

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

Criminal
Case No. 21/1609 SC/CRML

PUBLIC PROSECUTOR

v

SANICK ASANG

Date: 11 August 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr P. Sarai & Mr G. Simeon
Defendant – Mr C. Leo

SENTENCE

A. Introduction

1. Mr Asang pleaded guilty to two charges of domestic violence (Counts 1 and 2) and one charge of breaching the Leadership Code by failing to comply with and observe the law (Count 3). Mr Asang accepted the summary of facts and was accordingly convicted on his own pleas and the admitted facts.
2. The charges relate to 2 separate incidents of assault on consecutive days.
3. The law accepted to not be observed or complied with in Count 3 are the basis of Counts 1 and 2, namely domestic violence contrary to the *Family Protection Act*. The Leadership Code applies as Mr Asang is a Member of Parliament and Third Deputy Speaker of Parliament therefore had the additional obligations imposed on him by the Leadership Code and the Constitution.

B. Facts

4. Mr Asang is married to the complainant. They have been married for 20 years and have 4 children aged 7-19 years old.
5. The complainant wrote 2 letters, one to the Speaker of Parliament and the other to the Ministry of Health, in which she raised concerns about Mr Asang's behaviour and misuse of government vehicles after his election as a Member of Parliament and as Third Deputy Speaker of Parliament.
6. At around 11pm on 6 January 2021, Mr Asang went to his wife's house. He was very angry about the 2 letters written by the complainant. When the complainant came out of the house



to go use the bathroom, she was shocked to see Mr Asang standing outside. She yelled out and the children came running. Mr Asang said to her, "Who advised you to do the letter?" referring to her letter to Parliament. She replied that his brother the police officer Solomon advised her to. He responded, "You guys want to fuck me, you think you will win me over; we will go to Court." He swore at her, "Go and the people who advised you fuck you."

7. Whilst they were arguing, Mr Asang took a perfume bottle and hit the complainant's head. Mr Asang then grabbed a wooden broom and used it to hit her head 3 times, her back 3 times and twice on her hand. The complainant was hurt and broke out crying. Mr Asang only stopped when the wooden broom broke into 3 pieces (Count 1).
8. The next afternoon, on 7 January 2021, Mr Asang returned to the complainant's house. He was very angry about her letter to the Ministry of Health. He said angrily, "You had no right to report me to the Ministry" and grabbed a wooden mop. He used it to repeatedly hit her. Mr Asang hit the complainant twice on the head and repeatedly on her hand and backside using the wooden mop causing her to cry (Count 2).
9. In assaulting the complainant and thereby committing domestic violence, Mr Asang failed to comply with and observe the law set out in sections 4(a) and 10 of the *Family Protection Act* 2008 hence breaching the Leadership Code (Count 3).
10. Mr Asang made full admissions to the Police. He stated that he was very angry at what the complainant did to write to the Speaker to remove the government vehicle from him. He was angered by his wife bringing their domestic issues into his work.

C. Sentence Start Point and Personal Factors

Sentence start point

11. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.

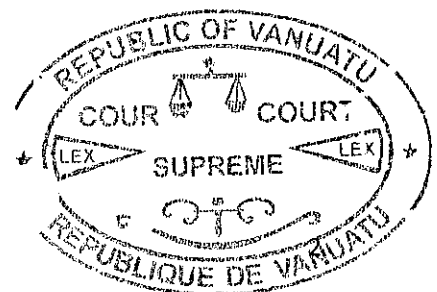
Maximum sentences

12. The maximum sentence provided in the *Family Protection Act* No. 28 of 2008 for domestic violence is 5 years imprisonment or VT100,000 fine or both.
13. The maximum sentence provided in the *Leadership Code Act* [CAP. 240] for breach of the Leadership Code through failing to comply with and observe the law is 10 years imprisonment or VT5,000,000 fine.

Aggravating factors of the offending

14. The offending is aggravated by:

- Serious breach of trust;



- The offending occurred at night at the complainant's home where she was entitled to be safe and protected;
- The repeated nature of the offending and premeditation involved;
- Assaulting the complainant in front of their children;
- The use of offensive language – Mr Asang swore at his wife;
- The use of a perfume bottle, wooden broom and wooden mop as weapons in the assaults; and
- The effects upon the victim including the pain suffered, hitting her head which is the most vulnerable part of the body and the trauma of being assaulted in front of her children.

Mitigating factors of the offending

15. Mr Asang told the Police that he was very angry at what his wife did to write to the Speaker to remove the government vehicle from him. He stated in his sworn statement that he was provoked by her asking Parliament to remove the vehicle he was entitled to. Further, that he was provoked by his wife's involvement in his work affairs. Mr Asang was angered however that does not justify or excuse his committing violence against her. His anger does not mitigate the offending.
16. Mr Asang is stated to have been 'provoked'. The defence of provocation applies where the offending was immediately provoked by the unlawful act of another. Neither the wife's letters nor her writing of the letters are unlawful acts. These also do not mitigate the offending.
17. Mr Leo submitted that the offending occurred in a short timeframe, both incidents of assault lasting a short time. However, Mr Leo accepted that nowhere in the witness statements or accepted facts was it identified how long each incident of violence lasted for. This also is not mitigatory.
18. Mr Leo submitted that the offending occurred in the spur of the moment. However, having assaulted his wife at night, Mr Asang returned the next day and again assaulted her. The second incident could not be described as occurring in the spur of the moment by any stretch of the imagination. Mr Asang told the Police that he was very angry with his which is why he told her off and hit her. His words implied that being angry with his wife justified his hitting her. I therefore do not accept that either incident of assault was a spur-of-the-moment action. I accept Mr Sarai's submission that spur-of-the-moment is not a valid mitigating factor in domestic violence cases, even though it is commonly used as an explanation for defendants' actions.
19. Accordingly there are no mitigating aspects to the offending.
20. Mr Leo submitted that Mr Asang be sentenced to a fine only on all 3 charges. He relied on *Malau v Public Prosecutor* [2021] VUCA 48 as having almost similar facts except that Mr Asang did not use weapons. As already stated, I considered that the use of the various items by Mr Asang in his assault of his wife constituted the use of weapons. The present



case is also different from *Malau* because it involved actual violence, whereas *Malau* did not. Accordingly, *Malau* is distinguishable on the facts. I note that in any event, a suspended sentence of imprisonment was imposed in *Malau*. I consider that given the facts in the present case, consistency of sentencing calls for a sentence of imprisonment to be imposed.

21. Mr Leo cited *Public Prosecutor v Leingkon* [2021] VUSC 175 for his submission that community work or a fine be imposed for the breach of the Leadership Code. However, the present case involves more serious offending as it involved actual violence whereas in *Leingkon*, there was endangering of the pilot and fellow passengers. Further, in *Leingkon*, the defendant was drunk. In the present case, Mr Asang was not drunk. I consider that a sentence of imprisonment is appropriate.
22. I adopt a global sentence start point of 18 months imprisonment.

Personal factors

23. Mr Asang pleaded guilty at the first reasonable opportunity. Accordingly I deduct 33% (6 months) from the sentence start point.
24. Mr Asang is 41 years old. He is married and has 4 children. He is responsible for their school fees and day to day needs. He also looks after his parents. Mr Asang is stated to be a strong contributor to his community at Malekula and to the Presbyterian Church of his community. Mr Asang is a Member of Parliament, elected in the 2020 general elections. He is also serving as the Third Deputy Speaker of Parliament. He has supporting references from the Prime Minister and leader of his political party the Minister of Climate Change. Mr Asang has no previous convictions.
25. He is stated to be remorseful however that does not sit well with Mr Asang's statement to the pre-sentence report writer that one of the reasons for his offending was that he was angry with his wife for allowing their eldest daughter's boyfriend to live with them and for allowing that daughter to go clubbing although she is still in school.
26. Mr Asang has performed a customary reconciliation ceremony with the people and chief of his community involving VT100,000 cash, a pig and a kava ceremony, and a VT30,000 fine to his mother-in-law. The complainant did not know about this ceremony until after it had happened and according to Mr Asang, has declined all offers for a custom reconciliation ceremony with her personally. For Mr Asang's personal factors, I deduct 3 months from the sentence start point.

D. End Sentence

27. Taking all of those matters into account, the end sentences imposed concurrently are:
 - a. Domestic violence (Counts 1 and 2) 9 months imprisonment; and
 - b. Breaching the Leadership Code by failing to comply with and observe the law (Count 3) 12 months imprisonment.



28. The sentence is imposed to deter offending by sending the message to the community that the law prohibits domestic violence and that leaders have a duty to comply with and observe the law. The sentence is also imposed to mark the gravity of the offences and to hold Mr Asang accountable for his criminal conduct.
29. Mr Asang's fall from grace is in itself punishment. However, I reiterate that as a leader, he has a responsibility to lead by example to solve disputes through dialogue, not violence.
30. I have the power to suspend a sentence in whole or in part. The factors which favour suspension of the sentence include the following: the prompt guilty plea, the lack of previous convictions, Mr Asang's engagement in a custom reconciliation ceremony although not with the complainant herself, his responsibilities to public office and to his children. I assess also that Mr Asang has prospects for rehabilitation.
31. The factors which favour not suspending the sentence include the following: the offending was repeated, it was premeditated, occurred in front of his children and involved the use of items as weapons.
32. On balance, weighing those factors, I consider the end sentences should be suspended. The period of such suspension will be 2 years. Mr Asang is warned that he must remain offence-free for the next 2 years or he will need to serve his sentences of imprisonment in addition to any other penalty that may be imposed on him for the further offending.
33. In addition, Mr Asang is ordered to complete 50 hours of community work.
34. Mr Asang has 14 days to appeal his sentence.

**DATED at Port Vila this 11th day of August 2021
BY THE COURT**

VM Trier
Justice Viran Molisa Trier

