

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

**Criminal
Case No. 21/3131 SC/CRML**

BETWEEN: Public Prosecutor

**AND: Thuram Malserake
Defendant**

Date: 1 December 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr G. Simeon for Public Prosecutor
Ms F. Kalsakau for Mr L. Moli for the Defendant

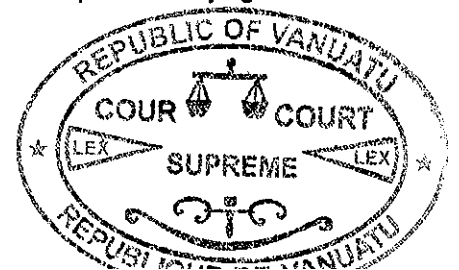
Sentence

A. Introduction

1. Mr Malserake pleaded guilty to intentional assault (charge 1), threat to kill (charge 2) and 2 charges of domestic violence (charges 3 and 4).

B. Facts

2. Mr Malserake and Ms Flora Bani are in a de facto relationship. They reside together at Freshwota 1 area, Port Vila.
3. On 23 June 2021, Mr Malserake was unable to locate his phone. He asked Ms Bani if she had seen his phone and was told that Ms Bani and her cousin Eva had not used his phone. This made Mr Malserake angry. He kicked Ms Bani, which caused her to fall to the floor. He then punched her to both sides of her face. [Charge 1].
4. Mr Malserake then squeezed her neck and said "If you want, I will kill you. Where is my phone?" [Charge 2]. Ms Bani repeatedly told Mr Malserake that she had not taken his phone, and he attempted to again punch her but Ms Bani blocked the blow. She was in pain and crying.



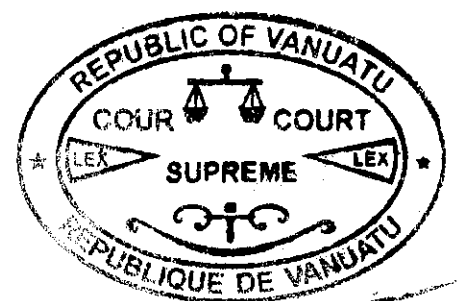
5. Mr Malserake then went over to Eva and punched her. Ms Bani called out for him to stop, but Mr Malserake continued to assault Eva by pushing her out of the house and punching her in the face. [Charge 3].
6. Ms Bani reported the matter to the police. In her report she alleged that Mr Malserake regularly assaulted her in similar ways. [Charge 4].
7. Mr Malserake made admissions when interviewed by the police.

C. Sentence Start Point

8. The sentence start point is to be assessed by having regard to the maximum penalties available for the offending and factoring in the aggravating and mitigating aspects of the offending.
9. Intentional assault has a maximum sentence of 5 years imprisonment. The maximum sentence for threat to kill is 15 years imprisonment. The maximum sentence for domestic violence is 5 years imprisonment.
10. There are no mitigating aspects to the offending. However, there are aggravating factors, including the following:
 - The repeat nature of the offending, including the fact there are 2 complainants;
 - The controlling behaviour; and
 - The breach of trust.
11. I adopt a sentence start point of 1 year 8 months imprisonment, on a global concurrent basis.

D. Mitigation

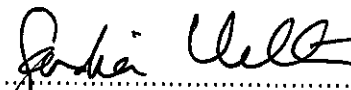
12. Mr Malserake pleaded guilty at the earliest available opportunity. He spared Ms Bani the need to give evidence, and his pleas are an indication of his remorse and his acceptance of wrongdoing. On the other hand, the evidence against Mr Malserake was strong and he had little alternative but to plead. For his prompt pleas, I reduce the sentence start point by 25%.
13. Mr Malserake is 23 years old, and he and Ms Bani have a young daughter. He is a chef by occupation.
14. He has no previous convictions.
15. Mr Malserake explained he became angry as he believed Ms Bani had taken his phone. The PSR indicates he has no insight to his offending and continues to shift the blame to Ms Bani. He has not participated in a custom reconciliation ceremony, but maintains he is willing to do so.
16. For his personal factors, I further reduce the sentence start point by 3 months.



E. End Sentence

17. The end sentence I impose is 12 months imprisonment. I impose that on all the charges, to be served concurrently.
18. The Court has the ability to suspend the sentence in certain circumstances. In this instance, I consider suspension is appropriate, as it will have the effect of the holding a sentence of imprisonment over Mr Malsrake's head should he repeat his loss of self-control and take it out on others. I do not consider his offending merits immediate incarceration, and I am mindful of his obligations towards his daughter. Accordingly, the sentences are suspended for 2 years. Mr Malsrake needs to stay offence-free for 2 years to ensure he does not serve this present sentence.
19. Mr Malsrake clearly requires some assistance to prevent further offending. Accordingly, he is additionally sentenced to 12 months of supervision, with special emphasis to be placed on anger management and programmes dealing with the consumption of alcohol and other substances.
20. Additionally, Mr Malsrake is to complete 120 hours of community work.
21. Mr Malsrake has 14 days to appeal the sentence.

Dated at Port Vila this 1st day of December 2021
BY THE COURT


Justice G.A. Andree Wiltens

