

**PUBLIC PROSECUTOR**

**V**

**ATANAS NAKAR**

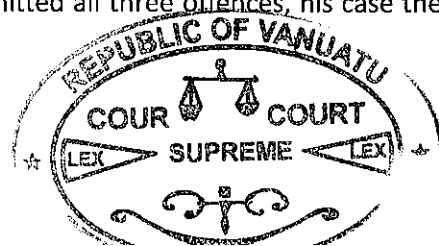
***Date of Sentence:***     ***18 March 2022 at 10 am***  
***Before:***               ***Goldsbrough J***  
***In Attendance:***     ***Taiki M, for the Public Prosecutor***  
                                  ***Garae J, for the Accused***

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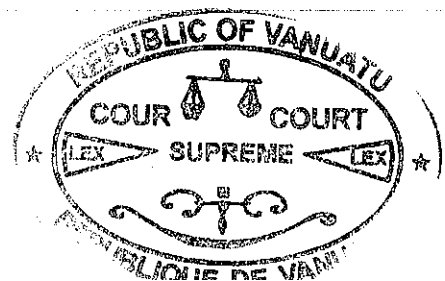
**SENTENCE**

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1. Antanas Nakar pleaded guilty to two offences under the Family Protection Act 2008 sections 4 (1) f and 4 (1) g and to one offence under section 115 of the Penal Code of making a threat to kill.
2. On 7 February 2022 at Unmet Village, Malekula, there was an altercation involving the accused and his elder sister. The accused asked his sister about their two nieces and did not like the answer he received. He became angry and swore at his sister. He grabbed a bush knife and used it on a bucket and a piece of wood. The accused's father took the bush knife from his son. Seeing a young coconut, he again threatened his sister but was stopped by his parents, and then threatened her with a piece of bamboo. Do you want me to hit you with this, he said to his sister.
3. The sister ran towards her parents. Antanas walked off but returned with another knife, which was taken from him by his parents. Then he said 'by mi kilim tet you by yu no save sleep lo place by mi killem tet yu mo bonem haos blo yu tedei'. This was directed at his elder sister and witnessed by his parents.
4. He was arrested on 9 February 2022 and spoken to by the police on 11 February and admitted his offending. Since his arrest he was remanded in custody and first appeared in the Supreme Court on 15 March 2022 and admitted all three offences, his case then being adjourned for sentence on 18 March 2022.



5. The maximum penalty prescribed for these offences is 5 years imprisonment for domestic violence offences and 15 years for the threat to kill. The starting point from which the court may determine an appropriate sentence is determined by consideration of the maximum prescribed penalties and the factors which may be said to aggravate or mitigate the offences. It is not in dispute that this was one single incident and that the sentences for each offence should be concurrent, with the offence of making a threat to kill being regarded as the most serious of the three offences.
6. Here it is said that the use of a weapon makes the offences more serious, and the fact that the offences took place where the victim was supposed to feel safe, that is to say at home. It is further suggested that the use and threat of use of weapons makes the offences more serious. Finally, the victim being put in fear is an aggravating feature. There is nothing that goes to mitigate the offences.
7. In this case, it was the fear of violence, rather than the use of actual violence on the victim, which was present. In each separate threat, the accused's parents were on the scene to stop any escalation. Weapons were used, but not to cause physical injury. There was no justification present for the threats.
8. In *PP v Nakou* [2021] VUSC 391 a starting point of 3 years was determined for the offence of making threats to kill. In *PP v Malsrake* [2021] VUSC 343 a starting point of 20 months. In *Nakou* there were repeated threats made on different occasions and in *Malsrake* there were repeated threats and an actual assault.
9. In this case, the court adopts a starting point of eighteen months imprisonment, given that the offending on its face is less serious than that considered in both *Nakou* and *Malsrake*. It all took place as part of one incident and it did not include the infliction of actual physical harm on the victim.
10. The defendant pleaded guilty at the first available opportunity and should be given credit for that. He has spent time in custody before his sentence and is entitled to have that taken into account. At the time of the sentence, he has spent 36 days in custody. There is little else that can be said in mitigation of these offences and the defendant's previous character shows that he has a history of demonstrating a short temper and lack of self-control in anger.



11. Submissions on an early plea discount range from 30 to 33%. Taking into account its utilitarian value, a discount of 30% is given. Balancing the need to make allowance for 36 days already spent in custody against the need to reflect that this offender is not a first offender, the court concludes that a sentence of 12 months imprisonment suspended for two years together with the imposition of 120 hours of community service on each offence concurrent is the appropriate end sentence.
12. Suspension of the sentence reflects the fact that actual imprisonment has not, in the past, been effective at persuading this man from further offending. It also reflects the fact that this offending is not the most serious of its kind. By providing the offender with the opportunity himself to avoid the consequence of imprisonment together with the reminder of his offending as he serves his community sentence it must be hoped that Antanas Nakar can keep himself out of further trouble.
13. The sentence of the court for each of the three offences is 12 months imprisonment suspended for two years together with 120 hours of community service to be completed within the next 12 months each sentence to be served concurrently.

**DATED at Port Vila this 18<sup>th</sup> day of March, 2022**

**BY THE COURT**

*EP Goldsbrough*

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**EP Goldsbrough**

**Judge**

