

PUBLIC PROSECUTOR

v

KENNETH KALO

Date: 15 September 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr C. Shem
Defendant – Mrs P. Malites

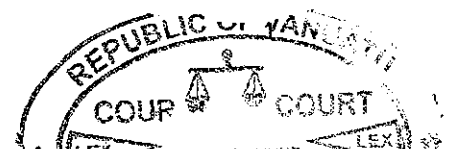
SENTENCE

A. Introduction

1. Mr Kalo pleaded guilty to domestic violence (Charge 1), threat to kill (Charge 2) and intentional assault (Charge 3). He is convicted on his own pleas and the admitted facts.

B. Facts

2. At the time of the offending, Mr Kalo and the complainant Anika Vavora were living in a *de facto* relationship. They have a son together who was 4 at the time of the offending.
3. On 8 August 2021, Mr Kalo went to Ms Vavora's workplace the Saloon Bar. He became angry with her, threw a glass of alcoholic drink at her and rowed at her to go outside. This was offensive and intimidating behaviour (Charge 1). He also hit the table with his hand which caused great fear to her. He tried to enter the bar to hit her but the security guard stopped him.
4. After this, Ms Vavora went to a friend's house at Fresh Wota 1 area where she rested the whole of the day on 8 August 2021. At night, Mr Kalo arrived at her friend's house and demanded that she return with him to their house at Club Hippique. She cried but Mr Kalo told her that, "*Sapos yu no wantem folem mi go lo haos, bae mi kilim yu ded lo hammer*" ('If you do not come home with me, I will kill you dead with a hammer'). She was afraid so she did as Mr Kalo wanted and went home with him (Charge 2).
5. On 10 August 2021, Ms Vavora made another Police complaint that on 9 August 2021, she returned home from work at around 10pm. She knocked on the door and Mr Kalo opened it. When she tried to enter, Mr Kalo squeezed her neck with his hands. She



struggled and managed to free herself and ran off. She returned a while later thinking that Mr Kalo was no longer angry with her. However, as soon as she entered the house, he turned off the lights and assaulted her. She could not tell what he used to assault her but she felt blood running down her face. A witness who is a sister of Ms Vavora saw Mr Kalo kick Ms Vavora's face repeatedly and beat her with his hands repeatedly. The injuries caused included laceration on the right side of the forehead requiring 5 stitches, bleeding from the right nostril, laceration on the upper lip and facial swelling (Charge 3).

6. Mr Kalo admitted his offending to the Police.

C. Sentence Start Point

7. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.

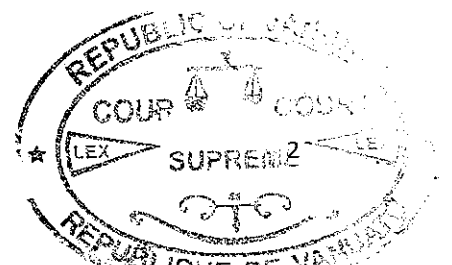
8. The maximum sentences provided are:

- a. Threat to kill – 15 years imprisonment (s. 115, *Penal Code* [CAP. 135]);
- b. Intentional assault – 5 years imprisonment (s. 107(b), *Penal Code*); and
- c. Domestic violence – 5 years imprisonment or VT100,000 fine or both (ss 4 and 10, *Family Protection Act* No. 28 of 2008).

9. There are no mitigating aspects of the offending but it is aggravated by the following:

- Serious breach of trust;
- The shame and humiliation cause to the complainant at her workplace (Charge 1);
- The offending occurred in the home where the complainant was entitled to be safe and protected (Charge 3);
- The offending occurred at night;
- The repeat nature of violence;
- The controlling attitude demonstrated;
- There was some planning involved including switching off the lights before assaulting the complainant; and
- The effect upon the complainant including the fear caused to her and injuries inflicted to her head which is the most vulnerable part of the body.

10. The factors set out above require a global sentence start point of 4 years imprisonment.



D. Mitigation

11. Mr Kalo pleaded guilty at the first opportunity. He has spared the complainant the need to give evidence against him however, the Prosecution case against him was strong. I therefore deduct 25% from the sentence start point.
12. Mr Kalo is 27 years old. He has a son. He works as a driver for Au Bon Marche supermarket. His ambition is to travel to Australia for seasonal work and buy land and build a house for his family.
13. Mr Kalo has no previous convictions. He is willing to perform a custom reconciliation ceremony but the complainant has refused. He is stated to be remorseful. He has not breached his bail conditions in the past 2 years.
14. For Mr Kalo's personal factors, I deduct a further 15% from the sentence start point.

E. End Sentence

15. Taking all of those matters into account, the end sentences imposed concurrently are:
 - a. Threat to kill (Charge 2) 2 years 7 months imprisonment;
 - b. Intentional assault (Charge 3) 2 years imprisonment; and
 - c. Domestic violence (Charge 1) 6 months imprisonment.
16. The Court has a discretion under s. 57 of the *Penal Code* to suspend all or part of the sentence where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender."
17. The offending was serious. On the other hand, I have regard to Mr Kalo's prior clean record, employment, strong prospects for rehabilitation, plus the fact that he has not breached his conditions of bail for the past 2 years. I note that the complainant is in a new relationship which Mr Kalo has accepted. I therefore exercise my discretion and suspend the sentences for 2 years. Mr Kalo is warned that if he is convicted of any offence during that 2-year period that he will be taken into custody and serve his sentences of imprisonment, as well as the penalty imposed for the further offending.
18. In addition, Mr Kalo is to undertake 100 hours of community work.
19. Mr Kalo has 14 days to appeal.

DATED at Port Vila this 15th day of September 2023

BY THE COURT


Justice Viran Molisa Trief

