

**PUBLIC PROSECUTOR**  
**-V-**  
**DAVID NAKOU IAKOAKO**

*Mr. T. Karae for the State*  
*Mr. A. Bal for the Defendant*

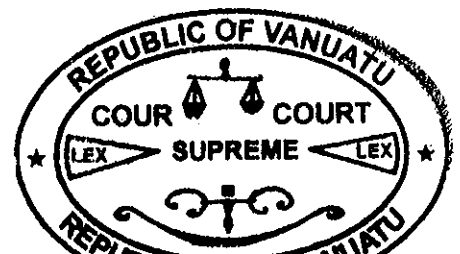
**SENTENCE**

David Nakou Iakoako, you have been convicted on your plea of guilty to an offence of Intentional Assault causing permanent damage contrary to section 107 (c) of the Penal Code Act [CAP. 135]. This is an offence which carries a maximum sentence of 5 years imprisonment.

The brief facts of the case which was outlined by the Prosecutor and admitted by you tells of how you and your father treated the complainant who is an elderly 70 year old widow.

To begin with in 2006 you and your father lied to the complainant who by then was a widow, that if she allowed your father to build some rent rooms on her land she would be given one room for her own use and benefit. When the house was built however, instead of giving the complainant the promised room, you sent her away.

The complainant had also planted numerous fruit trees in her compound including oranges, mandarins and mangoes. In early 2009 when the fruit trees were ready for picking, the complainant went to harvest the fruit but she was stopped from doing so by you and your father. The complainant returned however on 7 June 2009, and, with the help of her daughter, cut down the fruit trees that she had planted in the compound.



Later that evening you went and angrily confronted the complainant at her home and you assaulted her several times. You punched her on the left side of the face causing a bruise and swelling below the eye and knocking out a tooth. When she fell on the ground you kicked her on the back and ankle with your safety boots.

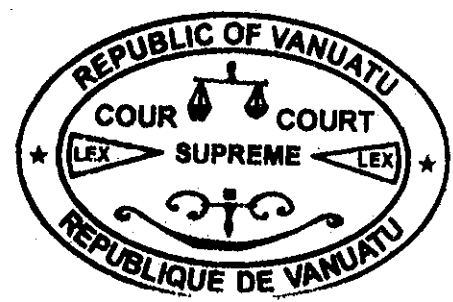
David Iakoako your pre-sentence report discloses the following personal circumstances:-

- You are 25 years of age, married with a child;
- You attended school up to year 8;
- Despite your lack of formal qualification you are considered a resourceful subsistence farmer and a good provider for your family;
- You support your father; and
- You have offered to perform a custom reconciliation ceremony to the complainant but she has not been receptive to your approaches.

I have taken these matters into account together with the submissions of your counsel who urges a non-custodial sentence on your behalf.

I note that you are a first time offender and although you said nothing to the police when questioned about the incident, you pleaded guilty to the charge which indicates a somewhat belated acceptance of responsibility for your actions and also shows some remorse on your part.

I do not doubt that the actions of the complainant in chopping down the fruit trees might be considered a provocative, even aggressive, act directed at you and your father, but equally, your actions in prohibiting her from picking fruit from the trees that she herself had planted was a deliberate interference with her entitlement to harvest the fruits of her labour. I note that you do not claim to have planted any of the fruit trees involved.



Your pre-sentence report states that the main contributing factor to your offending is your inability to control your anger but, whatever the reason might be, there can be no justification or excuse for this premeditated, sustained, and cowardly attack on an elderly widow by an able-bodied young man. The law exists to protect the weak and the defenceless and there are few more disadvantaged and more defenceless in society than an elderly widow who deserves all our sympathies and support.

In this case you punched the complainant (your adopted mother) with such force as to dislodge a tooth from her mouth and, when she fell on the ground helpless, you continued with your attack by kicking her several times. Such a gratuitous attack on a defenceless elderly widow cannot be condoned by the Court which has a duty to protect and uphold the right of women and girls in Vanuatu to be treated with respect and dignity.

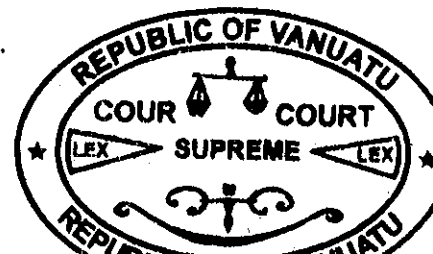
David Iakoako what you did to the complainant was neither respectful nor dignified and I am certain you would not like the same to be done to you or to your other female relatives.

In *Public Prosecutor v. Malesu* [2001] VUSC 37 which involved an intentional assault by a man on his defacto wife which caused her death, the Chief Justice said:

*"... the offence of this kind is very serious. ... as a man, using your fists and legs to kick a woman, a human being like you is intolerable in a society like Vanuatu. Man and woman are all human being and are not animal to be assaulted like you did to the deceased."*

In that case although the defendant pleaded guilty like you have done in this case, nevertheless, the Chief Justice imposed a deterrent sentence of 3 years and 4 months imprisonment. I accept that the victim did not die in this case but the Chief Justice's sentiments remain relevant.

Having carefully considered the various aggravating features in this case which outweigh the mitigating factors urged on your behalf, the sentence which this Court imposes on you David Iakoako is one of 12 months imprisonment.



I turn next to consider whether, in view of the circumstances of the case in particular, the nature of the crime and the character of the offender, this is an appropriate case to suspend the execution of the sentence.

In this regard I am persuaded from the circumstances of the crime and your hitherto good character, that this unfortunate incident was a "one-off" spur of the moment reaction and I accept that you should be allowed to remain in and continue to contribute to your community.

Accordingly your sentence of imprisonment is suspended for a period of 12 months. This means that if you stay out of trouble for the next 12 months and do not commit any further offences you will not have to serve this sentence and will be free of it.

You are warned however that if, within the next 12 months, you re-offend and are convicted of any other offence you may be required to serve this sentence of 12 months imprisonment in addition to any other sentence you may receive for your re-offending. What path you choose to follow is entirely in your hands.

In addition, and with a view to monitoring your progress and to help you stay out of trouble, I sentence you to 12 months supervision with a strong recommendation that you undergo counselling for anger management.

In suspending this sentence of imprisonment I have not ignored the cases drawn to my attention in Prosecuting counsel's submissions which, as always, are well thought out and comprehensive, but the cited cases are readily distinguished from the present. *PP v. Daniel* involved the complete loss of sight in one eye which cannot be compared to the loss of a tooth, and in *PP v. Willie Tataki* the victim sustained multiple injuries to her face and body and a cut to her nose which left a lasting disfiguring scar. The victim was also pregnant at the time and spent 6 days recovering in hospital and was off work for 12 days.

I am also mindful of what the Court of Appeal said in Jenkinson's case about a suspended prison sentence:



*"The defendant who receives such a penalty still suffers the stigma of a prison sentence, and for the duration of the suspension is at risk of actual imprisonment should another offence be committed."*

**DATED at Isangel, Tanna, this 21<sup>st</sup> day of May, 2010.**

**BY THE COURT**



**D. FATIAKI**  
Judge.

