

**PUBLIC PROSECUTOR**

**V**

**FRANK HOLI**

Coram: A. Laloyer – Acting Chief Magistrate

Counsel: Mr. Michael. G for Public Prosecutor

Defendant in person

**SENTENCE**

1. Mr. Frank Holi, you entered a guilty plea on one count of domestic violence contrary to section 4 (1)(a)(b)(d) and section 10 of the Family Protection Act No. 28 of 2008 and one count of intentional assault contrary to section 107 (b) of the Penal Code Act [Cap. 135].
2. You are now sentenced on the information charge dated 29 July 2021.
3. The offence of domestic violence is reflected in ss. (1)(a)(b)(d) of the Family Protection Act No. 28 of 2008 provides:

***“4 Meaning of domestic violence***

***(1) A person commits an act of 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);***

***(b) psychologically abuses, harasses or intimidates the family member;***

***(c) ...***

***(d) stalks the family member so as to cause him or her apprehension or fear;***

***(e) ...***

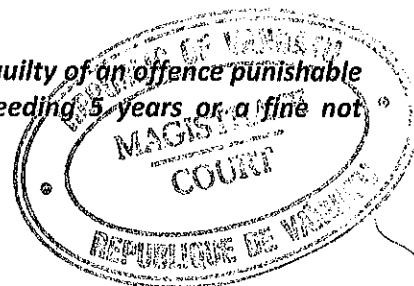
***(f) ...***

***(g) ... .”***

4. Section 10 of the Family Protection Act No. 28 of 2008 states that:

***“ 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.***



- (2) *It is not a defence to an offence under subsection (1) that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.*
- (3) *An offence under subsection (1) is in addition to and not in substitution for any other offence constituted by an act of domestic violence.*
- (4) *If a person (in this subsection called "the instigator") counsels or procures another person to commit an act that if done by the instigator, would be an act of domestic violence, then the instigator is taken to have committed the act and subsection (1) applies in relation to the instigator.*
- (5) *If a person is convicted of an offence against this section, a court may, in determining the penalty to be imposed on the person, take into account any compensation or reparation made or due by the person under custom.*
- (6) *If under custom such compensation or reparation has not been determined and a court is satisfied that a determination is likely to be made without undue delay, the court may postpone sentencing pending the determination."*

Section 10 of the Penal Code Act [Cap. 135] provides :-

***"No person shall commit intentional assault to n the body of another person.***

***Penalty: (a)...;***

***(b) if damage of a temporary nature is caused, imprisonment for 5 years;***

***(c) ...;***

***(d) ... ."***

5. The high level of fine set by law is 5 years imprisonment or 100,000 Vatu fine or both for an offence of domestic violence under section 10 the Family Protection Act and 5 years imprisonment for an offence of intentional assault under section 107 (b) of the Penal Code Act. This indicate the intention of the legislature that those offences are serious in nature. The courts must reflect the intention when sentencing those committing such offences.
6. A person who commits such offences is liable for such maximum 5 years or 100,000 Vatu fine.
7. The facts of this case as provided by prosecution and you accepted these facts before you entered a guilty plea on 31 July 2021. You did not dispute them. You are now sentenced on the basis of these facts.
8. Facts of this case which you do not dispute are those-
9. On 09 July 2021, you asked 1,000 Vatu from the complainant who is your defacto partner. You did not come back home until the early morning of 10 July 2021 intoxicated with alcohol. You went into your bedroom and asked her to have sex with you. The complainant refused your advances. You picked up a broken piece of tile with the intention to assault the complainant. When the complainant saw that piece or tile in your hand, she got up from the bed and ran out of the house. You followed her. You dropped the piece of broken tile and you picked up a stone. You ran after her and assaulted her with the stone more than once when she called out for help and some people living in the same yard as the complainant came and you fled away. The complainant was taken to the Vila Central Hospital for medical assistance since she was badly assaulted.
10. During your interview with the police, you admitted to the allegations made against you.



11. In this case, the following aggravating factors are present:-

- You used the stone as weapon to assault the partner;
- You were provoked at the time of the offence;
- The victim as women was vulnerable to the assaults you caused to her;
- You assaulted your partner to satisfy your urges;
- You the weapon on more than one occasion causing actual injuries to your partner which required the nurse at VCH to give her a lot of stitches as per the photos and medical report;
- You cause fear to your partner;

12. The mitigating factors present are as follows:

- Your guilty plea;
- You had cooperated well with the police and made admissions when questioned.

13. You must be responsible and accountable for your own acts. The offences committed here are serious in nature.

14. I noted also that you do not have a previous conviction.

15. This is not a case that this court should be lenient. Rather the Court must impose prison sentences to deter you and others from committing these offences, and to protect women living in such relationship without our communities as well.

16. I take the mitigating and aggravating factors into consideration including the case of Public Prosecutor v Francisco Batick MC/CRML 20/2043 [2020] into account and decides that a starting for your sentencing is 24 months imprisonment. Your sentence will be reduced for your guilty plea by one-third. No custom reconciliation to take into account.

17. Having said this, your end sentence will be 16 months imprisonment.

18. You have a right to appeal this sentence if you are unsatisfied with it. You have 14 days to do that and it starts today.

**DATED at Port Vila, this 31<sup>st</sup> day of July 2021**

BY THE COURT VANUATU  
MAGISTRATE  
LALOYER. COURT  
Acting Chief Magistrate

