

**BETWEEN: Public Prosecutor**

**Vs**

**Eugenio Malkom**

**Defendant**

**Date of Plea:** *2<sup>nd</sup> February 2022*  
**Date of Oral Sentence:** *2<sup>nd</sup> February 2022*  
**Coram:** *Trevor NAIEU*  
**Appearances:** *Terry Toas for Public Prosecutor*  
*Defendant in Person*

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**SENTENCE**

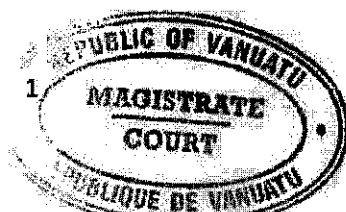
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**A. Introduction**

1. Mr Eugenio Malkom pleaded guilty ("*Yes hemi tru*") to the offences of domestic violence and Intentional assault.

**B. Facts**

2. The victim is Mr Malkom's de facto partner and together they have a Son.
3. The victim stated that Mr Malkom is a violent person with a history of domestic violence towards her dated back to the year 2019 when they started to cohabit in their de facto relationship.
4. Apart from the previous dates since 2019 that she had suffered from the violent acts of Mr Malkom, the violent offending's of the 13<sup>th</sup> day of December 2021 including the



25<sup>th</sup> day of December 2021 and the 1<sup>st</sup> day of January 2022 were too much for the victim to bear therefore she decided to seek help by reporting the matter to the police.

5. On the 13 day of December 2021 at around 7 O'clock in the evening, the victim was returning from the shop when she met Mr Malkom who was very upset and asked her of her whereabouts. Already knowing what Mr Malkom will do to her, she quickly tries to give an explanation but did not have the chance to do so because Mr Malkom quickly threw in a kick towards her that landed on her right hand. The victim suffers great pain on her hand that night until the next morning when she seeks medical attention and the medical examiner confirmed after an x-ray test that she suffered a fractured bone. Upon returning home after getting medical treatment, Mr Malkom uttered an apology to the victim for what he did.
6. Few days later on the 25 December 2021, the victim was returning from a dinner she was invited to by a family friend at around 8 O'clock in the early night, she again met up with Mr Malkom at their home. Mr Malkom uttered no words to the victim and sensing that Mr Malkom is upset, just before the victim gives him an explanation of her whereabouts, Mr Malkom landed a heavy punch to the victim's left eye and due to the impact of Mr Malkom's strong fist and power, the victim fell to the floor. The victim suffered a swollen black eye as a result of this incident. Mr Malkom again uttered an apology to the victim for what he did.
7. Few days later on the 1 January 2022 at around the early hours of the morning while the victim and Mr Malkom and everyone else were celebrating the new year, unforeseen to the victim, Mr Malkom surprises the victim with a powerful and heavy punch to her left eye (the same area that is still bruised from the 25/12/21 incident) and continued further to kick her with his legs on her left ribs and slapped her on both the cheeks. This ambush unexpected assault resulted the victim to suffer from both swollen cheeks and a swollen and bruised black eye and not being able to eat any food therefore she only resort to drinking milk (pauls milk bought from the shop) when she gets hungry.

**C. Law**

8. These offences are set out as follows in respective legislations.

1. *Domestic Violence - Family Protection Act*

*S.10. (1) A person who commits an act of domestic violence is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000Vatu, or both.*

2. *Intentional Assault – Penal Code*



*S. 107 no person shall commit intentional assault on the body of another person*

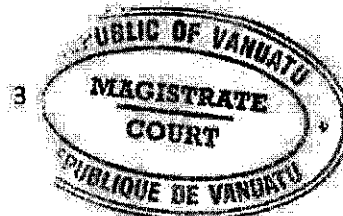
*Penalty: (c) if damage of a permanent nature is caused, imprisonment for 10 years;*

**D. Conviction**

9. Upon admission of guilt by the defendant and my satisfaction that all the elements of both the offences were met after having heard from the Prosecutor's submission of facts and evidence, I hereby enter conviction against the defendant Mr Malkom for both the offences of domestic violence and intentional assault.

**E. Sentence start point**

10. The sentence start point is arrived at after having considered the maximum sentence available for these offending's and the careful assessment of the mitigating and aggravating factors of the offending's.
11. The maximum penalty for domestic violence is a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000Vatu or both.
12. The maximum penalty for intentional assault is imprisonment for 10 years.
13. There are no mitigating factors to these offending's. The aggravating factor are as follow;
- Breach of trust, love and care from the very home and relationship that she should feel secure, loved and protected.
  - Continuously breached his remorse after each incident
  - The assault all happened as a surprise to the victim therefore showing a degree of planning by the defendant
  - Photographs of victim shows clearly the bruises and swelling of her eye and cheeks
  - Photograph of the victim's hand being treated by the nurse/doctor during medical examination
  - The medical examination report shows the following:
    - ❖ Swelling on the right hand
    - ❖ Difficult to move right hand
    - ❖ Painful on right hand
    - ❖ x- ray findings



- The opinion of the medical examiner says that the victim was "...assaulted by her husband...swelling of right hand...Fracture of right ulnar bone of right hand...painful on right hand..."

14. The sentence start point I set for the offending of domestic violence is 12 months imprisonment.
15. The sentence start point I set for the offending of intentional assault is 12 months imprisonment.
16. The sentence start point I set for both the offending will be a concurrent sentence of 24 months or 2 years imprisonment.

#### **F. Personal Factors**

17. The following are mitigating factors personal to Mr Malkom:

- Mr Malkom is a first time offender with no previous conviction and pleaded guilty for the offending of domestic violence and intentional assault at the earliest opportunity given saving the Courts time and expense in conducting a trial and avoiding the embarrassment to the victim to appear and give evidence. This also shows an acceptance of wrong doing and an indication of remorse. Mr Malkom's early guilty plea awarded him a one third deduction to his sentence for the domestic violence offending and the intentional assault offending.
- Mr Malkom is 21 years old and currently unemployed.

18. The following are aggravating factors personal to Mr Malkom:

- Breach of trust from continuously apologizing to the victim after assaulting her but then repeats the violent cycle again few days later.
- Unpredictable to cause violence or assault.

19. For Mr Malkom's mitigating personal factors I reduce 12 Months whereby 6 months is deducted from the domestic violence offence and a further 6 months deduction from the intentional assault offence.

#### **G. End Sentence**

20. The end sentence appropriate for Mr Malkom's offending will be a concurrent sentence of 12 months imprisonment and is to take effect immediately.



21. This sentence is intended to deter the defendant and other like-minded perpetrators of domestic violence to respect their partners and not resort to violence as a means of solving their issues or to get what they wanted or what suits them in their relationship. Men must appreciate the fact that women love them and decided to live with them and also they must value the fact that their partner or wife has voluntarily taken a huge and risky decision to leave their parent's home and to start a home of their own with them. Men must also know that women did not choose a relationship for violence or a relationship life that she will continuously live in fear for her safety. Not only that domestic violence is a crime but is also a disease that initiates both in the mentality and character of a perpetrator of violence that must not be tolerated in all levels of the society therefore for sentences like this is crucial to counter attack such a disease.

22. This sentence also echoes the same reasons clearly outlined by Judge Oliver Saksak in *Public Prosecutor v Sao Christopher [2021] VUSC 49* who stated that;

*"... 15. This is to mark the seriousness of the defendant's offending, to mark public disapproval of his action, to set a deterrence for him and other like-minded persons, to protect the vulnerable members for the society and to punish the defendant appropriately. These principles are well established in cases such as R v Radich [1954] NZLR86 at 87, and Veen v The Queen (No.2) [1998] HCA 14, (1988) 164 CLR 465..."*

23. It is therefore seen inappropriate by this Court to suspend all or part of the sentence due to the serious nature and the type of offending involved. There is obviously a need to protect the vulnerable members of the community from this type of conduct and the need for the elimination of all forms of domestic violence in the communities of this Country.

#### **H. Right to Appeal**

24. The Defendant is advised of his right to appeal this sentence if he does not agree with it and is given 14 days from the date of this sentence to do so.

Dated at Lakatoro this 8<sup>th</sup> day of February 2022.

BY THE COURT



Magistrate