

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

**Criminal Appeal  
Case No. 25/1182 SC/CRML**

**BETWEEN:** Philip Oscar  
**Accused/ Appellant**

**AND:** Public Prosecutor  
**Prosecutor/ Respondent**

Date of Hearing: 17<sup>th</sup> June 2025, at 10:00am  
Before: Justice Josaia Naigulevu  
Counsels: Mrs. P. Malites - Appellant  
Ms. M. Tasso – Respondent

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**JUDGEMENT**

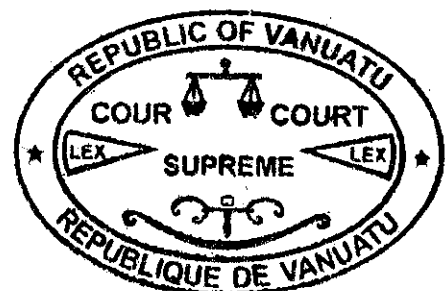
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**A. Introduction**

1. The appellant appeals against his sentence of seven months imprisonment that was imposed in the Magistrates Court on the 8<sup>th</sup> April 2025. He had been convicted for a count of domestic violence contrary to sections 4 (b) and 10 (1), and a count of malicious damage to property contrary to section 133 of the Penal Code on his guilty plea.

**B. Appeal against Sentence**

2. The Appellant filed a Memorandum of Appeal on the 29<sup>th</sup> April 2024. It contained a single ground which contended that the starting point and the final sentence were manifestly excessive having regard to the circumstances of the case, the nature of the offence and the appellant's personal circumstances.



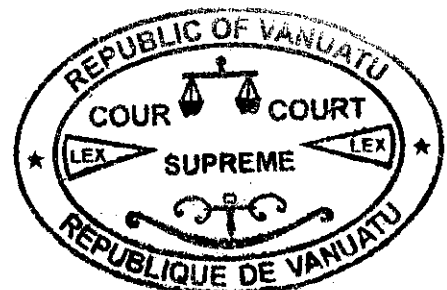
3. On the 14<sup>th</sup> May 2025, the appellant filed an Amended Memorandum of Appeal. It added an alternative ground. It asserted that the sentencing Magistrate erred in failing to suspend the end sentence.

**C. Appellant's Submission**

4. The appellant contended that the sentence imposed against him was excessive and disproportionate to the nature of the offending. He asserted that the seven months custodial sentence be quashed and the remaining time that he was to serve be suspended.
5. Counsel drew to the Court's attention a number of comparable cases in which suspended sentences and community- based sentences were preferred, instead of custodial sentences. They were both decisions of the Magistrate's Court. This Court will not rely on them.
6. She also drew to the Court's attention to the fact that the violence was an isolated event, that no serious or permanent injuries were sustained, that the appellant was a first offender and had expressed remorse. Additionally, he had pleaded guilty to the charges at the first opportunity.

**D. Respondent's Response**

7. The respondent did not oppose the appeal and agreed that the sentence should not have been an immediate custodial sentence.
8. Counsel referred to the decision of the Court of Appeal in Walter Malan v PP Criminal Appeal case No.21/1839. In that case, the Court of Appeal enumerated a number of factors that may influence the decision to suspend a sentence. They include the following: a guilty at the earliest opportunity, the absence of a prior conviction, cooperation with the police, a willingness to engage in a custom reconciliation ceremony and the expression of remorse.



**E. Decision**

9. I note that the lower Court did acknowledge a number of relevant personal and mitigating factors in its sentencing remarks, but did not consider them when it came to decide how the end sentence was to be served. This Court notes that the appellant entered a prompt guilty plea, did not have a prior conviction, had expressed remorse, and because of cultural obligations and familial ties, could possibly engage in a custom reconciliation ceremony.
10. I have taken into account the submissions by counsels, the provisions contained in section 57 (1) (a) of the Penal Code relating to the suspension of sentences of imprisonment, and the sentencing guideline of the Court of Appeal regarding this matter that can be found in its decisions in Public Prosecutor Criminal Case No. 21/1839, and am persuaded that the lower Court erred in law when it imposed an immediate custodial sentence on the 8<sup>th</sup> April 2025.

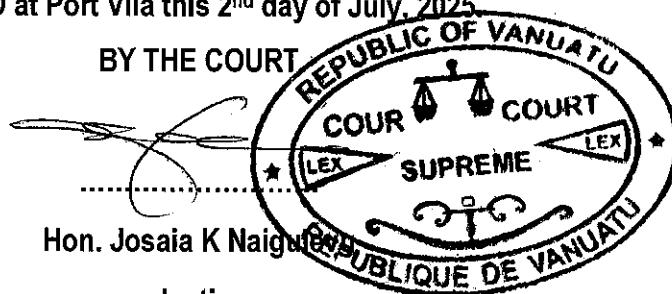
**F. Orders**

The Court makes the following orders:

1. The Appeal is allowed and the Order made on the 8<sup>th</sup> April 2025 for an immediate term of seven months imprisonment is set aside;
2. The term of seven months imprisonment is suspended for a period of six months;
3. The appellant is therefore to be released forthwith upon the foregoing conditions.

DATED at Port Vila this 2<sup>nd</sup> day of July, 2025

BY THE COURT



Hon. Josaia K Naigau

Justice