

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

Case No. 25/940 CRML

PUBLIC PROSECUTOR

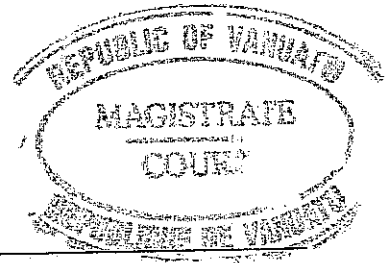
V

SERENA MALA

Date of Plea & Sentence: 06<sup>th</sup> April, 2025

Date of written sentence: 7<sup>th</sup> April, 2025.

In Attendance: Mr. George\_M- State  
Defendant.



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SENTENCE

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**Background/Introduction**

1. Ms. Serana Mala appeared for Plea and sentence yesterday, the 6<sup>th</sup> of April, 2025, and pled 'hemi tru' to both count 1 of domestic violence and count 2 of intentional assault. These were recorded as her pleas to the charges.

**Facts**

2. Having heard prosecuting counsel and the defendant's version of the facts, I accept the following as the actual facts in relation to her offending; That on the 5<sup>th</sup> of April, 2025, in their usual place of residence, at Independence Park area, the defendant had questioned the complainant (her oldest daughter) about one Lydiana, with whom the complainant had gone out and returned without her, and having not been satisfied with the complainant's respond, she walked towards her, assaulted her and used a knife to swing it at the complainant who was pushing against her from behind, when she injured the complainant, causing injuries to her body.

3. A medical report from the doctor was tendered as prosecution evidence of the assault and injury from the knife.

4. The defendant admitted the assault and use of knife upon the complaint and given her guilty pleas, I convict her of the two counts against her.

#### Sentencing Consideration

5. The maximum penalty for the offence of domestic violence is an imprisonment term of 5 years, or a fine of VT 100,000 or both fine and prison term, and for intentional assault where damage caused is of temporary nature, an imprisonment term for 5 years. Such penalties imposed by the law makers of this country reflect the seriousness of her wrong doing and that is explained to the defendant.

6. The accepted aggravating factors to her offending are that:

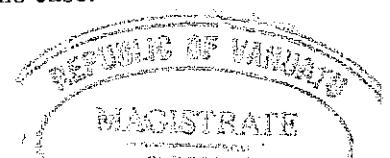
1) She used a weapon (knife) to carry out the assault.

2) The offending took place in their own home, where the complainant and all other children residing therein, were supposed to feel properly cared for and protected by the defendant, and her unlawful actions created a breach of trust between her and the complainant and other children under her care.

3) That her actions reflect lack of self-control as a mature person and a mother, to execute proper discipline and care towards the complainant as her first-born daughter

4) Her offending shows she decided to take the law into her own hands and not resort to more peaceful form of discipline of the complainant in this case.

7. While she presents her version of the facts leading up to her offending, I still find there are no mitigating factors to the defendant's offending in this case.



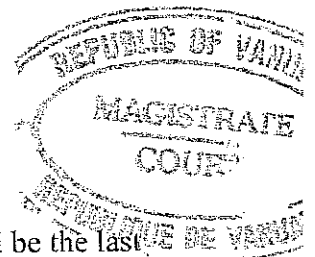
8. I consider the state counsel's sentencing submission and the defendant was given further opportunity to reply to the submission, from which she makes reference of her last-born male child who is just over 1 year old, and who is still breastfeeding, and all her 6 children are dependent solely on her for financial support, and physical support, including seeing to her children's education financially, since her current partner has retired from work.

9. And given the relevant factors, I find that sending the defendant to an immediate prison term would not be fitting in this case, since her offending would be at a lower scale compared to other offending mothers, as in the appeal case of *Timothy v PP* [2024] VUSC 15. The appeal court in this case had to consider whether the sentence of 9 months imprisonment imposed without suspension by the lower court was manifestly excessive, and in considering the circumstances in light of section 57(1) of the Penal Code Act, the important principles in relation to a defendant mother with dependent children were considered and it is from these principles that I refer to and adopt in this case.

10. The case of *R (on The Application of Stokes) v Gwent Magistrates Court* ([2001] EWHC 569 (Admin)), was also cited by the above appeal case, where the High Court of England and Wales judicially reviewed a magistrate's decision to sentence a mother of four children to prison for non-payment of fines. The sentencing Judge highlighted the best practical approach in sentencing a mother of dependent children to prison, by stating:

*"When a court ... is contemplating making an order which would separate completely a mother from her young children and send her to prison for a period of time with unknown consequences of the effect of that order on her young children, it must take into account the need for proportionality and must ask itself, given the seriousness of the intervention it is minded to make in terms of taking a mother away from her young children and imprisoning her: Is this proposed interference with the children's right to respect for their family life proportionate to the need which makes it legitimate?"*

11. For these reasons, I find that sending the defendant to prison would be the last resort taken by this court, given the circumstances of her offending, and also that it



would defeat the 'best interest' principle reflected in Article 3 of the Convention on the Rights of the Child (Ratification) Act 1992, which states:

*"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

12. I find that all her 6 children are entirely dependent on her for physical and financial support and if she were sentenced to a prison term, it would result in adverse, and, or negative impact to her already hard-to-discipline older children, including the complainant, and the children after her.

**End Sentence**

13. And given the relevant consideration, I sentence the defendant to a sentence of Community work as follows:

- 40 hours community work for the count of domestic violence;
- 40 hours community work for the count of intentional assault.

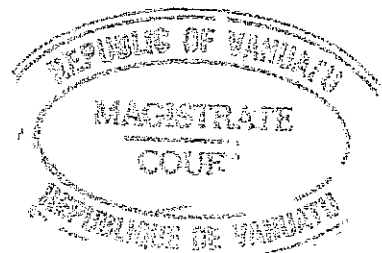
14. Each sentence is to be served concurrently.

15. That she is also ordered to pay prosecution cost of VT1000.

16. She is further Ordered to remain of good behaviour towards her children where she must resort to more peaceful means of discipline of all her 6 children including the complainant, and refrain from using violence or weapons.

**Reason for Sentence**

17. Her sentence is explained to her as punishment for her wrong actions, as well as to deter her and likeminded offenders from committing similar offences, and




especially when it comes to domestic violence, that this court will not condone such violence in family relationship, especially as in the case between the defendant and her complainant daughter.

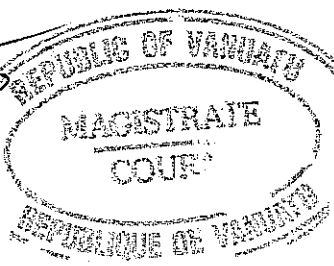
18. Her sentence is also necessary to give her a chance to rehabilitate from her unlawful acts and to allow her and her complainant daughter a change to reconcile and rebuild the trust between each other.

19. The defendant is informed of her rights to appeal within 14 days from date of this sentence.

**DATED at Port Vila, this 07<sup>th</sup> April, 2025.**

**BY THE COURT**

  
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**FSam**  
**Senior Magistrate**

  
REPUBLIC OF VANUATU  
MAGISTRATE  
COURT  
REPUBLICQUE DE VANUATU