

PUBLIC PROSECUTOR

V

KALFAU NASSE

Coram: Chief Justice Vincent Lunabek
Counsel: Ms. Josephine Tete for the Public Prosecutor
Mr. Lorenzo Moli for the Defendant

Date of Sentence: 1st August 2019

SENTENCE

1. Defendant Kalfau Nasse appears for sentence after entering a guilty plea on the one count of Domestic Violence contrary to sections 4 (1) (a) and 10 (1) of the Family Protection Act no. 28 of 2008 and pleaded not on the second count of possession of cannabis leaves, contrary to section 2 (62) and 17 of the Dangerous Drugs Act [CAP 12]. A Nulli Prosequi was entered in relation to the second count on possession of cannabis leaves. You are sentenced today only on that count of Domestic Violence.

2. Sections 4 (1) and 10 (1) of the Family Protection Act Provides:

"4. Meaning of domestic violence

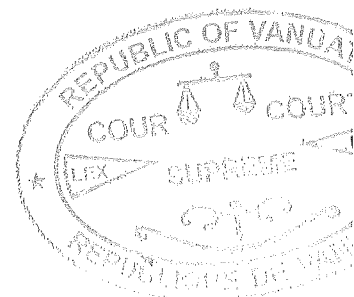
(1) *A person commits an act of domestic violence if he or she intentionally does any of the following acts against a member of his or her family.*

(2) *Assault the family member (whether or not there is evidence of a physical injury.)"*

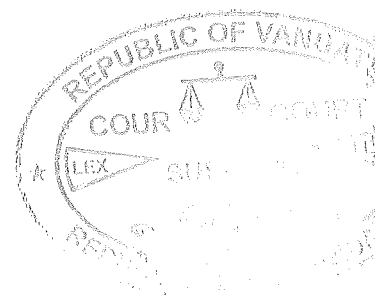
Section 10 says:

"10.

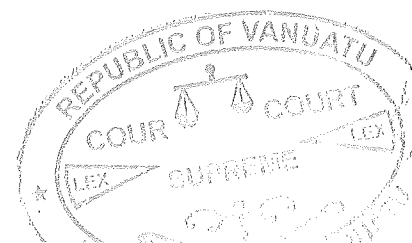
(1) *A person who commits an act of domestic violence is guilty of an assault punishable on conviction by a term of imprisonment not exceeding 5 years or a fine not exceeding 100, 00 vatu or both.*



3. The maximum penalty for an offence of domestic violence is a term of imprisonment not exceeding 5 years or a fine not exceeding 100, 000 vatu or both. It is a serious offence as intended by Parliament by this specific legislation of an imprisonment or fine or both.
4. The brief facts are that Mr. Nasse, you are 29 years of age and you originated from Tanna Island. You live in a de facto relationship with a woman. You have a daughter with her. The victim complainant is your biological mother. She lodged a complaint to the police on the 7th of March 2019 against you for assaulting her by slapping her in the face and punching her in the shoulder. This offending happened on the 6th of March 2019 at Laulalagis Village Tanna. On 6th March 2019 at Laukalagis Village, the complainant was with her grandson outside of the family home and you were sick with flu at that time. You came outside of the house and had blown you nose into your sister's bathing towel. Your mother saw it and told you to stop as there is a chance you sister might contract flu but you did not pay any attention. The second time you came outside and blew you nose into your sister's towel your mother again told you to stop doing so. This time, when the complainant told you the second time not to blow your nose into your sister's towel, you then turned around and punched her in her shoulder and slapped her in the face. The incident was reported to the police. The police officers came to your Village. You were cautioned and arrested. The complainant sustained injuries as the result of the domestic violence offence. A medical report was made on 7th March 2019 certifying:
 - Swollen jaw and gum
 - Swollen shoulder
 - Swollen right back
5. The prosecution refers to two cases in their submissions. The first is the case of **Public Prosecutor v. Wari [2017] VUSC 144**. This was an appeal from a Magistrate's Court sentence of a husband causing minor injuries on the body of his wife. The offender was on parole for similar offences. He was sentenced to 5 months imprisonment suspended for 2 years. The appeal was uphold and the suspended sentence of 5 months was then re-activated for its full term by the Supreme Court.



6. The second case is that of **Public Prosecutor v. Pita [2017] VUSC 177**. The facts of this case were more serious than the present case as they involved a breach of a protection order. They also involved assaults amounted to Domestic Violence, threats to kill and malicious damage to property occurring over a period of 2 years. The Judge gave a starting sentence of 5 years imprisonment concurrently with others. After appropriate deductions, the defendant was left with 35 months to serve. As he has already served 5 months imprisonment, the judge had partly suspended the sentence by imposing 1 year to be immediately served and suspended the balance of 18 months for a period of 3 years.
7. The prosecution acknowledges that the two above cases are more serious than the present case. However, the prosecution reminds the Court of the emphasis to be had with domestic violence which reflects deterrence.
8. The prosecution submitted that an end sentence of 2 years suspended imprisonment for a period of 2 years. In addition a supervision order of 12 months and 200 hours of community works.
9. Your lawyer submitted to this effect. He referred to two cases, namely the case of **Public Prosecutor –v- Thomas Maliwan [2018] VUSC** where the Court took into consideration the prolonged history of the domestic abuse and assault, the seriousness of offending and sentence the defendant to 2 ½ years' imprisonment; and the case of **Public Prosecutor – v- Moses Robert [2017] VUSC** where the defendant was charged with one count of domestic violence towards his de facto partner, threatened her with a knife in front of her 9 year old son and threatened the son as well. The defendant was sentenced to 17 months imprisonment. He had previous conviction for similar offending.
10. Your lawyer submitted that the above two cases are more serious than the facts of the present case. In this case, your lawyer submitted the Court should take into account of the fact that you are a first time offender; you have a daughter and you live with your parents and support them. You acted out of anger when you committed the offences. You are remorseful for your actions and plead guilty at the first opportunity given to you by the Court. Your lawyer submitted for an appropriate sentence of 100 hours community



work and suspension order. But if the Court considers an imprisonment sentence, then, that sentence will be suspended.

11. In the present case, you were angry because your mother told you not to blow your nose on your sister's towel as you might contract the sick flu to her, you should retreat as it was so obvious. You turned around the second time she told you not to do so and without a word punched her on the shoulder and slapped her in the face. Your mother got injured – swollen jaw and gum; swollen shoulder and swollen right back - These are aggravating factors coupled with the fact the complainant is your own mother. You are sentenced to 2 years imprisonment as a starting point.
12. In mitigation, you are a first time offender and are remorseful. I give you a credit allowance of 6 months for that. Your sentence is now reduced to 1 year and 6 months imprisonment. You are entitled to one third of that sentence which is of a further 6 months. Your end sentence is 12 months imprisonment.
13. I consider the nature of the crime, the circumstances of this offending and your character as the offender, I decide to suspend your imprisonment sentence of 12 months for a period of 2 years to give you a chance, as a first time offender, to take lessons for your breach of the law and to behave. The effect of the suspension of the sentence is explained to you. You assure me in court that you have understood it.
14. You have 14 days to appeal this sentence if you are unhappy with it.

DATED at Port Vila, this 1st day of August, 2019

BY THE COURT,



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Vincent Lunabek
Chief Justice

