

PUBLIC PROSECUTOR

V

ANNA KELEP

Date of Sentence: 14th of September, 2020 at 2PM

Before: Fsam

In Attendance: Ms Tete for the State

Mr Moli for the Defence

Copy: The Public Prosecution, The Public Solicitor, Defendant.

SENTENCE

Introduction:

1. On the 9th day of September, 2020, Ms Kelep pleaded “yes i tru” and recorded as her guilty pleas to two counts laid against her, namely Count 1 of Intention Assault in contrary to section 107(c) of the Penal Code Act [Cap 135] and Count 2 of Domestic Violence in contrary to section 4 & 10 of the Family Protection Act 2008. Submissions were sought wherefrom this Court was to consider the relevant facts and laws before passing its verdict accordingly.

Brief Facts:

2. Ms Kelep and her husband, have had domestic issues in their relationship which resulted in their separation in 2012 and their children of two daughters and a son moving between Ms Kelep and her husband. Sometimes in June, 2020, Ms Kelep and her husband reconciled.



matrimonial relationship, and it was sometimes on the evening of 3rd of August 2020 that Ms Kelep was informed by her husband of her oldest daughter, Elsie of 16 years, leaving the house with her boyfriend for Bellevue where the boy lives. It was this incident that gave rise to heated arguments between Ms Kelep and her husband, particularly on her part, being concerned that her husband did not stop Elsie being young and prone to getting herself pregnant in a relationship too soon. Elsie did return home the next day when further confrontation took place between her and Ms Kelep, which led to Ms Kelep slapping Elsie. Elsie reported this to her father, who then got angry and assaulted Ms Kelep, and it was through a commotion over this incident that she fell on the floor and her husband stepped on the back of her neck. She then noticed a machete on the floor which she grabbed and swung it to her back twice towards her husband. It was when her husband ran out the door, that she realised she had cut her husband on the head. The machete was removed from her by relatives who called the police to the scene and arrested her.

The Law & Maximum Penalty

3. The following statutory provisions point to the offences committed and the maximum penalties imposed for such offences:

(a) Section 107(c) of the Penal Code Act [Cap 135] states:

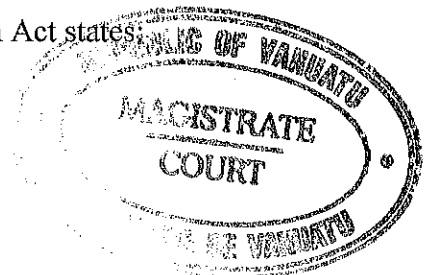
“107. Intentional Assault

No Person shall commit intentional assault on the body of another person

.....

(c) if damage of a permanent nature is caused, imprisonment for 10 years.

(b) Section 4 & 10 of the Family Protection Act states:



4. Meaning of domestic violence

(1) A person commits an act of domestic violence if he or she intentionally does any of the following acts against a member of his or her family:

(a) assaults the family member (whether or not there is evidence of a physical injury);

.....

“

“10 Domestic Violence Offence

(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.

....”

Aggravating and Mitigating Factors:

4. The Court heard submissions from both State Counsel and Defence Counsel, in deciding on the appropriate verdict for Mrs Kelep.

5. The Court also accepted the facts as submitted by Mrs Bakokoto and which are not disputed by Mr Toaliu.

6. The use of weapon, being a machete, for the assault was the only aggravating factor to this offending.

7. In mitigation, it is accepted that Ms Kelep has had a good rapport her entire life before the incident. That she is not a habitual offender. That she reacted towards her daughter because she felt betrayed and disrespected by



her daughter having struggled to raise her with very limited support from her husband.

8. It is also submitted that Ms Kelep's reaction to her husband was a mere instinct of her surviving from the situation she was in, with her husband stepping on her neck while she was on the floor in their house and no one else was around, and she feared she could have been killed if she had not reacted as she did with the use of the machete.

9. It is submitted that she was provoked by her husband to grab the machete and use it against him to defend herself. Mrs Bakokoto cited section 27 of the Penal Code, and I will consider this in sentencing Ms Kelep accordingly.

10. Mr Toaliu assisted this court with some important case authorities and which I will consider and adopt as guideline for sentencing Ms Kelep, particularly, the case of *Philip v Public Prosecutor* [2020] VUCA 40, *Public Prosecutor v Samule* [2019] VUCA 76, and the case of *Public Prosecutor v Hinge* [[2020] VUSC 131.

11. Mrs Bakokoto also made reference to some important cases, including *Public Prosecutor v Hinge* above-mentioned particularly in stating the similarity with this case where the defendant also a woman, had had domestic issues over some time with her husband, and the defendant also reacted after being provoked. The only difference to *Hinge* is that the assault to Ms Kelep's husband was not fatal or resulted in death.

12. Having considered all the relevant factors in relation to Ms Kelep's offending, this court is satisfied that the elements of Intentional Assault and Domestic Violence have been met, I therefore find Ms Kelep guilty of both counts and convict her accordingly.

Starting Point:



13. I adopt a starting point of 24 months imprisonment for both counts of Intentional assault and domestic violence given both emerged from the same set of facts, and within one chain of events.

Personal Factors

14. Ms Kelep is a young mother of 3 children, two girls and a boy, in her relationship with her husband.

15. She is employed at the Grand Hotel, and sells Kava juice every evening after work in the Nakamal to make earns meet for her family.

16. She has no prior convictions.

17. She cooperated well with the police during investigations and admitted the offence, taking responsibility for the offences she committed.

18. Ms Kelep pleaded guilty at the earliest available opportunity given her.

19. She is remorseful for her actions.

20. She had spent more than a month in remand.

Guilty Plea:

21. With regards to her guilty plea, I accept that while Ms Kelep pleaded guilty to the earliest available opportunity, she had no choice but to do so because of the overwhelming prosecution case, and so I award a 25 % deduction for her guilty plea, leaving a balance of 18 months.

22. I also accept that Ms Kelep was provoked in this case, where any normal person being in her situation, would have lost self-control and acted the way she did, and that her criminal responsibility should be diminished,



and the sentence imposed on her should reflect this diminution. I apply section 27 of the Penal Code accordingly.

23. Therefore, in considering Ms Kelep's personal circumstances, provocation and no prior convictions, I make a deduction of 3 months.

24. Further deduction is made in considering Ms Kelep having had spent over a month in custody.

End Sentence:

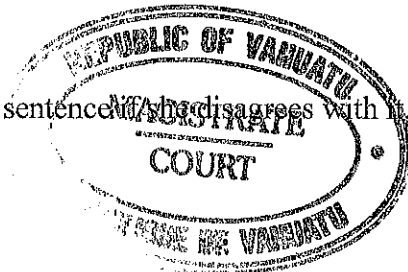
25. The end sentence imposed is 13 months and 2 weeks imprisonment for both Counts to be served concurrently.

26. In considering suspension of sentence I accept that Ms Kelep's husband and daughter (Elsie) stood in court raising their concerns about their Defendant mother/wife, with the husband stating his inability to care for his children while Ms Kelep was remanded, and her daughter shedding tears showing forgiveness on her part towards her mother (Ms Kelep) and sharing the children's desire for their mother to return to them. This shows Ms Kelep is wanted back into her family, further reflecting high chances for her rehabilitating back into the community.

27. I am also satisfied Ms Kelep plays a significant role as a mother and bread winner to the family, and there is no risk of her re-offending, if she returns to the community.


28. Therefore, I suspend Ms Kelep's sentence for 2 years in pursuant to section 57 of the Penal Code (Amendment) Act. This means she does not have to go to prison today. She can return to her family but she must be of good behavior, and not commit further offences. In the event she does commit an offence, the suspension will be uplifted and she must serve her term of imprisonment accordingly.


29. Ms Kelep has 14 days to appeal this sentence if she disagrees with it.



DATED at Port Vila, this 14th day of September, 2020.

BY THE COURT


FSam
Magistrate


REPUBLIC OF VANUATU
MAGISTRATE
COURT
REPUBLIC OF VANUATU