

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

Criminal Case No. 25/1123 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Port Vila

State

AND: BARNABAS GARAE
Port Vila

Defendant

Date of plea: 20 May 2025
Before: Justice B. Kanas Joshua
Counsels: Mr C. Shem, for the State
Mr F. Tasso (holding papers for K. Amos), for the defendant

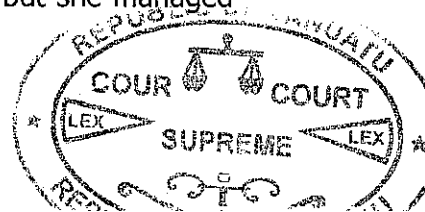
SENTENCE

Introduction

1. Mr Barnabas Garae, you appear today because you pleaded guilty to the following charges, on 20 May 2025:
 - a. Count 1 – Domestic violence, contrary to Section 4(1)(a) of the Family Protection Act No. 28 of 2008; and
 - b. Count 2 – Domestic violence, contrary to Section 4(1)(a) of the Family Protection Act No. 28 of 2008; and
 - c. Count 3 - Domestic violence, contrary to Section 4(1)(a) of the Family Protection Act No. 28 of 2008.
2. The maximum sentence for domestic violence is a term of imprisonment not exceeding 5 years, and and/or a fine not exceeding VT100,000.

Facts

3. You admitted and confirmed the following facts:
 - a. The complainant is your wife.
 - b. Sometimes around the month of August 2024, you had access to your wife's messenger account and read her messages. You saw a message from Philip Worwor, who wrote "childhood crush" and you got angry with your wife. You formed the opinion that your wife may have been having an affair with Mr Worwor while you were in seasonal work in Australia. You confronted her and she explained that Mr Worwor was a relative of hers whom she calls "tawi", and assured you that there was nothing between them.
 - c. You were not satisfied with the explanations by your wife and proceeded to assault her. At that time, she was lying on the bed and you punched her head which caused lacerations and bleeding. You then squeezed her neck but she managed



to free herself from your actions when you threw a canned fish at her. The can landed on her hip while she was escaping. The pain on her hip continued and she had to be massaged. She was in so much pain that she could not do anything.

- d. On 12 September 2024, you accessed your wife's phone again and went through her messages in her messenger account. You came across a message sent by an anonymous person that read, "Hi", "Hola", and "Awo mi ia". The messages displayed that your wife had seen the messages but had not responded to it. Later on that day, after the complainant had returned home with your son from school, she came and sat in the sitting room. You approached her and repeatedly punched the complainant on the left side of her head, resulting in lacerations and bleeding.
- e. Whilst assaulting her, you told her that as a married woman she should not be accepting friends from anonymous persons on the messenger platform. Your wife responded that she was fed up of your actions and opinions and in retaliation you kicked her on her left rib, with your foot. At that time your son and another person, called Francis, heard your wife crying and they rushed into the house. You then stopped what you were doing. Your son then assisted his mother by wiping blood from her face with a tea towel.
- f. The next day while your wife accompanied your son to school she was spitting blood. You later took your wife to the hospital where she was given medication. She was in a lot of pain and on several occasions experienced dizziness.
- g. On 22 January 2025, you accessed your wife's messenger and read her messages. This time you saw exchange of messages between her and another man on the Whatsapp platform. Those communications were between your wife and a supercargo officer and the exchange of messages related to communications of delivery of cargo to the ship, as your wife is employed as Administration officer of Essah Corporation.
- h. You saw that in the exchange of messages your wife referred to him by the name "Manuel". You were angry that your wife addressed the supercargo officer by his name and assaulted her.
- i. You punched her on the back with your right hand. She was sitting down, eating lunch inside the house. Immediately after the hit, she ran outside and vomited. As she was vomiting she choked from the vomit and lost consciousness, only to regain it after being washed with water.

Sentencing purposes/principles

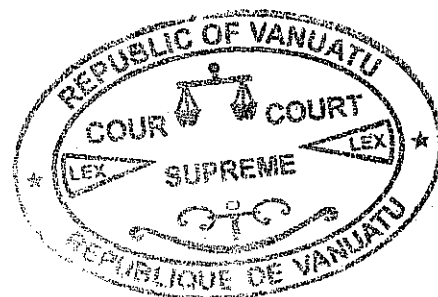
- 4. You must be held responsible for your actions so others who behave in the same way, can see that this is against the law and has serious consequences, so they can stop their actions. This sentence should help you to rehabilitate, and must be generally consistent.

Approach to sentence

- 5. The sentence approach taken is in two steps, as in *Jimmy Philip v. Public Prosecutor*¹, which applied *Moses v. R*².

¹ [2020] VUCA 40.

² [2020] NZCA 296.

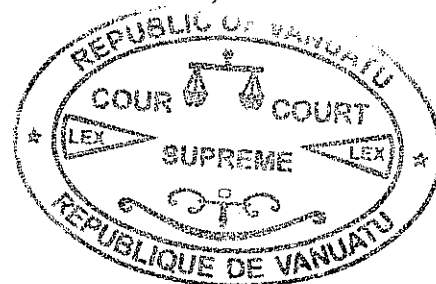


Step 1 – Starting point

6. The first step is to set a starting point. Reference is made to the aggravating and mitigating factors of the offending and the maximum penalty of the offence. The aggravating factors here are:
- a. Breach of trust between the defendant and his partner and their son.
 - b. Repeated offending on 3 different occasions.
 - c. Use of violence to control;
 - d. Planning – in all 3 occasions, the defendant approached the complainant when she was lying down or sitting down. These are vulnerable positions that will make it difficult for the complainant to escape.
 - e. Offending occurred at home, the very place where the victim should feel safe and secure.
 - f. Offending committed in the presence of their son, who saw and/or heard what happened between his parents. The psychological effect of this cannot be measured making more dangerous. It portrays violence as the way to handle problems.
 - g. Fear is caused on the complainant to put her in a submissive position so she can be controlled.
 - h. Jealousy felt by the defendant resulted in violence. This diminishes the trust in the relationship and does not promote good approaches on how to address one's emotions.
 - i. Shame and humiliation are felt by the spouse as others witness the scenes of violence.
 - j. Assault was aimed directly at the head, rib and backside (vulnerable parts) of the victim where prospects of further injuries could have been sustained.
7. There are no mitigating factors of the offending.
8. Prosecution referred to 2 cases as guides to starting points. The first case is **PP v. Alban³** where the court adopted a starting point of 3 years imprisonment for 4 counts of domestic violence. The end sentence was 17 months imprisonment. In this case, all incidents of domestic violence occurred at home where the offender punched his partner and when she fell to the ground he kicked her with the safety boots he was wearing. In the second case of **PP v. Saly⁴** the court adopted a starting point of 2 years 8 months imprisonment for 3 counts of domestic violence. The end sentence was 2 years imprisonment. The incidents of domestic violence occurred over a period of 3 years. In the first incident the defendant assaulted his partner by stabbing her in the back with a sling shot during a disagreement. As a result, she experienced numbness in her back. In the second incident the defendant assaulted the complainant to the point where she lost consciousness. In the third incident the defendant assaulted the complainant on the main road by kicking her in the ribs.

³ [2024] VUSC 167.

⁴ [2024] VUSC 112.



9. Defence agreed that the 2 cases referred to by prosecution were good authorities to assist the court with a starting point. They added the case of *PP v. Kalo*⁵, where the court adopted a starting point of 3 years and 3 months, and after reductions were made an end sentence of 2 years for threats to kill, 1 year 6 months for intentional assault, 6 months for domestic violence was given, to be served concurrently. The sentence was suspended for 2 years. In the current case there is no threats to kill, and they submitted that it is similar to the case of *Saly* where the defendant assaulted the victim on 3 occasions.
10. In comparing the authorities with the current matter, prosecution submitted a starting point of 36-48 months imprisonment. Defence submitted a starting point of 1-3 years imprisonment.
11. Domestic violence is an offence that occurs throughout Vanuatu and makes up the bulk of cases in the Magistrates' court. It is mainly committed by men towards their spouses. In some cases, women commit domestic violence on their spouses and most cases it is committed between couples in a relationship. It is a crime that creates an unsafe and insecure environment in homes, and it can lead to separation and divorce. The impacts of domestic violence affect children the most and the court condemns domestic violence, in *Kalo*, when it stated,

*"A home should be a safe place and a sanctuary. The infliction of physical force by a man on a woman is always to be condemned."*⁶

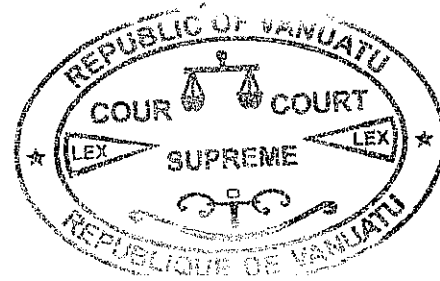
12. For the reasons above, I give a starting point of 3 years imprisonment for all 3 counts.

Step 2

13. The second step is to make the appropriate deductions for personal factors. Prosecution acknowledged that a deduction of 20-25% be made for the guilty plea. Defence submitted that 33% should be given as he pleaded guilty at the first possible opportunity.
14. Other mitigation factors were:
- The time spent in remand must be considered. Prosecution accepted that the time spent in remand must be deducted, but stated that the defendant only spent 6 days in remand and not 3 weeks as it states in the Pre-Sentence Report. This was conceded to by defence, who added that this equates to an effective sentence of 2 weeks.
 - The defendant is a first-time offender and cooperated with the police. In his caution statement he understood the allegations against him and admitted that he assaulted the complainant. The Pre-Sentence Report (PSR) confirmed this.
 - Reconciliation has been done verbally by the defendant, which the complainant accepted. The defendant showed a willingness to perform a custom reconciliation should the court orders.
 - Remorse is identified from the evidence before the court, where the defendant helped the victim to the hospital and assisted her in her recovery. He also made a

⁵ [2023] VUSC 164.

⁶ *Kalo v. PP* [2020] VUCA 39, at [20].

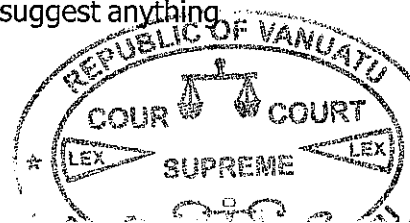


public apology in court this afternoon showing that he truly sorry for committing domestic violence on his wife and in front of his son.

- e. Good character reference was made of the defendant in the PSR. He has a good relationship with his community and carries out church activities.
15. I take into consideration that the defendant admitted in his caution statement that he assaulted his partner. He stated that it was intentional because he was angry at her. Prosecution has a strong case and for this I give a 25% discount, bringing the sentence to 25 months, or 2 years and 1 month imprisonment.
16. The second deduction to make is for the other mitigation factors. Prosecution submitted that the defendant's remorse is doubtful, as the PSR showed that he still blamed the act of affair of the victim caused his actions. I am also doubtful of the good character reference in the PSR, as that was made by the victim. The victim took the blame that she caused the defendant to be jealous from messages between herself and other male friends, when she had stated clearly that there was nothing sexual between her and those male friends. This is commonly seen in domestic violence matters where there is a "honeymoon period" and the couple are recovering and are in a temporary state of romance, and the victim takes the blame for the violence.
17. From the caution statement, the defendant referred to these messages as "having an affair". This is a wrong idea. "Having an affair" means having sex with another person. Sending messages to another person of the opposite sex is not having an affair. In addition, the messages did not suggest anything sexual between the victim and other males. In this case, it was quite clear from the victim's statement that the messages were sent from her relative or work related. Even the messages sent from the fake account which the victim never responded to, did not suggest anything sexual.
18. All this just indicates that the defendant lacks the communication skill to get information from his partner nor have the right approach to resolve matters. Instead he allows his emotions to take the better of him and resort to violence as the best way to deal with misunderstandings. Moreover, his example will influence his son that this is how you approach misunderstandings and the cycle of domestic violence continues.
19. For these reasons, I give a reduction of 1 month for the other mitigating factors.

End sentence

20. Mr Barnabas Garae, I am sentencing you to 2 years imprisonment for committing the offence of domestic violence on your partner.
21. You are 36 years old and you are in your prime years. In the PSR, your partner stated that you are a role model at home as you support and care for your son. This is contrary to the acts of domestic violence that you committed in the presence of your son. Showing violence as the way to resolve matters in a home just creates an unsafe and insecure environment for a young child. If you truly care for your son, you will stop this behavior. You must learn to control your jealousy and anger when you read messages sent to your partner from other males, especially when they are messages that do not suggest anything



sexual. Your partner is not having an affair as you think and if you had used a good approach, such as talking to her, you would have found out that there is nothing between your wife and the men who sent her messages.

22. You are a first offender and you are old enough to understand the consequences of domestic violence to stop them. You must create a safe and secure home for your partner and son as part of your support and care for them.
23. For the above reasons, I am suspending your sentence for 12 months, under my discretion in Section 57 of the Penal Code Act CAP 135. Suspending your sentence will help towards your rehabilitation. If you offend within this period, you will be arrested and this sentence will be activated, in addition to any other penalty imposed for the further offending.
24. To assist with your rehabilitation, I make the following orders:
 - a. That you must do 50 hours of community work; and
 - b. That you must attend the appropriate rehabilitation program offered by the Correctional Services that targets this offending.
25. You have 14 days to appeal.

Dated at Port Vila on this 10th day of July 2025

BY THE COURT

