025 but relisted for rearrangement on 24 June 2025 instead.
3. The defendants were rearraigned on 24 June 2025. Welby Kamisak pleaded guilty to the charge in Count 1. Tom Kamisak pleaded guilty to the charge in Count 2 and not guilty to the charge in Count 3. Prosecutions applied to enter nolle prosequi in relations to the charge in Count 3 and the defendant has been discharged accordingly from that charge.
4. The defendants are to be sentenced on their own guilty pleas.
5. The facts are that on 28 May 2023 the defendants entered Lounik Village with intention to cause a fight. The defendants, as a group confronted the village chief and his men who had gathered at their nakamal to drink kava. The defendants held knives and pieces of wood in their hands. They had learned that Odley Nakou was responsible for their missing garden crops. Arguments erupted and a fight broke out.
6. Defendant Welby Kamisak hit Odley Nakou on the right side of his head with a piece of wood and Tom Kamisak also hit the complainant with a piece of wood on the left side of his head



causing injuries and blood gushing out. The fight eventually stopped and the defendants returned to their own village..

7. There are no mitigating circumstances. Defence Counsel submitted the assaults were provoked. That submission is rejected. The defendants took the law into their own hands. They could have reported the incident to the Police but chose to take the matter into their own hands. They held knives in their hands as well as wood which are weapons. The assaults were repeated on the right and left side of the complainant's head, a vulnerable and vital organ of the human body. These are the aggravating features. These factors distinguish this case from the case of PP v Jeffrey Bob [2017] VUSC and PP v Peter Thomas [2021] VUSC.
8. The offence of intentional assault resulting in temporary injuries carries the maximum penalty of 5 years imprisonment.
9. I have seen the submissions filed by the Prosecution on 25/6/25. Considering the seriousness of the offences committed together with the aggravating features without any mitigating circumstances, I agree and adopt the starting point for both Welby Kamisak and Tom Kamisak to be 2 years imprisonment. I therefore sentence Welby Kamisak and Tom Kamisak to a start sentence of 24 months (2 years) imprisonment.
10. In mitigation I reduce their sentences by 5 months for guilty pleas albeit late, reducing the sentence down to 19 months imprisonment for each defendant.
11. I have read the Same Day Pre-Sentence Reports filed by the Probation Officer on 25/06/25 in respect of both defendants. For all the other personal factors contained in the reports and the Defence submissions . I reduce both defendants' sentence of 19 months by 5 months.
12. That leaves the defendants' end sentences to be 14 months imprisonment.
13. For Welby Kamisak I Order that your end sentence be suspended for a period of 2 years from the date of this sentence. You must not commit any other offences within this period. If you do and are charged and convicted, you will go to prison for 14 months.
14. For you Tom Kamisak your sentence of 14 months imprisonment is suspended but only on the condition that you are not convicted and sentenced also for your traffic offending in Criminal Case No.25 /1785 Public Prosecutor v Tom Kamisak.
15. Those are the sentences of both defendants. You both have rights of appeal against your sentences within 14 days if you do not agree with them.

DATED at Isangel, Tanna this 27th day of June 2025

BY THE COURT


Hon. Oliver A Saksak

Judge

