

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal
Case No. 19/962 SC/CRML

PUBLIC PROSECUTOR

V

JACK NASEI

Coram: Chief Justice Vincent Lunabek
Counsel: Ms. Marie Taiki for the Public Prosecutor
Mrs. Kylie Karu for the Defendant

Date of Sentence: 31st July 2019

SENTENCE

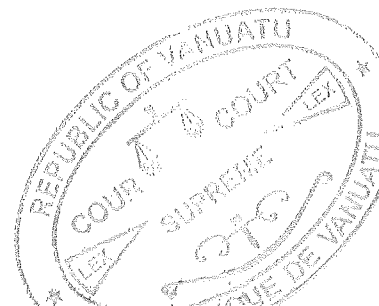
1. This is the sentence of Jack Nasei. Jack Nasei you are charged and pleaded guilty to one count of intentional assault causing damage on the body of another person resulting in permanent nature type injury, contrary to section 107 (c) of the Penal Code [CAP 135].

2. Section 107 (c) provides:

"107. No person shall commit intentional assault on the body of another person:

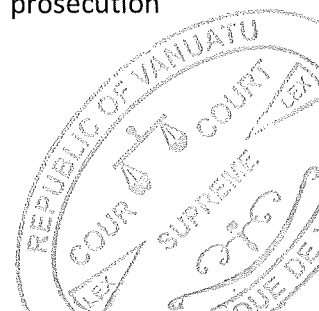
(c) If damage of permanent nature is caused, imprisonment for 10 years."

3. This is a serious offence as illustrated in the maximum penalty of 10 years imposed by law. It is noted that the maximum penalty for this category of offending under s. 107 (c) of the Penal code was 5 years imprisonment and it has now been increased by double by the Parliament in the Penal Code (Amendment) Act No. 15 of 2016. The law (as amended) comes into effect on 24th February 2017. This is a new dimension that I consider when I approach the sentencing of this Defendant in term of its seriousness and the makeup of the starting point sentence. The sentence that I pass on you today must reflect the



intention of the law maker and the particular circumstances of your offending. It may be that some court decisions passed before the new law (as amended) must be readjusted or reconsidered for this category of offence under S.107(c) of Penal Code.

4. The facts are these – Jack Nasei, you were born on 13 May 1974. On 19 January 2019 around 2.00pm at Mele area, you kicked the complainant until she was down on the ground. You kicked her on her stomach and rib inflicting pain on her and causing permanent damage on her body. The complainant is your de facto partner. She lives with you at Mele area for 1 year. You did not have any children together. On Tuesday 1st of January 2019 in the afternoon, your brother Peter Nukur was drinking alcohol liquor and came to the house you live in with the complainant at Mele. Peter Nukur questioned you on why you let the complainant go drinking on a previous occasion. The complainant hearing this began to get upset. The complainant told Peter Nukur that: *“You no save reason why mi drink, brother blong you go tekem narafala woman i spolem heart blong mi”* (translation being: *“You don’t know the reason why I drink, your brother has been seeing another woman and it spoils my heart”*). The complainant further said to Peter Nukur: *“Olsem you lego woman blong you bai hemi kam stap wetem Jack bageggen”* (translation being: *“If so, let your wife go, she will come and stay with Jack”*). When you heard what the complainant said you became angry, you kicked the complainant and she fell down. You continued to kick her to the ground, on her rib and stomach. She was on the ground crying and calling for help; you did not take notice of her and went back inside the house. Peter Nukur said: *“lego samting ia i stap kiaman ded ia”* (translation being: *“Let this thing who lied dead there”*). On Wednesday 2 January 2019, the complainant’s sister came and took her to the Vila Central Hospital. She was examined by the Doctors and admitted to the hospital. The Medical Report by Dr. Vincent Atua who examined the complainant, found that she had internal bleeding and admitted to surgical ward:- Ruptured spleen and injury to her left kidney.
5. I have the opportunity to read and consider the Pre-Sentence report filed by the Probation Service dated 30 May 2019. I also read and consider the prosecution



submissions and authorities relied upon. I further read and consider the submissions and case authorities provided by your lawyer in her submissions on your behalf.

6. The prosecution refers to the Court of Appeal judgment in the case of **Tari –v- Public Prosecutor [2011] VUCA 26** where a bottle was used against a victim causing serious permanent injuries. The Court of Appeal said this:

*“Where an assault involves unprovoked violence and causes permanent serious injury, an immediate custodial sentence is appropriate.” A starting point of 3 years was imposed given that a weapon was used. The prosecution refers also to the following cases on the purposes of the sentencing and punishment and in particular violent assaults on women: **Public Prosecutor –v- Daniel [2005] VUSC 15; Public Prosecutor –v- Tataki [1994] VUSC 12 (16 September 2016); Public Prosecutor –v- Bani [2017] VUSC 105; criminal case no. 3849 of 2016 (14 February 2017); Public Prosecutor v. Mael [2018] VUSC 150; criminal case 1363 of 2018 (31 July 2018).***

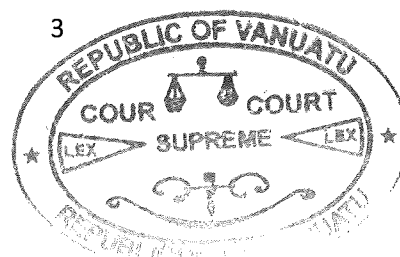
7. The Prosecution identified the following aggravating factors exist:

- a) Unprovoked attack...;
- b) Force used....;
- c) She is vulnerable; and
- d) The actions are serious Breach of trust.

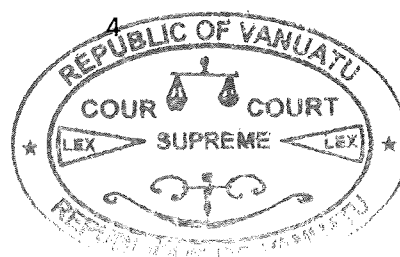
8. In addition to the aggravating factors, the victim impact assessment shows of the effect of the assault on the complainant:

- Her body is no longer as fit as it was before the assault. She continues to feel pain in her body and she no longer does heavy work. The change of weather, as it gets cold she feels the pain on her hips; she feels pain in her stomach. She never felt that pain before and it makes her sick.

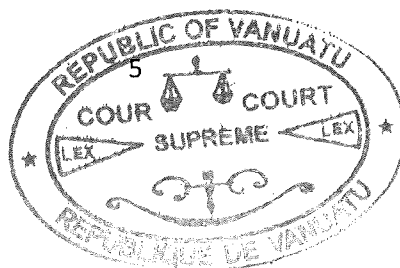
- She continues to have fear as she may run into your family who may not be happy about her because of the report she made to the police. She now lives in fear and not like before she not afraid.



9. The prosecution submitted a starting point sentence for an offence of intentional assault causing permanent injury of this type, that does not fall into the worst category of cases but it is serious, the starting point is not below 3 years and an uplift of 1 year to reflect the aggravating factors present in this case. The Court will make appropriate deductions for an early guilty plea and an end sentence of imprisonment having the effect to deter these types of offences against women. The prosecution said it is also open to the Court to suspend the end sentence with an additional supervision order to require you to attend rehabilitation or workshop such as Anger Management and Community Work.
10. Your lawyer submitted on your behalf to this effect. She refers to the case of **Public Prosecutor –v- Quaga [2018] VUSC 163** where the defendant was charged with one count of intentional assault causing permanent injury to section 107 (c) of the Penal Code. He entered guilty plea on the facts that on the night before the incident the defendant assaulted the victim on her chest with a piece of wood. In the morning when the defendant approached the victim again he was drunk and had a knife in his hand. He cut the victim with the knife on her right arm and cut off the tip of her right index finger. The medical report reveals there were multiple cuts to her right forearm and the tip of her right index finger was severed with a scar forever on her right hand. The Defendant received an end sentence of 18 months imprisonment which is suspended for two years. There was no recent medical report to show the complainant current situation.
11. Your lawyer submitted the appropriate starting point sentence is 2 years imprisonment. An uplift of 1 year to reflect the aggravating factors increasing the starting point to 3 years. The Court must deduct one third deductions for your early guilty plea. Another deduction for 6 months for other mitigating factors and an end sentence of 17 months imprisonment to be suspended for 2 years on the basis, you are a first time offender, you do not have previous conviction; you plead guilty at the earliest opportunity which shows are remorseful. You had spent two months and 10 days in pre-custody. Your lawyer said it should be considered as enough as punishment for this act in this case. In addition an order for supervision is added to your suspended imprisonment sentence.



12. When I consider your sentencing, I consider first the following aggravating factors which exist in the circumstances of this case:
- a. The violent attack on the body of the complainant is an unprovoked one – you were out of anger when you heard what the complainant was saying to your brother.
 - b. There was force used with your leg (kicking) on her body.
 - c. The violent attack with force caused serious damage.
 - d. She is a vulnerable person. She is a woman, she is smaller than you.
 - e. There were repetitions of the kick while the complainant was on the ground.
 - f. Breach of trust – the complainant is your de facto partner and she lives with you. Your actions against her are a serious breach of trust.
 - g. The effect of the assault on the complainant and her life. Her body is not as fit as it was before. She continues to feel pain in her body and she no longer does heavy work. She feels pain in her body when it was cold and this makes her sick as she never had this before. She also lives in an environment of fear of your family as they are not happy with the report she made to the police.
13. The starting point sentence is one of 3 years imprisonment. I give an uplift of 1 year to reflect the seriousness of the aggravation in this case. The appropriate starting point sentence is 4 years imprisonment taken the increase in the (Amendment) provision increasing the maximum penalty for this offence from 5 years to 10 years imprisonment since February 2017.
14. In Mitigation, I deduct 6 months for the fact that you do not have previous conviction. An additional 3 months to reflect on your remorse and a further 6 months to reflect the custom reparation or reconciliation you did to the complainant and she accepted despite



refusing the first reconciliation attempt. Your sentence is now 33 months imprisonment. A further one third reduction of that to reflect your early guilty plea at the first opportunity given to you by the Court. You have an end sentence of 22 months imprisonment.

15. You have already spent a period of 2 months and 2 weeks and 3 days in Pre-Custody period. They will be deducted in your favour.
16. Your end sentence is 19 months and 1 week and 4 days imprisonment.
17. I consider whether I should suspend this term of imprisonment. I note and consider the unprovoked nature of the violent attack on your partner, I consider the particular circumstances of this offending and in particular the fact that she is a woman and weak member of the community. I consider your character as the offender, I decline to suspend it.
18. You shall serve that term with effect that will start tomorrow Thursday 1 August 2019 as you were on bail and you should go back to your house, talk to your family and get personal property you will need before you enter custody to serve your imprisonment term of 19 months and 1 week and 4 days.
19. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port Vila, this 31st day of July, 2019

BY THE COURT


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Vincent Lunabek
Chief Justice

