

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

Criminal
Case No. 24/1356 SC/Criminal

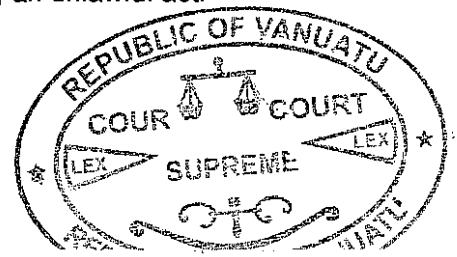
BETWEEN: PUBLIC PROSECUTOR
AND: YVES ENKEY

Date of Trial: 19 and 22 July 2024
Date of Verdict: 13 August 2024
Before: Justice M A MacKenzie
Counsel: Mr. S. Blessing for the Public Prosecutor
Mr. E. Molbaleh for the Accused

VERDICT

Introduction

1. Mr Enkey faces 8 charges, as detailed in the Information.
2. On 24 May 2024, Mr Enkey pleaded guilty to charges 1, 2 and 5. These charges involve domestic violence towards his partner, Regilla Arcknaveth ("Regilla") and brother-in-law. Charges 1 and 2 relate to physical violence. Charge 5 relates to abusive language.
3. Mr Enkey pleaded not guilty to charges 3, 4 and 6-8.
4. The charges are;
 - a. **Charge 3-** domestic violence contrary to ss 4 and 10 of the Family Protection Act. The particulars are that Mr Enkey bit Regilla's ear so that it bled profusely.
 - b. **Charge 4-** attempted unpremeditated intentional homicide, contrary to ss28 and 106(1)(a) of the Penal Code [CAP135]. The particulars are that Mr Enkey attempted to cause Regilla's death by squeezing her neck, an unlawful act.



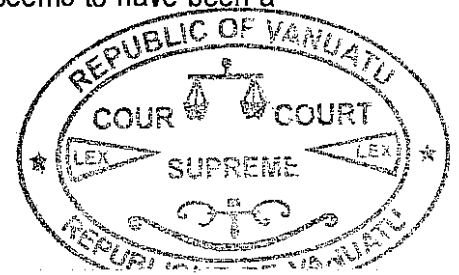
- c. **Charge 6-** domestic violence contrary to ss 4 and 10 of the Family Protection Act. The particulars are that Mr Enkey psychologically abused the complainant, by abusing, harassing, and intimidating her by making threats to harm her 2 brothers if she refused to return home.
 - d. **Charge 7-** threat to kill contrary to s115 of the Penal Code [CAP135]. The particulars are that Mr Enkey made oral threats to the complainant that “*You must follow everything I say. If you don’t follow, I will come to your house and kill you. And if I can’t get to you, I will kill your two brothers*”
 - e. **Charge 8-** attempted premeditated intentional homicide, contrary to ss28 and 106(1)(b) of the Penal Code [CAP135] The particulars are that Mr Enkey attempted to cause the complainant’s death by an unlawful act, in that he pursued her with a machete, stabbed her in the upper back, causing her to collapse and continued to stab her legs and hands and across her body.
5. Each charge must be considered separately, as though each charge had its own separate trial

Charge 6

6. Prior to the prosecution closing its case, I invited Mr Blessing to review the evidence relating to charge 6. My review of the evidence was that there was no evidence to support the charge. As such, there was no case to answer in respect of charge 6. Mr Blessing confirmed that he intended to make a *nolle prosequi* application in relation to charge 6, and he did so when Court commenced after the lunch adjournment.
7. Pursuant to s 29 of the Criminal Procedure Code (CPC), the prosecutor may enter a *nolle prosequi*. The effect is that Mr Enkey is therefore discharged in respect of charge 6.

Amendments to charges 7 and 8

8. I granted leave to Mr Blessing to amend the date of charge 7 and the date and particulars of charge 8. Mr Molbaleh did not oppose the amendments to either charge. In relation to the particulars of charge 8, it is to fit the proof. It seems to have been a



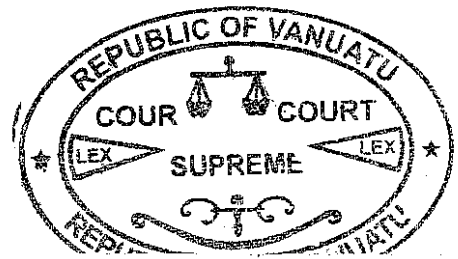
drafting issue, as the prosecution case in relation to charge 8 was always that Mr Enkey stabbed Regilla Arcknaveth. There was no prejudice to Mr Enkey arising from the proposed amendments. I address the issue of the materiality of the date of an offence at paragraphs 10 to 14.

9. In relation to charge 7, I directed a translated version of the particulars, which in part, were in Bislama. Mr Molbaleh took no issue with the translation.

Materiality of date

10. If the evidence at trial differs from that particularised in the charge, that is not as a rule fatal to a conviction. Refer *Dossi* (1918) 13 Cr App R 158 and *Pritchett* 2007 EWCA Crim 586. The position will be different with the allegation as to the date is not merely procedural but may determine the outcome of that house. For example, in some instances the date on which the act occurred will affect the age of the alleged victim which may be material.
11. Since divergence between a charge and evidence as to date is not in itself fatal to a conviction, it may not be necessary for the prosecution to apply for a charge to be amended if a difference becomes apparent. Refer *Dossi*.
12. In his written closing submissions, Mr Molbaleh submitted that a number of charges could not be proved because they did not happen on the dates particularised in the charges. He did not raise this during the trial.
13. While it would have been prudent for the prosecutor to seek to amend the dates of all the charges, it is not fatal. It will not affect the outcome of the charge and there is no prejudice to Mr Enkey as the trial issue is that Regilla either exaggerated or lied about the incidents.¹
14. The evidence itself clearly establishes when the two alleged incidents occurred. Regilla said the first incident took place on 17 January 2024, and was medically examined on 19 January 2024. The second incident took place on 22 February 2024, which is the date of the medical examination. The divergence between the dates as particularised appears to have arisen from a lack of attention to detail by the prosecutor. This is discussed further below.

¹ The credibility and reliability of Regilla's evidence is not the only trial issue. For example, in his written submissions, Mr Molbaleh raises an issue as to whether the prosecution has proved intentional to kill in relation to charges 4 and 8.



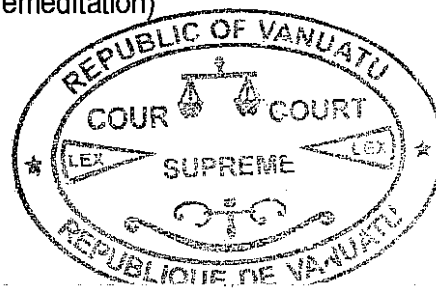
Elements of the offences

Charge 3- Domestic violence

15. Under the Family Violence Act, domestic violence is an intentional act against a family member. The charge will be proved if I am sure that:
1. Regilla is a member of Mr Enkey's family, as defined in s 3 of the Family Protection Act 2008 (*the Act*).
 2. Mr Enkey intentionally assaulted Regilla. Pursuant to s 4 of the Act, a person commits an act of domestic violence if he or she intentionally does any of a number of acts against a family member. It includes an assault.

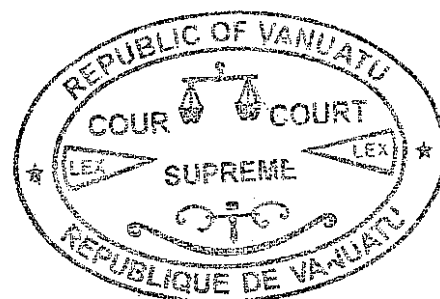
Charges 4 and 8 – Attempted intentional homicide

16. There are two charges of attempted intentional homicide, which relate to two separate incidents.
17. The first incident involves an alleged strangulation on 17 January 2024. The attempted intentional homicide charge relating to this incident is laid under ss 28 and 106(1)(a) of the Penal Code- attempted **unpremeditated** intentional homicide.
18. The second incident is alleged to have taken place approximately a month later and involves Mr Enkey allegedly stabbing Regilla with a knife. The attempted intentional homicide charge relating to this incident is laid under ss 28 and 106(1)(b) of the Penal Code- attempted **premeditated** intentional homicide.
19. The two most recent Court of Appeal cases to have considered attempted intentional homicide are *Namri v Public Prosecutor* [2018] VUCA 52 and *Bakeo v Public Prosecutor* [2023] VUCA 24.
20. In *Namri v Public Prosecutor*, the charge was laid under ss28 and 106(1)(b) of the Penal Code. The Court of Appeal held that a charge of attempted premeditated intentional homicide has the following elements;
1. An accused intended to kill.
 2. The intention to kill was formed before the killing (premeditation)



3. What the accused did was an attempt to intentionally kill
21. In *Bakeo v Public Prosecutor*, the charge was laid under ss 28 and 106(1)(a) of the Penal Code. This is attempted unpremeditated intentional homicide. The Court of Appeal held that a charge of attempted intentional homicide has the following elements;
1. At the relevant time before the event occurred, an accused must have had an intention to kill.
 2. The accused then must have undertaken an act, or omitted an act, as a step toward committing that crime
 3. That act must be sufficiently proximate or immediately connected to the intention to kill.
22. While the Court of Appeal noted that the relevant statutory provisions were ss28 and s106(1)(a), there is no specific discussion about the charge being attempted unpremeditated intentional homicide. Rather, the elements identified by the Court appear to relate to attempted premeditated intentional homicide. This is particularly when I consider both *Namri v Public Prosecutor* and *Bakeo v Public Prosecutor* alongside each other.
23. Premeditation is defined in *Pakoa v Public Prosecutor* [2019] VUCA 51 as a decision made before the act.² The Court confirmed that the premeditation needs to be before the act. So, the first element of attempted premeditated intentional homicide as detailed in *Bakeo v Public Prosecutor* appears to relate to premeditation even though a charge under section 106(1)(a) is unpremeditated intentional homicide. In my respectful view the first element for attempted unpremeditated intentional homicide is – “is there an intention to kill?”
24. I am fortified in my view about this when I consider *Namri v Public Prosecutor*, and the elements of unpremeditated intentional homicide as referred to in *Kal v Public Prosecutor* [2016] VUCA 56, citing with approval *Koroka v Public Prosecutor* [2007] VUCA 3. In *Namri v Public Prosecutor*, it was held that the first element was intention to kill, and the second element addressed premeditation. In *Kal v Public Prosecutor*, the charge was unpremeditated intentional homicide as the charge was laid under s106(1)(a). The Court of Appeal agreed that the elements were;

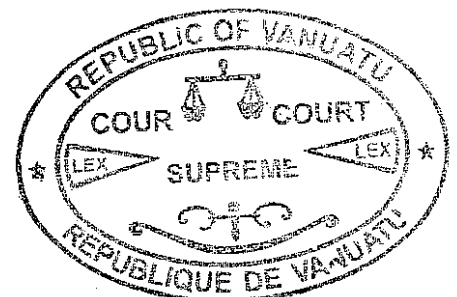
² at [16].



- a. An intentional act.
 - b. Which was unlawful
 - c. The unlawful act caused the death in question.
25. There is a distinction between s 106(1)(a) and (1)(b). So, in my respectful view, the elements of the respective offences must reflect the difference between premeditated and unpremeditated intentional homicide. But as currently framed in both *Namri v Public Prosecutor* and *Bakeo v Public Prosecutor*, the elements appear to be the same. With respect, that cannot be right.
26. In relation to charge 4, I proceed on the basis that the elements are as set out in *Bakeo v Public Prosecutor*, even though I do not think that the first element is correct. This is because it is binding.
27. In relation to charge 8, I consider that the elements are as set out in *Bakeo v Public Prosecutor*. That is consistent with *Namri v Public Prosecutor*, which did involve a charge of attempted premeditated intentional homicide.

Charge 7-threat to kill

28. For a charge of threat to kill contrary to section 115 of the Penal Code, the elements are:
1. Mr Enkey directly caused Regilla to receive oral threats to kill her and her brothers.
 2. Mr Enkey knew the contents of the threats.
 3. Mr Enkey intended the threats to be taken as real.
29. A review of cases tends to suggest some divergence as to the elements of threat to kill. I have derived the elements from *Public Prosecutor v Ahelmalahlah* [2021] VUSC 329. On appeal, the nature of the threat was in issue (rather than the elements). But there was no issue raised about the elements, so respectfully I adopt the elements identified by the primary judge in that case.



Burden and standard of proof

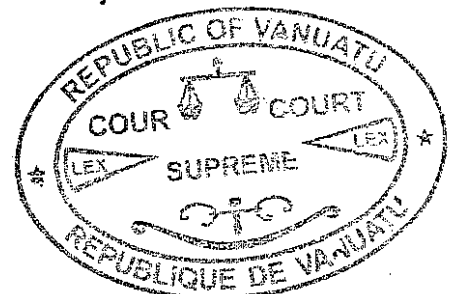
30. The Prosecution has the onus of proof and is required to establish the elements of each charge beyond a reasonable doubt before a finding of guilt can be made in respect of the charges. This excludes consideration of any possibility which is merely fanciful or frivolous. Mr Enkey is not required to establish anything.
31. This was confirmed to Mr Enkey prior to the prosecution opening its case, as the statement required by s 81 of the Criminal Procedure Code was read out to Mr Enkey.
32. Proof beyond reasonable doubt is a very high standard. I must be sure of each element of a charge before there can be a finding of guilt.

Submissions

33. At the conclusion of the evidence, counsel requested time to file written closing submissions. I granted the request. I have read and taken into account their submissions.

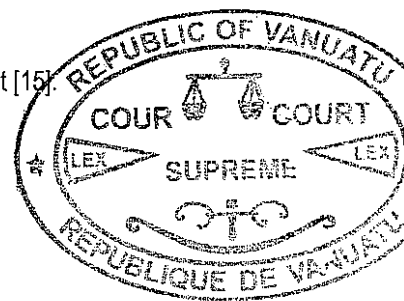
The evidence

34. The prosecution called two witnesses who gave in person evidence; the complainant Regilla Arcknaveth and her brother, Gouthier Arcknaveth. The evidence of Charlie Arcknaveth was read to the Court, and was translated from English into Bislama. There were a number of exhibits produced by consent during the trial, as detailed and discussed below.
35. In assessing the evidence given by the witnesses, there are a number of factors which assist with considering whether the witnesses gave truthful and accurate evidence. In considering the evidence of all the witnesses who gave evidence during the trial, I have considered the reasonableness, probability and coherence of the evidence. Sometimes conflicts or differences in the evidence can be caused by mistakes and misinterpretation; sometimes witnesses can see and hear things that were not seen and heard by other witnesses. This does not mean one of the witnesses is necessarily not telling the truth. Sometimes conflicts are not able to be explained away.



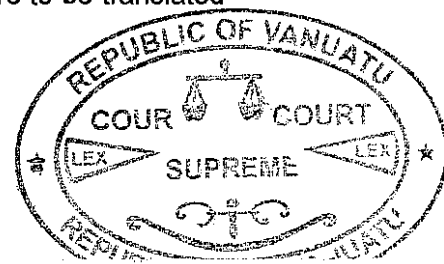
36. In considering evidence, I may accept everything a witness has said. I may reject everything a witness has said. There is a middle ground. I may accept parts of a witness' evidence and reject other parts. I must consider the whole of the evidence.
37. The witness' demeanour is a small part of my assessment of the witness. I prefer though to look at what the witness actually said, and take into account;
- a. consistency within the witness' account and over time;
 - b. consistency when comparing the witness' account with relevant exhibits;
 - c. consistency with the evidence of other witnesses whose evidence I have accepted.
 - d. Whether there is supporting evidence. There does not have to be, but it may help.³
 - e. the inherent plausibility and coherence, or not, of the witness' account. Does it make sense?
38. It is important that I consider each witness' evidence in the context of all the evidence in the case. Also, witnesses can be inaccurate or may not remember secondary, marginal or important facts for various reasons, including that they were not seen as important at the time. However, their evidence may be accurate about essential matters, but not about details. Essential matters are matters which relate to the elements of the charges.
39. I reminded myself that if I were to draw inferences, they cannot be guesses or speculation but had to be logical conclusions drawn from reliably accepted or properly established facts. As was said by the Court of Appeal in *Swanson v Public Prosecutor [1998] VUCA 9*, inferences may be drawn from proved facts if they follow logically from them. If they do not, then the drawing of any conclusion is speculation not proof. Speculation in aid of an accused is no more permissible than speculation in aid of the prosecution. Inferences need not be irresistible.

³ There is no general requirement for corroboration; *Walker v Public Prosecutor* [2007] VUCA 12 at [15].



Exhibits

40. There were a number of exhibits produced by consent, as follows;
- a. **Exhibit 1** - Formal Admissions
 - b. **Exhibit 2** - Statement of Kelly Tawai dated 30 January 2024 relating to Mr Enkey's arrest
 - c. **Exhibit 3** - Statement of Kelly Tawai dated 30 January 2024 relating to the record of interview with Mr Enkey.
 - d. **Exhibit 4** - Statement of Kelly Tawai dated 2 March 2024 relating to Mr Enkey's second arrest
 - e. **Exhibit 5** - Statement of Kelly Tawai dated 2 march 2024 relating to the record of interview with Mr Enkey
 - f. **Exhibit 6** - Mr Enkey's Caution Statement dated 30 January 2024.
 - g. **Exhibit 7** - Mr Enkey's caution statement dated 2 March 3024.
 - h. **Exhibit 8A- B** - Photographs of Regilla's injuries
 - i. **Exhibit 8C** - Photo of the backside of Regilla (Tee Shirt)
 - j. **Exhibit 9** - Medical report dated 19 January 2024
 - k. **Exhibit 10** - Medical Report dated 22 February 2024.
 - l. **Exhibit 11** - Crime scene notes
 - m. **Exhibit 12** - Statement of Athen David dated 1 March 2024
 - n. **Exhibits 13A-13J** - Photographs of Regilla taken by Athen David.
 - o. **Exhibit 14** - Forensic diagram detailing location of stab wounds on Regilla's body
 - p. **Exhibit 15** - Statement of Charlie Arcknaveth.
41. All the exhibits produced, other than the two medical reports were in Bislama. Accordingly, I directed that all statements/documents in Bislama were to be translated



into English. Mr Blessing was to arrange this and then show the translated documents to Mr Molbaleh, who was to confirm he agreed with the translation.

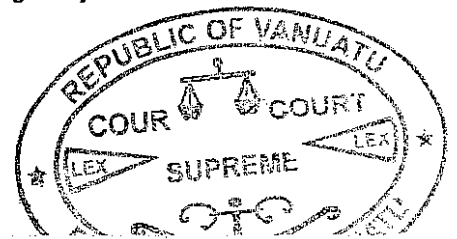
The complainant's evidence

Mode of evidence

42. The complainant, Regilla Arcknaveth's evidence was given in a closed court. At the outset of the trial Mr Blessing sought this direction. There was a delayed start to the trial and when counsel advised the court that the trial would be proceeding, I directed Mr Blessing to consider how Regilla was to give her evidence, as the charges relate to serious alleged domestic violence. In such cases, the Court should consider a complainant's vulnerability. The application was not opposed by Mr Molbaleh.
43. There are various alternative ways for a witness to give evidence, including closing the Court. Others are the use of a screen or an AVL link. The purpose of these types of measures is to ensure that a vulnerable witness is able to give the best quality evidence they can. Such measures say nothing about a defendant and no adverse inference is to be drawn against Mr Enkey because Regilla gave her evidence in this manner.
44. Currently the Civil Procedure Rules provide for alternative ways of giving evidence. Yet the Criminal Procedure Code does not. That is curious given that the vulnerable complainants in criminal trials are required to give evidence re living traumatic experiences often of a very personal nature. In making the direction to close the Court during Regilla's evidence, pursuant to s 28(1)(b) and s 65(1) of the Judicial Services and Courts Act [Cap 270], the Supreme Court has jurisdiction to administer justice in Vanuatu, and such inherent powers as are necessary to carry out its functions.

Background

45. Regilla Arcknaveth (Regilla) is aged 28 years. She and Mr Enkey were in a relationship for 10 years. The relationship started when Regilla was still at school. There was a custom ceremony so their families accepted the relationship. They met on Malekula and have a daughter, who lives with Regilla's mother on Malekula. Their daughter is 8 years old. Regilla agreed in cross examination that Mr Enkey loves their daughter.
46. Regilla confirmed in cross examination that she and Mr Enkey lived in the islands and came to Port Vila last year because they were travelling. Mr Enkey got a job as a cook

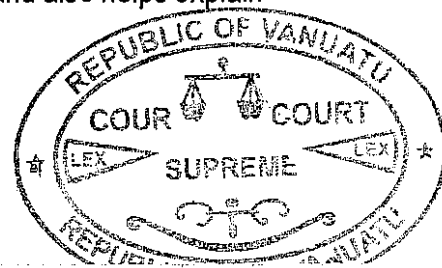


at the Grand Hotel. He wanted to join the RSE scheme. Once on Efate, they rented a house at Bladiniere Estate.

47. According to Regilla it was a difficult relationship, marred by controlling behaviour, threats and physical violence. Matters came to a head in January and February 2024. The prosecution case is that earlier this year, there were two separate incidents of serious alleged violence by Mr Enkey; one in January 2024 and a second incident in February 2024, when Mr Enkey was on bail. After the incident on 22 February 2024, when Mr Enkey stabbed Regilla with a knife, she resolved to end the relationship, because of her fear that she would die.

Unreported domestic violence

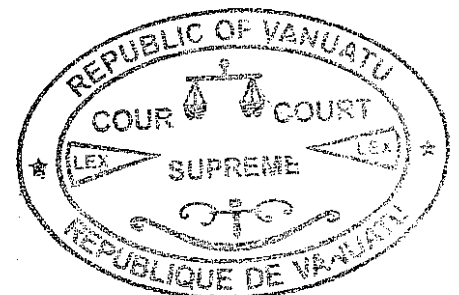
48. Regilla gave evidence about an unreported history of domestic violence, including threats and physical violence. Regilla said there was domestic violence throughout the 10 years of their relationship. She described an incident when he kicked her when she was 3 months pregnant. Regilla acknowledged she had not reported the domestic violence, explaining that Mr Enkey said he would kill her if she reported it to the police, saying "I will kill you and go to jail for the rest of my life". She did not agree that she was a jealous person. She said it was Mr Enkey, who always wanted to know where she was.
49. There was no objection to this evidence, which is propensity evidence, as it shows a tendency or pattern of behaviour by Mr Enkey towards Regilla, if the evidence is accepted. But I did not understand that the evidence was lead for orthodox propensity purposes. The Prosecutor did not suggest that the history of domestic violence made it more likely that the incidents outlined by Regilla happened.
50. Evidence of other misconduct by a defendant towards a complainant can be admissible if the probative value far outweighs its prejudicial effect; *Pakoa v Public Prosecutor* [2019] VUCA 51 at [36] and [37], and *Public Prosecutor v Ahelmalahlah* [2021] VUSC 329.
51. I consider that Regilla's evidence about the domestic violence within the relationship is probative evidence relating to Mr Enkey's attitude towards her, and the hostility of its expression. This was background or narrative evidence. It is integral to understanding the history between Regilla and Mr Enkey and the dynamics of their relationship. It has explanatory value in terms of Mr Enkey's attitude towards Regilla and also helps explain



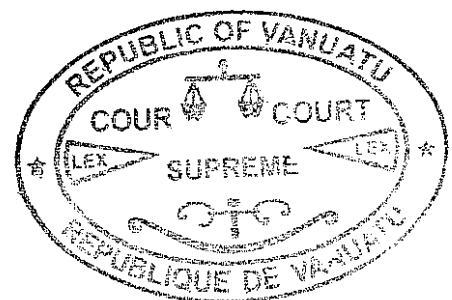
why Regilla acted as she did, in having contact with Mr Enkey once he was released on bail, and when Mr Enkey asked her to visit him in prison. For these reasons, the probative value of the evidence far outweighs its prejudicial effect.

Incident One

52. On Wednesday 17 January 2024, Regilla said she was at home at 3 pm when Mr Enkey phoned her and asked her if she wanted to drink kava and wine. Regilla told him she did but did not have any money. Mr Enkey said he would pay for it. Mr Enkey then phoned her again and asked if she would prepare some food and he would bring kava and wine home. Regilla acknowledged when asked by Mr Molbaleh, that she told Mr Enkey to get two bottles of wine – one for her and one for him.
53. Regilla prepared food and waited for Mr Enkey to come home. He had been at work. He worked as a cook at the Grand Hotel. When Mr Enkey arrived home, they started drinking kava until 8 pm. At that point, Regilla told him she had had enough kava and wanted to drink some wine. She drank 3 cups of wine while they sat outside chatting. After drinking 3 cups of wine, Regilla told Mr Enkey she was feeling slightly drunk/tipsy and that she wanted to have something to eat and go to sleep. Mr Enkey said no, he wanted to finish his kava and then he would drink some wine and then they would go to sleep.
54. Regilla ignored this and went and had something to eat. Mr Enkey finished his kava and started drinking wine. Regilla went to bed and went to sleep. Mr Enkey woke her up by calling out to her and shaking her. He called out “*mummy, mummy*” and told her to ‘*get up*’. She did not want to. She wanted to sleep. Regilla candidly accepted in cross examination that she had been sick in the bed, but did not accept that Mr Enkey woke her up so that the mattress could be turned over so they could sleep on the dry side.
55. Mr Enkey kept calling out to her, and then lifted her head up from the bed. He commented to her that he had paid for her kava, wine and food, and then when he ask her/calls out to her, she doesn’t want to wake up. Mr Enkey then said he wanted to have sex with her. Regilla told him she did not want to. She wanted to sleep. She laid down on the bed and went to sleep. She was woken up again and Mr Enkey repeated that he wanted to have sex. She told him she did not want to. Mr Enkey responded by slapping her over the ear. He slapped both ears. She put her head down on the pillow and cried.

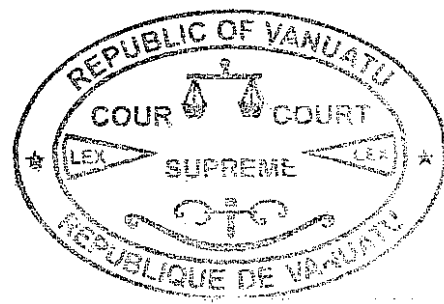


56. Things did not end there. Mr Enkey grabbed her head and jerked her up, so she was sitting, and said "You know what I am telling you?" Regilla confirmed that she did, and said she did not want to. She wanted to sleep. In response, Mr Enkey punched her to the cheek. Regilla demonstrated the punch to the cheek. She said she felt sore as it was painful. She was crying.
57. While she was crying, Mr Enkey put one hand over her mouth and the other on the back of her neck and squeezed, telling her not to cry so loudly. But it made her cry even louder. Mr Enkey grabbed and squeezed her hair again when she laid her head on the pillow. He then bit her right ear, which was very painful and made her cry even more. She was injured and her ear bled badly. There was a lot of blood.
58. Mr Enkey then started squeezing her neck and telling her to "shut up". He squeezed her neck as he was talking to her and she cried more and more. This time, Mr Enkey was squeezing the front of her neck. He then grabbed her by the neck and twisted her head. Regilla demonstrated that Mr Enkey squeezed the front of her neck and also demonstrated how he was holding her neck when he twisted her head. She showed the Court that Mr Enkey had her in a head lock with his arm across her neck. She said that he grabbed her in a headlock and tried to bend her head over. Regilla rejected the proposition in cross examination that she didn't know what happened when her neck was twisted because she had drunk too much. Regilla said that he did do it. It was not put to her in cross examination that she lied about her neck being twisted.
59. Regilla then called out for help from her brothers. Her brother came to her assistance and told her to go outside. She didn't as Mr Enkey was nearby. There was an exchange between Mr Enkey and Regilla's brother. Mr Enkey was verbally abusive to her brother. Once Mr Enkey went outside, Regilla went outside and went and stayed at her sister's house, which was nearby.
60. The next day Mr Enkey phoned her throughout the day. She did not answer any of his calls. Regilla's brother took her to stay with an older relative in Prima. He also expressed his concern about Mr Enkey's behaviour towards her and raised whether it should be reported to the police. Regilla's brother was worried that Mr Enkey could kill her. Regilla decided that the next day they would go and report it to the police, which she did.



Events post the first incident

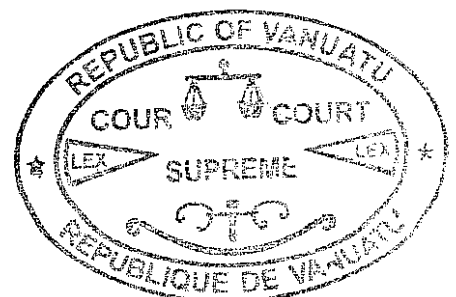
61. As a result. Mr Enkey was arrested, held in custody and then released on bail conditions. Regilla was made aware of the bail conditions, which included conditions that Mr Enkey was not to contact Regilla and was to remain 100 metres away from her. She was told by police that she was not to contact him.
62. Despite the non-association condition, Mr Enkey made contact with her. She was asked why she answered his calls. Regilla said that Mr Enkey told her he got her phone number from Digicel. She agreed that she answered because she still loved him and he was her child's father. He telephoned her and asked her to withdraw the case, as he did not want to go back to prison. Regilla said she could not withdraw it. Mr Enkey persistently phoned, asking her to withdraw the case. He wanted them to write a letter to cancel the case. Regilla did go and meet Mr Enkey in town. She explained that she did so because he called her. He told her to take it to the police. She did so, but was told that the case could not be withdrawn.
63. Some days later, Mr Enkey started contacting her again. In one conversation, he told her she was not to change her phone number and sim card. Another day he phoned her and said he wanted to meet up with her to have sex on the road. She told him she was afraid. She reminded him of his bail conditions, but he insisted, so she did meet up with him. Mr Enkey wanted to have sex but she told him she did not want to. Mr Enkey phoned her the next day and repeated his wish to have sex. Again, she rebuffed his request. Regilla said that their conversations that followed involved arguments.
64. Regilla said that during the phone calls when she refused to have sex, Mr Enkey threatened her, by saying "*I will get hold of you. I will kill you*". That if she was not going to have sex with him, he would find her anywhere on the road and would kill her. And that if he did not find her on the road, he would kill her brothers. Regilla was asked to clarify what she meant when she used the word "*kill*". She said "*He would kill me; kill me dead*".
65. On another occasion, Mr Enkey made contact and asked to meet Regilla in town as he wanted to give her his ATM bank card. She said she was reluctant and did not want the ATM card as she was afraid he might threaten her. Mr Enkey said he was going to give her the ATM card so that she could withdraw some money to get things for their daughter and send them to the islands. They met in town. Mr Enkey withdrew 15,000 vatu and gave her 3000 vatu, saying it was his way of apologising for his behaviour. He



also gave her the ATM card. Two days later he called her asking for his card as he had spent the money withdrawn from the ATM.

The second incident

66. Contact continued via text messages and phone calls until the final incident of violence. On 22 February 2024, Regilla sent a text message to Mr Enkey advising him those whatever problems they had between them, there should be no family interference. A short period of time later, when she was at Bladiniere estate sitting under the avocado trees, Regilla saw Mr Enkey at the gate holding a knife. He held the knife in his right hand as he ran into the yard.
67. When she saw him come through the gate holding the knife, Regilla ran away because she wanted to get into the house. But Mr Enkey caught up with her and stabbed her in the back and she fell down. She was crying and was covered in blood. Then, Mr Enkey stabbed her with the knife to her leg and then her arm. Then he stabbed her head with the knife. Regilla indicated that it was to her head. She said he stabbed her to the eyebrow, cheek and near her eye.
68. Mr Blessing asked Regilla exactly where Mr Enkey stabbed her. She said he stabbed her on her upper left arm. There is a scar towards the back of her arm. He cut her to the left eye brow. There is slight scarring. He stabbed her just below the left eye and. There is a slight scar. He stabbed her in the middle of her back closer to the right shoulder. She called out to her younger brother Charlie, but he could not hear her as he was in the house wearing ear plugs. One of the tenants banged on the window with a piece of wood to alert Regilla's brother. By the time he reached her, Mr Enkey had dropped the knife and had run away. The police were called and Regilla went to hospital. It was put to Regilla that she was not telling the truth about this incident because otherwise she would not have gone to see him in jail. She said he asked her to visit.
69. Mr Molbaleh asked Regilla about the knife. She denied it was a knife that belonged to she and Mr Enkey. She said it had the name of Mr Enkey's brother on it. When challenged about this, she said that police did not take any photos of the knife that night. She found the knife two weeks later lying in the grass. She said that police collected the knife.



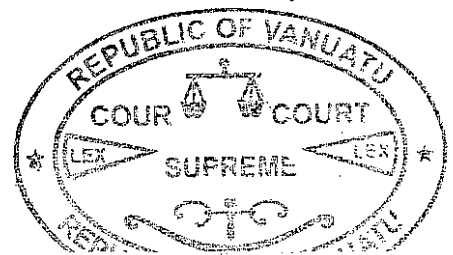
70. Mr Enkey has been held in custody since the February 2024 incident. Regilla accepted that she has been to visit him. She explained that he called her to visit him so she did. She said that regardless of the fact he stabbed her, she has enough compassion to go and see him.

Gouthier Arcknaveth's evidence

71. Gouthier Arcknaveth is Regilla's brother. He lived at the property at Bladiniere estate, along with his younger brother, Charlie Arcknaveth and Regilla and Mr Enkey. Gouthier and Charlie slept in one bedroom and Regilla and Mr Enkey slept in the other bedroom.
72. On 17 January 2024, later in the evening Gouthier was sleeping and woke to hear Regilla cry out, asking for help. He said she was crying loudly and very hard. She said Yves had bitten her ear, and that he was squeezing her neck, trying to twist her neck - or something to that effect. Gouthier told her to go out and get away from Yves. Yves' response was to insult Gouthier. Regilla ran outside and ran towards the road. He ran outside and saw that Regilla had run out to another yard. When he couldn't find her, Gauthier said he went back to bed.
73. The next day, Gouthier phoned Regilla who told him she had spent the night in an empty yard. He told her not to go back to the house and he was going to arrange for her to stay with someone. After work, he saw Regilla, who was crying and had a bleeding ear. After a discussion about what had gone on in the relationship, Gouthier told her that they would go and report it to the police the next day. They did this and Yves was arrested and then released on bail conditions. Gouthier confirmed that he was not aware that Regilla and Yves had contact once Yves was granted bail, or that she visited him in prison.
74. On 22 February 2024, Charlie contacted Gouthier and told him that Yves had broken his bail and had gone to the yard at Bladiniere. Gouthier went directly to the hospital to see Regilla, who was in pain and was covered in blood. He said he saw the knife marks on Regilla's face, arm and her back. He went and made another statement to police, along with a man named Denis Robert, who according to Gouthier, saved Regilla's life.

Charlie Arcknaveth's evidence

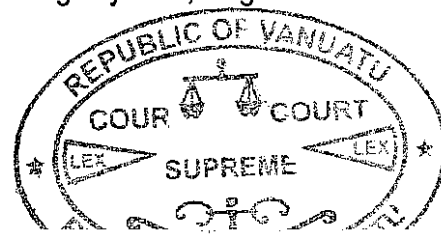
75. Charlie Arcknaveth's statement was read to the Court. He was not required to give evidence. Therefore, his evidence was unchallenged. Charlie said that on 22 February



2024, he heard his neighbour Robert Dennis call out to him loudly. As a result, Charlie ran outside and saw Yves Enkey holding a knife and stabbing Regilla with it. He was dragging Regilla on the ground. He said that Regilla's shirt was torn, and she was covered in blood. He tried to intervene and help Regilla but he was afraid of Yves, because he was holding a knife. He looked for a piece of wood to hit Yves with, but he had run away. Charlie looked for him, but he was no longer in the vicinity of the yard. Police were then called to assist in taking Regilla to the hospital as quickly as possible.

Mr Enkey's arrests and caution statements

76. Mr Enkey was first arrested and cautioned by Kelly Tawai, a police officer on 30 January 2024. This was in relation to the initial incident which took place on 17 January 2024, according to both Regilla and Mr Enkey himself.
77. I directed translations of all documents from Bislama to English. The date on the translated version of Mr Enkey's first caution statement (exhibit 6) to police makes no sense. It is abundantly clear that Mr Enkey was arrested and cautioned by Kelly Tawai on 30 January 2024. I refer to exhibit 2, which is Kelly Tawai's typewritten statement confirming that Mr Enkey was arrested on 30 January 2024. The relevant parts of the caution statement are handwritten but it is obvious that the statement made by Mr Enkey was made that same day, 30 January 2024, and not 30 February 2024. It is also apparent that Mr Enkey was referring to an incident which took place on 17 January 2024 and not 17 February 2024. First, Mr Enkey was arrested on 30 January 2024 so could not have been talking about an incident which took place in February 2024, and second, 30 February is not an actual date. With the greatest of respect, the only logical conclusion is that the prosecutor has misread the police officer's handwriting. This is sloppiness on the part of the prosecutor. The actual document is the exhibit and not the translated document.
78. On 30 January 2024, Mr Enkey was arrested by Kelly Tawai and advised of his rights. Mr Enkey made a statement under caution. He said that on 17 January 2024, he was not working at the time, so he went to the market and town. At one stage he told her he would buy a bottle of wine for himself. Regilla asked him to buy two bottles of wine – one for her and one for him. He bought two bottles of wine. He said they met up as Regilla wanted to buy some kumala. He gave her money to buy the kumala. He bought kava. They went home, drink kava and cooked. He went back to the nakamal and bought Tusker beer. When he got back home Regilla had finished drinking her wine. She wanted him to share the wine. Mr Enkey said he told her she had enough to drink. He went out and got more Tusker beer and stayed outside drinking. By then, Regilla

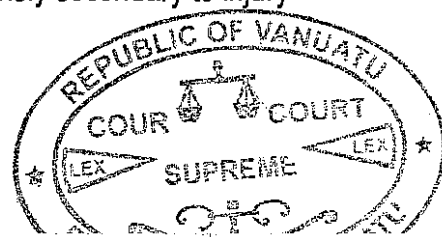


was asleep. Mr Enkey got very drunk once he finished his beer so did not know what was happening. Mr Enkey acknowledged that he made some advances towards Regilla. She told him about at the next morning. Mr Enkey said he did not intend to do anything bad to Regilla. It was just the effect of his alcohol and he sincerely apologised for what he did to Regilla.

79. Mr Enkey was released on bail. He was not to contact Regilla. Despite this, he did so. There was a second incident in late February 2024. Kelly Tawai arrested Mr Enkey again on 1 March 2024. When Mr Enkey was told he was under arrest he ran away. The police officer chased him, then restrained and handcuffed him. Mr Enkey was taken to the police station. Mr Enkey was given his rights. He was subsequently interviewed under caution.
80. In the interview, Mr Enkey said that it was true that he used a small knife to cut his de facto partner Regilla on 22 February 2024 at Bladiniere estate. He did this because Regilla held onto his ATM card after they meet up. He said he had called and text her to withdraw some money for him and bring it to his workplace. She did not and that made him angry. After the first incident he said his mother spoke to Regilla's family about the issues between them and that lead her family to beat her badly. Regilla called him and swore at him. Mr Enkey said he was angry with her at that time on 22 February.
81. He said he went to meet Regilla at Bladiniere and saw her standing near the gate holding a phone. Mr Enkey said he ran towards her with the intention of hitting her but saw a small knife lying on the ground. Out of anger, he picked up the knife and used it to stab Regilla. After that, he ran away and stopped a bus, which he took back to his house at Erakor.

Medical reports

82. Regilla was medically examined on two occasions. The medical reports were not challenged. The first medical examination took place on 19 January 2024. This was two days after the first alleged incident. The report notes that Regilla was fully orientated. The report set out that her left ear had bruises, swelling, was red and tender. The report went on to note that Regilla was suffering from pain on her left ear as a result of being assaulted by her partner.
83. A second request was made by police for a further medical examination on 22 February 2024. Regilla was examined by a doctor at Vila Central Hospital. The doctor's opinion was that Regilla had multiple puncture and laceration wounds likely secondary to injury



with a sharp blade weapon. The report specifically referred to the location of three lacerations to Regilla's head and body. There was a laceration to her forehead and a laceration to her cheek. Both lacerations were 2 cm in length. There was also a laceration to Regilla's left upper back. It is described as a puncture wound 1 to 2 cm.

Athen David

84. On 1 March 2024, photographs of Regilla's injuries were taken by Mr David, a crime scene officer. Photographs taken by Mr David are exhibits 13A-J. In his statement, Mr David said he took 10 photographs of Regilla and 10 photographs of injuries to her body. He noted that she had bruises on her body, cuts to her face, left hand, left leg, and backside.
85. In the crime scene notes, Mr David noted that Regilla had injuries on the left side of her face. He said that on the left side of her head, there was a knife cut mark. There was also a knife mark on her left leg and a knife mark to her back. Exhibit 14 is a forensic diagram of the location of Regilla's injuries as noted by Mr David.

Other photographs

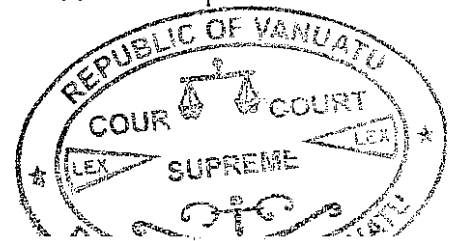
86. Exhibits 8A-C are photographs taken of Regilla and her injuries in the immediate aftermath of the incident on 22 February 2024.

Defence position

87. Once the prosecution case concluded, the statement required by s88 was read to Mr Enkey. Mr Enkey elected not to give or call evidence. He elected to remain silent. That is his right. Mr Enkey's choice not to give evidence, does not of itself lead to an inference of guilt against him.

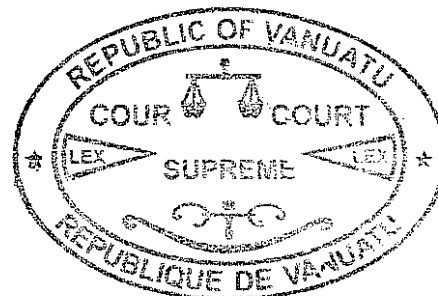
Assessment of the evidence

88. I consider that overall Regilla's evidence was compelling, honest and accurate. I assess that it was an authentic account of what happened to her in January and February 2024. Regilla gave very clear and detailed evidence about the nature of their relationship and

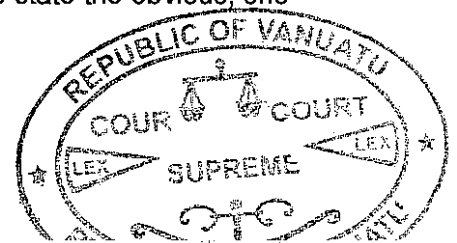


what she says happened to her. Her evidence was coherent, plausible and a matter of fact recounting of the incidents of violence by Mr Enkey towards her. It was not embellished or exaggerated, as Mr Molbaleh submitted.

89. Regilla was candid. She made appropriate concessions. For example, she readily acknowledged that she had contact with Mr Enkey following his release from prison and then when he was remanded in custody after the February 2024 incident. She candidly accepted things against her own interests. An example is that Regilla agreed that she had been sick in the bed at the time of the first incident on 17 January 2024.
90. Regilla's evidence was internally consistent. She remained firm in her evidence when challenged in cross examination about whether her recall was accurate and whether she was telling the truth. She did not step back from the evidence given in evidence in chief.
91. Regilla's evidence was consistent with other evidence. Her evidence is supported by a number of pieces of evidence;
 - a. The photos of Regilla and her injuries are consistent with her description of what happened during the second incident and where she was struck with the knife. The photo of the complainant's blood-stained tee shirt supports the complainant's narrative that she was stabbed in the back by the defendant, as does the medical report.
 - b. The medical reports- the report of 19 January 2024 confirms that Regilla did have an injury to her ear. The report of 22 February 2024 confirms that Regilla had lacerations to her forehead, cheek and upper back, from a knife.
 - c. Mr David's observations of Regilla and the location of injuries on her body are consistent with Regilla's evidence and descriptions.
 - d. The evidence of both her brothers. While there is an inconsistency about where Regilla ran to after the first incident, relevantly her brother Gauthier said that he heard Regilla crying out for assistance, and that she was crying. Regilla also immediately told him that Mr Enkey had bitten her ear and that he was squeezing her neck, trying to twist it. And that the next day Regilla had a bleeding ear. Gauthier's evidence that Regilla called out to him for assistance, that she was crying, told him about the ear biting, that Mr Enkey had tried to twist it and that her ear was bleeding the next day was not challenged in cross examination.
 - e. Charlie Arcknaveth's evidence was unchallenged. He saw Mr Enkey stabbing Regilla with a knife.



- f. Mr Enkey's caution statements to police. In the first statement, he confirmed that he became very drunk and that he made some advances towards Regilla. In his second statement, Mr Enkey confirmed he used a small knife to cut Regilla on 22 February 2024, and that he was angry with her.
92. Regilla did not accept that she was being untruthful about the knife incident because she had continued to have contact with the defendant after the violence. She explained why that was so. She said that she had compassion for the defendant. Also, she said that he contacted her telling her to come and see him in prison. According to the complainant's evidence, the relationship was marred by physical violence and the defendant's controlling behaviour of her. As such, it is explicable that she went to visit him in prison. While the fact that Regilla continued to have contact with Mr Enkey post the two serious alleged incidents could impact on the truthfulness of her evidence, I assess that it does not. Regilla 's reasons for doing so are understandable given the history of unreported domestic violence.
93. In his written submissions, Mr Molbaleh submitted that the Court cannot rely on Regilla's evidence (or her brothers') as her evidence about various matters is not credible. Credibility is about the truthfulness of evidence. Reliability is about the accuracy of evidence honestly given. Particular issues said to impact on the truthfulness of Regilla's evidence include;
- a. That Regilla was dishonest to the law when police told her not to meet Mr Enkey or talk to him, yet she did.
 - b. She lied about the ear biting incident and that it bled profusely as the medical report does not show it.
 - c. She lied that the first incident happened on 17 February 2024 as the first medical report is dated in January 2024.
 - d. The evidence that the knife had Mr Enkey's brother's name written on it, when there are no photographs of the knife.
 - e. That she ran to her sister's house after the first incident.
94. None of the above matters mean that Regilla's evidence is untruthful or inaccurate.
95. The submission that Regilla is dishonest to the law because she "disobeyed" a police directive not to have contact with Mr Enkey is ill advised. It was Mr Enkey who was subject to bail conditions under the Penal Code, not Regilla. To state the obvious, she



could not be subject to bail conditions. She did nothing wrong. The submission overlooks the nature of their relationship as described by Regilla in her evidence. If there is a practice by police to tell alleged victims not to contact a defendant, it is to be strongly condemned as firstly it shifts responsibility, but more importantly, it has absolutely no lawful basis.

96. I will discuss the ear biting incident in more detail shortly. It is sufficient to say at this point that Regilla was not challenged in cross examination about that incident.
97. I do not consider that a lack of photographs of the knife with Mr Enkey's brother's name on it undermines the truthfulness of Regilla's evidence. Her evidence is that police did not take any photographs of the knife that night. It was two weeks later that she found the knife lying in the grass. She also said that police collected the knife. I decline to speculate about why there is not a photograph of the knife. It could be because Regilla is not telling the truth about the knife, but equally, it could be that it is a failure on the part of the police. I simply do not know, and it would be wrong to engage in speculative reasoning. As was said in *Kal v Public Prosecutor* [2016] VUCA 56 at [29], judges make their decisions based on the evidence before them.
98. I accept that there is an inconsistency between the evidence of Regilla and her brother about where she ran to the night of the first incident. But it is not a material inconsistency as it does not relate to any element that the prosecution are required to prove in relation to the charges. It might be that her brother is mistaken. I prefer Regilla's evidence given the significance of the incident to her -she had every reason to recall what happened that night.

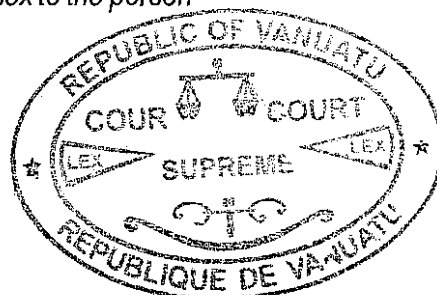
Charge 3- domestic violence

Is Regilla a member of Mr Enkey's family?

99. Mr Enkey and Regilla have been in a relationship for 10 years, live together and have a child together. They are not married but there was a custom ceremony. A spouse is a member of the family under s 3 of the Act. A spouse is defined in s5 of the Act:

Meaning of spouse

Spouse of a person means an individual of the opposite sex to the person who:



(a) is or has been married to the person; or

(b) although not married to the person, is living with the person in a marriage-like relationship or has lived with the person in such a relationship; or

(c) is a biological parent of a child with the person (whether or not they are or have been married or are living or have lived together)

100. The unchallenged evidence is that Mr Enkey and Regilla lived together in a marriage like relationship up until Mr Enkey was arrested, and that they have an 8-year-old daughter.

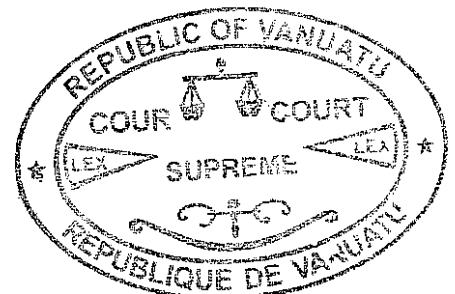
101. Therefore, I am sure that Regilla is Mr Enkey's spouse.

Did Mr Enkey intentionally assault Regilla ?

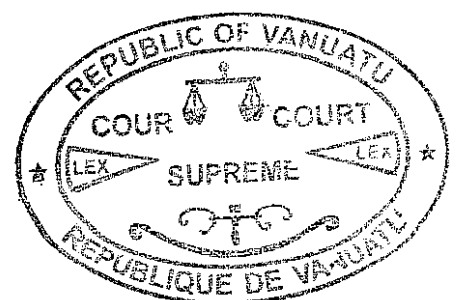
102. The assault alleged is that Mr Enkey intentionally bit Regilla on the ear. An assault is not defined in either the Family Protection Act or the Penal Code. Here, the alleged act is the application of force by biting. If I am sure about Regilla's evidence, that is an assault.

103. Regilla's evidence about this incident is detailed above. She described Mr Enkey biting her ear during a sustained assault on her. He was angry with her because he had paid for the kava, wine and the food and wanted to have sexual intercourse. According to Regilla's narrative, Mr Enkey became angry when she refused his requests to have sexual intercourse.

104. Regilla's evidence about the ear biting incident was not challenged in cross examination. Rather, in written submissions, Mr Molbaleh asserted that Regilla lied about the ear biting incident and that it bled profusely as the medical report of 19 January 2024 did not show any open cut or laceration that could lead her ear to bleed profusely. As it was central to the charge, the suggestion that Regilla lied about the ear biting incident should have been put to her, if it was part of the defence case. As was held in *Fisher v Wylie* [2021] VUCA 5, the fact that Regilla was not cross examined on that evidence leaves it specifically unchallenged, and so in the normal course it would be accepted.



105. I have said that overall, I assess Regilla to be a truthful and accurate witness. Her evidence about Mr Enkey biting her ear was clear, matter of fact and detailed. Her narrative is supported by other evidence -her brother, the medical report of 19 January 2024 and Mr Enkey himself.
106. Gouthier's evidence was that Regilla told him immediately that Mr Enkey had bitten her ear. He also described seeing Regilla the next day with a bleeding ear. While an immediate complaint does not necessarily signify a truthful account, it would be an odd thing to say to Gauthier, if it was not true. Again, Gouthier was not challenged about these matters in cross examination.
107. I do not accept that the medical report of 19 January 2024 shows that Regilla is not telling the truth. To the contrary, it supports her evidence. The report confirms that Regilla's ear had bruises, swelling and was red and tender. The report also notes that Regilla was suffering from pain. Saliiently, Regilla was not asked whether she had an open cut or laceration as a result of her ear being bitten.
108. In his first caution statement, Mr Enkey told police that he had made advances towards Regilla, consistent with her evidence. That is important because Regilla says that the violence happened after she rejected Mr Enkey's advances.
109. One final matter is Mr Molbaleh's submission that Regilla lied about the ear biting incident taking place on 17 February 2024 as the medical report is dated January 2024. In her evidence, Regilla said right at the outset that the first incident took place on 17 January 2024. That there is some confusion about the date of that incident has nothing to do with Regilla. It is sloppy particularisation of the charges by the Prosecutor.
110. Taking all the factors set out above, I am sure that Mr Enkey bit Regilla to the ear.
111. An act is intentional if done consciously and deliberately. I am also sure that when he bit Regilla to the ear, it was intentional, when I take into account all the evidence and the surrounding context. Mr Enkey was angry, and became violent. There is no suggestion that this was somehow accidental but relevantly, biting a person on the ear to the point that it bled profusely can only have been done consciously and deliberately.
112. Therefore, charge 3 is proved beyond reasonable doubt.

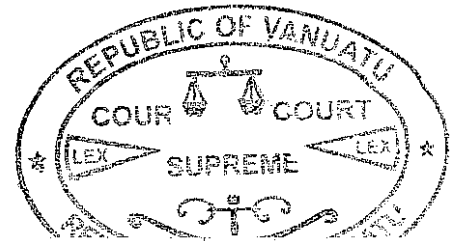


Charge 4- Attempted intentional homicide.

113. For charge 4, the applicable statutory provisions are ss 28 and 106(1)(a) of the Penal Code [CAP135]. That is to say, the attempted intentional homicide was unpremeditated.
114. The allegation in relation to charge 4 is that Mr Enkey squeezed the front of her neck and then twisted her neck/head. Regilla described it as a headlock. This followed on from Mr Enkey having assaulted Regilla in various ways- slapping her cheek, assaulting her by holding her tightly while she was sitting on the bed, punching her cheek, putting a hand over her mouth and the other hand on the back of her neck and squeezing, grabbing her hair and biting her ear so that it bled profusely.

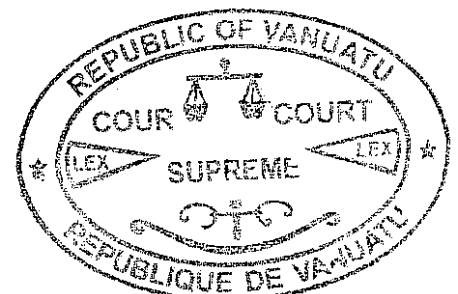
Am I sure that at the relevant time before the event occurred, Mr Enkey had an intention to kill?

115. The prosecution case is that Mr Enkey had an intention to kill Regilla before the event occurred and that intention can be inferred from the escalating level of violence that evening. On the other hand, the defence case is that Mr Enkey did not have an intention to kill. He did not communicate that intention prior to the attempt.
116. There is no direct evidence of whether Mr Enkey had an intention to kill before the event. It is a matter then of assessing what inferences can be drawn from the evidence as a whole. Intention is to be assessed taking into account all relevant circumstances, including Mr Enkey's words and actions. His actions should not be considered in isolation from what he said and did in the lead up to the incident; *Bakeo v Public Prosecutor* [2023] VUCA 24 at 21.
117. I have already explained what I consider to be the difficulty with the way the elements of attempted intentional homicide are framed in *Bakeo v Public Prosecutor*, when the charge is attempted unpremeditated intentional homicide. But I proceed on the basis of the three elements identified in *Bakeo v Public Prosecutor* given that it is binding.
118. It is not in dispute that;
- a. Mr Enkey made advances towards Regilla or that he had been consuming alcohol. Mr Enkey said so himself.
 - b. Mr Enkey was physically violent to Regilla. Mr Enkey has accepted some level of violence towards Regilla during this incident as he has pleaded guilty to



slapping Regilla to the cheek (Charge 1) and grabbing her and holding her tightly while she was sitting upright on the bed (Charge 2)

119. In the lead up to the event, I infer that Mr Enkey was angry and frustrated because Regilla did not want to have sexual intercourse, despite him paying for the kava and the wine. He asked her more than once. After Regilla rebuffed his requests, her evidence is that Mr Enkey was physically violent to her. She says the violence became progressively more serious. After he slapped her and held her tightly, her evidence is that there were then a series of assaults. Mr Enkey punched her cheek, which was painful. He put a hand over her mouth and the other on the back of her neck and squeezed. He grabbed and squeezed her hair. He bit her ear which was painful. It was after these assaults, that Mr Enkey started squeezing the front of Regilla's neck telling her to "shut up". Then he twisted her neck. As was said in *Bakeo v Public Prosecutor*, the neck is an extremely vulnerable part of the human anatomy.
120. Regilla's evidence about the escalating violence (other than slapping her and holding her) leading up to her neck being squeezed was not challenged in cross examination. It should have been, if it was not accepted. As I have said, I accept Regilla's evidence in an overall sense. Her evidence about this incident was clear, detailed and plausible. Other than the twisting of her neck, it was not challenged. It had a real air of authenticity- Mr Enkey became angry and became increasingly violent, culminating in squeezing Regilla's neck, a vulnerable part of her body.
121. Given Mr Enkey's actions in the lead up and his actions in squeezing the front of Regilla's neck and twisting her head, I infer that, Mr Enkey intended to kill her. It is the cumulative effect of Mr Enkey's actions. He was angry because she refused to have sexual intercourse in circumstances where he clearly had an expectation that she should comply, which set in train a series of assaults which became increasingly more serious. Mr Enkey covered Regilla's mouth. He targeted Regilla's neck. This indicates coercive control. As the New Zealand Law Commission explained in recommending a new offence of strangulation/suffocation, it sends a message that "I can kill you, if I want to".
122. Further, I infer that the intention to kill was before the event occurred, given Mr Enkey's anger towards Regilla because she would not have sexual intercourse with him which manifested itself into an increasing level of violence in the lead up to squeezing the front of Regilla's neck and twisting it. The available inference is that before the squeezing and twisting he decided to step up his efforts and intended to kill.



123. Therefore, I am sure that at the relevant time before the event occurred, Mr Enkey had an intention to kill.

Am I sure that Mr Enkey undertook an act (or omitted an act) , as a step towards committing that crime ?

124. As held in *Bakeo v Public Prosecutor*, it does not have to be established that the act itself would have resulted in Regilla's death. The act here alleged is that Mr Enkey squeezed and twisted Regilla's neck, following on from various assaults.

125. Regilla gave clear and detailed evidence about this incident. It was not suggested to her in cross examination that she lied about the neck squeezing or twisting. She rejected the proposition put to her in cross examination that she could not recall this because she had too much to drink. Regilla was candid that she was sick after drinking the wine. However, her evidence about this incident was clear and detailed, and inherently plausible. I assess that she described something that actually happened to her. She then called out to her brothers for help. That is relevant in the sense that Regilla only called out for help at that point, which is an indicator that something serious had just happened. Regilla also told her brother Gauthier immediately that Mr Enkey had squeezed her neck, was trying to twist her neck.

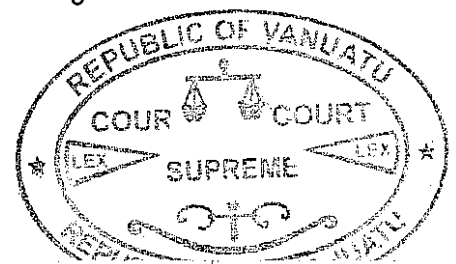
126. There is nothing in the medical report about Regilla's neck. However, she was not asked by either counsel about the medical examination on 19 January 2024. In such circumstances, it would be speculative to draw any conclusions from the medical report as to the truthfulness of Regilla's evidence or otherwise.

127. Regilla's evidence about the front of her neck being squeezed and then twisted was both truthful and accurate, for the reasons already discussed.

128. Therefore, I am sure that Mr Enkey took a step towards committing the crime.

Am I sure that the squeezing and twisting of the neck was sufficiently proximate or immediately connected to the intention to kill?

129. Mr Enkey's actions in squeezing the front of Regilla's neck and putting her in a headlock are sufficiently proximate or immediately connected to the intention to kill. This was not merely preparatory. Squeezing the front of Regilla's neck and twisting it with the use of



a headlock demonstrates that Mr Enkey's actions went well beyond mere preparation. His actions had a very close relationship to the completion of the offence.

130. I am sure that the act, the squeezing and twisting of Regilla's neck was proximate to, and immediately connected to the intention to kill.

131. Therefore, Charge 4 is proved beyond reasonable doubt.

Count 7 – Threat to kill

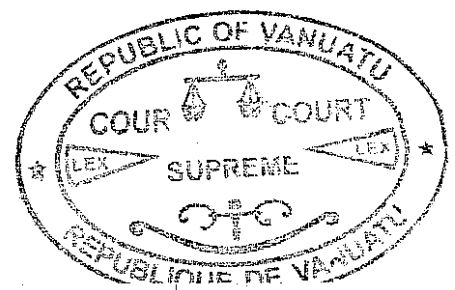
Am I sure that Mr Enkey directly caused Regilla to receive oral threats to kill her and her brothers?

132. Regilla's evidence was that when Mr Enkey was on bail there was contact between them, and that Mr Enkey, at times, wanted to have sexual intercourse with her. She did not however want to do so and refused him.

133. Her evidence was that during phone calls when she refused to have sexual intercourse Mr Enkey made oral threats to kill her and her brothers. That if she was not going to have sex with him, he would find her anywhere on the road and would kill her. If he did not find her on the road, he would kill her brothers. Regilla was clear that when she used the word "kill", she meant that Mr Enkey would kill her; kill her dead.

134. Regilla was cross examined about the threats to kill. She was asked if it was over the phone. Her response was that sometimes when they were together Mr Enkey would tell her face to face and sometimes over the phone. She said she was scared, too scared to tell her brothers, which is why she stayed silent; kept quiet. Mr Molbaleh asked Regilla if she reported Mr Enkey when he was on bail. She candidly confirmed she did not. Regilla then rejected the suggestion in cross examination that her evidence about the phone calls (about the threats) was not true or otherwise she would have reported him. Regilla remained firm that she did not report him but what she said was true.

135. I do not understand Mr Molbaleh's submission that there is no evidence. Regilla gave clear evidence about the circumstances and the content of the threats made by Mr Enkey to kill her. Her evidence was internally consistent, and she remained firm that the threats had been made when challenged in cross examination. There is ample evidence. Her evidence did not require corroboration. There is nothing in the submission that the cell phone records could have been produced. The evidence before the Court is either sufficient to establish an element of a charge or it is not.



136. As I have assessed Regilla to be a truthful and accurate witness, I am sure that Mr Enkey directly caused Regilla to receive oral threats to kill her and her brothers.

Am I sure that Mr Enkey knew the contents of the threats ?

137. The threats were made by Mr Enkey himself directly to Regilla. I am sure then that Mr Enkey knew the contents of his threats.

Am I sure that Mr Enkey intended the threats to be taken as real ?

138. Intention is to be considered by taking into account all relevant circumstances, and Mr Enkey's words and actions. Again, the backdrop to the threats was Regilla's unwillingness to have sexual intercourse with Mr Enkey. In January 2024, Regilla's refusal to have sexual intercourse manifested itself into physical violence. The threats to kill were simply a different manifestation of Mr Enkey's response to Regilla rebuffing his requests for intimacy.

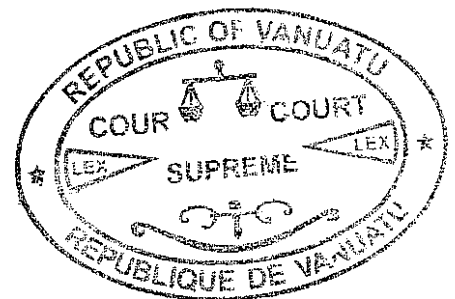
139. I am sure then that Mr Enkey intended Regilla to receive the threats, and for them to be taken as real. The threats were a way of Mr Enkey expressing his anger and hostility towards Regilla. This is given the content of the threats, that he told Regilla that he would kill her dead and that he threatened not only Regilla but also her brothers. The threats should not be considered in isolation to the incident in January 2024 and the ongoing requests for sexual intercourse, rebuffed by Regilla. I infer that Mr Enkey intended that the threats be taken as real, particularly given the content of the threats.

140. I am sure then that Mr Enkey intended the threats to be taken as real.

141. Charge 7 is proved beyond reasonable doubt.

Charge 8 – Attempted intentional homicide

142. For charge 8, the applicable statutory provisions are ss 28 and 106(1)(b) of the Penal Code [CAP135]. That is to say, the attempted intentional homicide was premeditated.



Am I sure that at the relevant time before the event occurred, Mr Enkey had an intention to kill ?

143. This charge is that Mr Enkey attempted to intentionally kill Regilla and that it was premeditated. Premeditation is a decision made before the act; *Pakoa v Public Prosecutor* [2019] VUCA at 15.

144. There is no direct evidence of an intention to kill, and whether it was formed before the act. It is a matter then of assessing what inferences can be drawn from the evidence as a whole. Intention is to be assessed taking into account all relevant circumstances, including Mr Enkey's words and actions. His actions should not be considered in isolation from what he said and did in the lead up to the incident; *Bakeo v Public Prosecutor* [2023] VUCA 24 at 21.

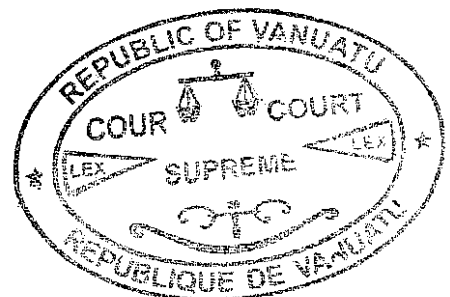
145. It is not in dispute that;

- a. Mr Enkey travelled to Regilla's location in breach of bail.
- b. That he was angry with her.
- c. That Mr Enkey stabbed Regilla with a knife.

146. During the second caution interview, Mr Enkey said that he used a small knife to cut Regilla. He did so because she held onto his ATM card. He said that he travelled to Regilla's location at Bladiniere. Mr Enkey said he saw Regilla, ran towards her with the intention of hitting her. He saw a small knife lying on the ground. Out of anger he picked up the knife and used it to stab Regilla.

147. As was held in *Pakoa v Public Prosecutor* at [17], premeditation could be immediately before the act where an attacker yelled "*I am going to kill you*" and then attacked. Or it could be established at an earlier point in time, or over a period of time, or over a period of time, by a single event or a series of events proved on the evidence.

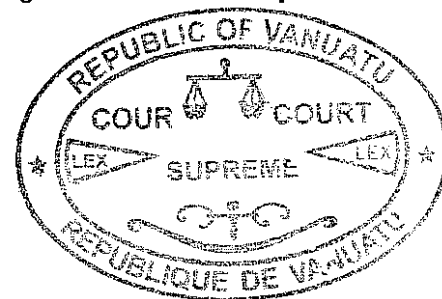
148. After Mr Enkey was released on bail, he made contact with Regilla. He gave her the ATM card. She did not return it. Mr Enkey said he was angry about this. Regilla's evidence is that Mr Enkey asked her to have sexual intercourse with him. She did not wish to do so. Mr Enkey then threatened to kill Regilla and her brothers.



149. Mr Enkey, angry with Regilla, sought her out. In breach of bail, he travelled to Bladiniere. He stabbed Regilla to the face and to her back, as she was running from him. Whether the knife had his brother's name on it or not does not impact on the truthfulness of Regilla's evidence about this incident, for the reasons already discussed. Also, it is something of a red herring because there is no dispute that Mr Enkey used a knife to stab Regilla. The evidence is overwhelming. Regilla's evidence was clear, detailed and plausible. It is supported by multiple pieces of evidence – the unchallenged evidence of her brother Charlie, Mr Enkey himself, the medical report and the photographs.
150. It does though seem rather implausible that Mr Enkey, who had gone to the trouble to seek out Regilla and was angry with her, just happened to see a knife when he got there, and pick it up. So I prefer Regilla's evidence that he had the knife with him, and that he stabbed her with it as she was running away. That is consistent with the photographs, the medical report and the forensic diagram showing the location of a laceration to her back.
151. I consider that there were a series of events that show premeditation so that Mr Enkey had an intention to kill Regilla before the act occurred. The series of events include the threats to kill, that he, on his own admission, was angry with Regilla, he deliberately travelled to Bladiniere, had a knife with him and used it.
152. The intention to kill is clearly shown from the use of the knife, and how many times and where Mr Enkey stabbed Regilla. Mr Enkey was angry, on his own admission. He stabbed Regilla a number of times -to the back as she was running away, and to her face, arm and leg. This was a concerted and deliberate effort on Mr Enkey's part . I am sure that when all the circumstances are taken into account, including Mr Enkey's words and actions, he had an intention to kill Regilla before the event, for the reasons detailed. There were a conscious and deliberate series of events.
153. I am sure that Mr Enkey had an intention to kill Regilla before the event occurred

Am I sure that Mr Enkey undertook an act, (or omitted an act), as a step towards committing that crime?

154. As held in *Bakeo v Public Prosecutor*, it does not have to be established that the act itself would have resulted in Regilla's death. The act here alleged is that Mr Enkey stabbed Regilla.



155. Mr Enkey undertook various acts as a step towards killing Regilla. He deliberately travelled to Bladiniere and used the knife to stab Regilla multiple times to various parts of her body as set out above and earlier. Mr Enkey's actions included stabbing Regilla as she was fleeing from him, and to the face. As already noted, there is overwhelming evidence that Mr Enkey stabbed Regilla a number of times to various parts of her body and caused her injuries. I refer to and adopt the discussion at paragraph 152 above.

Am I sure that act was sufficiently proximate or immediately connected to the intention to kill?

156. I am sure that Mr Enkey's acts of travelling to locate Regilla and then stabbing Regilla to various parts of her body was proximate and immediately connected to the intention to kill. Mr Enkey stabbed Regilla a number of times to various parts of her body, causing her injuries. I refer to and adopt the discussion at paragraph 152 above.

157. Charge 8 is proved beyond reasonable doubt.

**DATED at Port Vila this 13th day of August 2024
BY THE COURT**

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Justice M A MacKenzie

