

**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU**

**Criminal**

**Case No. 18/1812 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Elia Qon**  
Accused

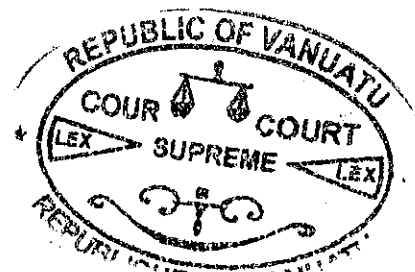
*Date:* Thursday 5<sup>th</sup> July 2018  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr K. Massing for the Public Prosecutor  
Mr J. Garae for the Accused

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**SENTENCE**

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1. The defendant pleaded guilty to one charge of intentional assault causing permanent injury, laid contrary to s. 107 (c) of the Penal Code Act [Cap. 135]. The maximum penalty for this offence is imprisonment for 10 years.
2. The female victim is the defendant's sister-in-law. On 4 April 2018, in the morning, the defendant asked for some bread for breakfast. The victim said that she'd kept it. This caused the defendant to go into the kitchen, retrieve a bush knife, and return to the victim. He then struck her with the back of the knife and cut her right arm. She ran to a relative to seek refuge, but she lost consciousness and fell down.
3. The victim was ultimately sent to Port Vila for medical treatment, as her wounds were too serious to be treated in Santo. She stayed in Port Vila Hospital for some weeks recuperating.
4. The medical report diagnosis is:-
  - (1) Right comminuted open fracture humerus secondary to assault with bush knife.
  - (2) Partial amputation at level of midshaft humerus with transection of posterior compartment of right arm including complete transection of right triceps muscle, right muscula-cutaneous nerve, cephalic vein, radial collateral artery and radial nerve.



### C. SUBMISSIONS

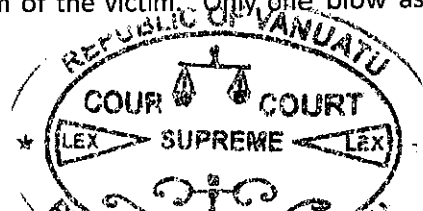
5. The prosecution submitted a starting point, in terms of *PP v. Andy* [2011] VUCA 14 of between 6 - 7 years imprisonment is appropriate. That is based on having regard to *Moli v. PP* [2014] VUCA 37 and *Tari v. PP* [2011] VUCA 26. Both cases involved gratuitous, violence, one with a bottle causing the loss of much of the victim's sight in one eye, and the other also with a knife causing serious injury to an arm/elbow. Both cases were determined when the maximum sentence for these types of offence was only 5 years imprisonment. Mr Massing has therefore raised the starting points from *Moli* and *Tari* which was between 3 and 4 years imprisonment.
6. Mr Massing points to the following aggravating factors to this offending:-
  - Breach of trust – victim is Defendant's sister-in-law;
  - Nature of weapon used – bush knife;
  - Injuries suffered, as per medical report; and
  - Psychological impact on victim.
7. Mr Garae relies on the further authorities of *PP v. Jerry* [2010] VUSC 40 where the defendant used a knife to cut his son's hand and caused an ulnar bone fracture; *PP v. Noel* [2012] VUSC 230 where the defendant struck the victim to the jaw with a metal spanner and kicked him while he lay prone on the ground causing a broken jaw and the loss of a tooth; and *PP v. Bani* [2017] VUSC 105 where the defendant stabbed the victim with a kitchen knife while in the middle of a drunken argument.
8. Mr Garae submitted the starting point should be between 4-5 years imprisonment. He accepted that suspension was not appropriate.

### PURPOSES AND PRINCIPLES OF SENTENCING

9. The relevant purposes and principles of sentencing that apply in this case are as follows:-
  - To hold the defendant accountable for the harm done to denounce his conduct.
  - To denounce his conduct.
  - To deter him and others from committing similar acts in future.
  - To consider the views of the victim and the impact of the offending on her.
  - To consider the prospect of rehabilitation.
  - To impose the least restrictive sentence available.

### STARTING POINT

10. The cases cited are helpful, but several are out of date due to the increase of maximum penalty; and the factual basis for each is different.
11. The appropriate starting point needs to take into account the following factors:-
  - The maximum sentence of 10 years imprisonment.
  - The unprovoked nature of the assault.
  - The nature of the weapon used.
  - What the attack entailed.
  - The injuries caused.
  - The impact of the assault on the victim.
12. I consider the appropriate starting point of Mr Qon to be a term of imprisonment of six years. This was a serious unprovoked attack to the arm of the victim. Only one blow as



struck, with the back of the knife. However, the arm was broken and muscle and nerves severed; and the victim spend a period of weeks in hospital. I cannot assess the future impact on the victim as the PSR did not deal with that.

#### MITIGATION

13. Mr Qon has no previous convictions. He is said to have co-operated with the police and he is said to be remorseful, however the PSR indicates his "remorse" cannot be given credence as he has put the blame on the victim, and has refused to take part in a reconciliation ceremony. Mr Qon is 38, single and would benefit from rehabilitation programmes available to him if imprisoned. I accept he has been remanded in custody since his arrest, a period of 52 days.
14. All of those factors reduce the start point by 6 months. The 52 days spent in custody will count towards the time he will be incarcerated.
15. The final factor to consider is Mr Qon's plea, which was entered at the earliest available opportunity. He is therefore entitled to a 1/3 reduction from the end point for that.

#### SENTENCE

16. The end sentence imposed is three years eight months imprisonment.

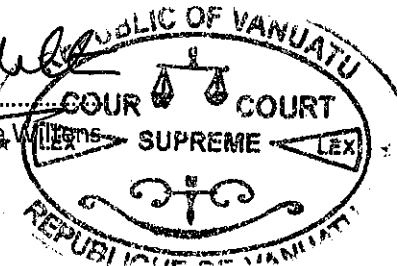
#### SUSPENSION

17. Although it is possible, in appropriate circumstances, to suspend a sentence of imprisonment, it is inappropriate in Mr Qon's case. The offending is simply too serious, given the unprovoked nature of the attack, and the consequences to the victim are on-going. As well, there is no real remorse here.
18. Accordingly, Mr Qon will have to serve a sentence of 3 years 8 months imprisonment for this offence, taking into account the 52 days already served.
19. He has 14 days to appeal the sentence if he disagrees with it.

Dated at Port Vila this 5<sup>th</sup> day of July 2018

BY THE COURT

*G.A. André*  
Justice G.A. André Wilems



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written around the top and bottom inner edges of the seal. In the center, the words "COURT" and "SUPREME" are visible, along with "LEX" on the right side.