

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

Criminal
Case No. 23/871 SC/CRML

PUBLIC PROSECUTOR

v

MAEL SAUL ENOCK

Date: 31 October 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms G. Kanegai
Defendant – Ms F. Kaisakau

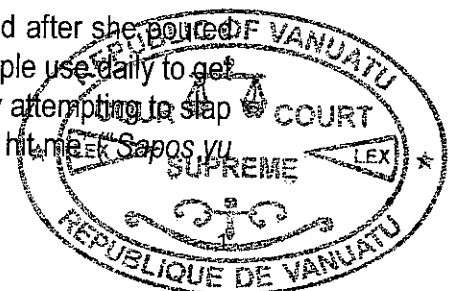
SENTENCE

A. Introduction

1. The Defendant Mael Saul Enock pleaded guilty to arson contrary to subs. 134(1) of the *Penal Code* [CAP. 135] (Charge 3) and domestic violence contrary to para. 4(1)(c) and s. 10 of the *Family Protection Act* No. 28 of 2008 (Charge 2). He is convicted on his own pleas and the admitted facts.
2. The Prosecution today entered *nolle prosequi* as to the charge of threat to kill contrary to s. 115 of the *Penal Code* (Charge 1). I informed Mr Enock that he was immediately discharged in respect of that charge.

B. Facts

3. The complainants Steve Enock Rangimen and his spouse Manen Dorethy Hokau are Mr Enock's son and daughter-in-law.
4. In August 2022, Mr Enock and his daughter-in-law Ms Hokau argued after she poured dirty water onto the main passage way between two yards which people use daily to get to school and the church. Mr Enock intended to assault Ms Hokau by attempting to slap her face (Charge 2). She yelled, 'If you are angry with me, come and hit me.' Sapos yu



kros, yu kam kilim mi). He replied, 'I did not ask to fight and argue with you' (*"Mi no askem blong faet mo raorao wetem yu"*).

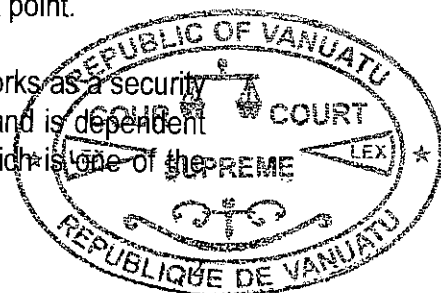
5. The complainants built a house together in 2022. They used building materials owned by Mr Enock without his consent.
6. On 30 April 2023, Mr Enock was furious when his son Mr Rangimen swore and hurled vulgar language at him. Mr Enock then set fire to the house, after pouring on benzene, and caused damage to the interior parts of the house, burning clothes and mattresses (Charge 3).

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) Arson – 10 years imprisonment; and
 - b) Domestic violence – 5 years imprisonment or a fine not exceeding VT100,000 or both.
9. The aggravating factors of the offending are the serious breach of trust and that the offending took place at the complainants' home where they are entitled to be safe.
10. The mitigating factor of the offending is that Mr Enock was provoked by the complainants using his building materials without his consent to build their house, and the swears and vulgar language directed at him by his son complainant Mr Rangimen. I can understand that Mr Enock was upset and ashamed then angered by these acts by the complainants.
11. The global sentence start point that I adopt, taking all matters into account, is 18 months imprisonment.
12. An uplift of 1 month is added to the sentence start point for Mr Enock's conviction in 2022 for domestic violence.

D. Mitigation

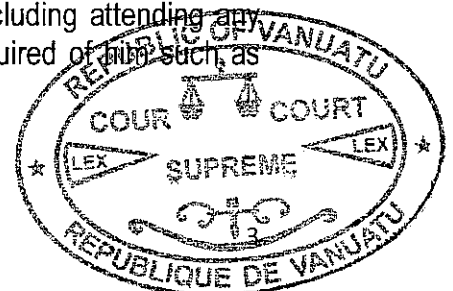
13. Mr Enock pleaded guilty at the first available opportunity. This has spared the need for the complainants to give evidence and saved time however the Prosecution case against him was strong. I therefore deduct 25% from the sentence start point.
14. Mr Enock is 58 years old. He lives at Melemaat village on Efate and works as a security guard at Port Vila Hardware. His wife is ill, has had a leg amputated and is dependent on him. They have four sons and two daughters, the youngest of which is one of the complainants in this matter.



15. Mr Enock has performed a custom reconciliation ceremony with his daughter-in-law Ms Hokau. He has not yet performed such ceremony with his son Mr Rangimen as he is on seasonal work overseas. He remains willing to perform such ceremony.
16. He is stated to be remorseful and has the support of his chief who had previously spoken with Mr Enock about his short temper.
17. A further 25% is deducted from the sentence start point for Mr Enock's personal factors.
18. Finally, Mr Enock spent 3-17 May 2023 in custody, effectively a month's imprisonment. Accordingly, a further month is deducted from the sentence start point.

E. End Sentence

19. The sentencing principles applicable in this case are holding Mr Enock accountable for his conduct, to denounce the criminal conduct and emphasize public disapproval of such offending, to protect the community, and to deter him and others from acting in this manner in future.
20. Taking all of those matters into account, the end sentences imposed are as follows:
 - a) Arson – 8 and a half months' (Charge 3); and
 - b) Domestic violence (Charge 2) – 4 months imprisonment.
21. 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."
22. While the offences that Mr Enock has been convicted of can be serious offences, in this case they were at the lower range of criminal culpability. In addition, the provocation to Mr Enock resulting in the offending, his custom reconciliation ceremony with the complainant Ms Hokau and willingness to perform one with his son on his return to Vanuatu, and work and family responsibilities favour suspension of sentence. I would also encourage the complainants to perform a custom reconciliation ceremony with Mr Enock following this sentencing. In the circumstances, I am prepared to exercise my discretion under s. 57 of the *Penal Code* to suspend the sentences for 1 year. Mr Enock is warned that if he is convicted of any offence during that 1-year period, that he will be taken into custody and serve these sentences of imprisonment, as well as the penalty imposed for the further offending.
23. In addition, Mr Enock is to complete 6 months of supervision including attending any Department of Correctional Services' rehabilitation programs required of him such as the anger management, "*Managem kros blo mi*" module.



24. Mr Enock has 14 days to appeal the sentence.

DATED at Port Vila this 31st day of October 2023
BY THE COURT

VM Trief
Justice Viran Molisa Trief

