

**BETWEEN:** Public Prosecutor

**AND:** Ben Wari  
Defendant

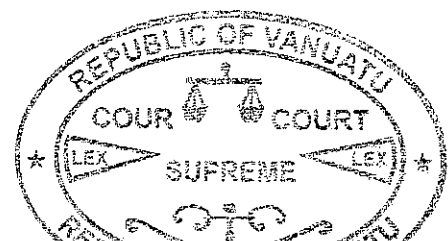
*Date:* 12<sup>th</sup> July 2023  
*By:* Justice W.K. Hastings  
*Counsel:* Ms M. Meltebury for the Public Prosecutor  
Mrs M. Markward for the Defendant

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**SENTENCE**

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1. Mr Wari, you have pleaded guilty to two charges and are here to receive your sentence. The first is a charge of intentional assault contrary to s 107(b) of the Penal Code. That offence carries a maximum penalty of 5 years imprisonment. The second is a charge of domestic violence contrary to s 4(1)(a) of the Family Protection Act. That offence also carries a maximum penalty of 5 years imprisonment or a fine not exceeding VT 100,000 or both.
2. These are the facts. The person you assaulted is your sister. You and she live together at Pango village with your respective partners. Your sister, her partner and their children had gone fishing and returned home with fish for dinner. She gave you your family's share. When she was about to cook the fish, she noticed that your spouse had taken more of the fish and became upset. She swore loudly saying "bastard." Your spouse heard this and reported it to you. A few minutes later, you came up behind your sister holding a bush knife in your right hand and asked her three times, "you swe from wanem?" You then cut your sister on the head twice with your bush knife.
3. Your sister bled heavily from the cuts on her head and was taken to hospital. She suffered a 20cm wound on her head that was closed with five stitches.
4. The sentence I impose must denounce your conduct, it must deter you and others from the same or similar offending, and it must reflect Parliament's intention that domestic violence receives a firm response.

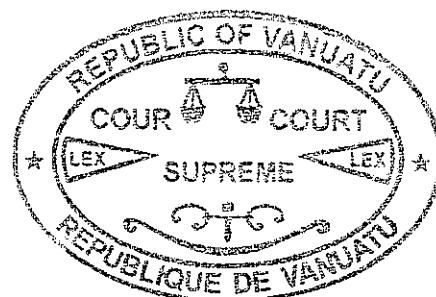


5. I have considered the submissions of the prosecutor and your lawyer. I have also considered the pre-sentence report. I will first of all establish a starting point for your sentence taking into account aggravating and mitigating factors related to the offending. I will then adjust the starting point taking into account aggravating and mitigating factors related to you to reach the end point of your sentence.
6. The prosecutor has referred me to three cases that assist in establishing a starting point. A starting point of 24 months imprisonment was adopted in *Public Prosecutor v Vala*<sup>1</sup> for offending that involved an assault on the defendant's partner with a machete in front of the children causing serious injuries to her hands, fingers and neck. He had threatened her on many earlier occasions as well. A starting point of 18 months imprisonment was adopted in *Public Prosecutor v Garae*<sup>2</sup> for offending that involved an assault with a mirror that caused deep laceration into the bone tissue and extensive bleeding. The offender and the victim were related. A starting point of 12 months imprisonment was adopted in *Public Prosecutor v Hory*<sup>3</sup> for offending involving a bare-handed assault on the defendant's girlfriend in which she suffered a scalp headache and an eyelid laceration.
7. Your lawyer has also referred me to the Garae and Hory cases, and several others in which the starting points were between one and two years' imprisonment.
8. I identify the following aggravating features of your offending:
  - a. The assault involved a breach of trust. The person you assaulted was your sister who was entitled to believe that you would protect and care for her;
  - b. The assault occurred in the home which is a place your sister can expect to feel safe in;
  - c. The assault involved a weapon, a bush knife, you knew was capable of causing serious injury or worse, and you assaulted her twice with it;
  - d. The injuries your sister sustained were serious enough for you to have been initially charged under s 107(c) before it was amended down to s 107(b). The wound bled heavily, was 20cm in length, and required stitches at the hospital to close it.
9. There are no mitigating features of this offending. Taking the aggravating features into account, I consider a starting point of 18 months imprisonment to be appropriate.
10. I turn now to personal factors:
  - a. You are 49 years old and are a pastor. As a pastor you are a role model and expected to show kindness towards others. These charges would have brought shame upon you, and a

<sup>1</sup> Public Prosecutor v Vala VUMC 11

<sup>2</sup> Public Prosecutor v Garae [2021] VUSC 339

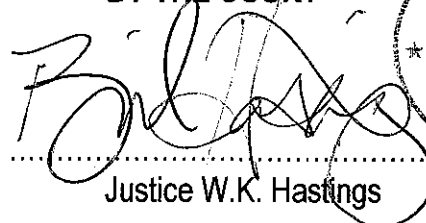
<sup>3</sup> Public Prosecutor v Hory [2021] VUSC 63



- certain fall from grace. You have five children and your wife depends on you for financial support.
- b. You are remorseful. You admitted to the police that what you did was wrong. You offered to perform a custom reconciliation ceremony to the complainant but she did not accept your offer. Your remorse warrants a 5% discount;
  - c. You have no previous criminal record. Your previous good character warrants a 10% discount;
  - d. You pleaded guilty to the domestic violence charge, and to the amended assault charge, at the first opportunity. Your guilty pleas warrant a 33% discount.
11. Taking these mitigating factors into account, the starting point will be reduced by 50% which brings me to an end point of 9 months imprisonment.
12. I now consider whether or not your sentence should be suspended. The prosecution submits that it should not be suspended so that your sentences serves as a deterrent for you and the community as a whole. Not suspending your sentence would reflect the value of protecting women and the public condemnation of this type of violence. Your lawyer submits that a suspended sentence coupled with a supervision order would be the appropriate sentence.
13. Mr Wari, although you are a first time offender, you are 49 years old and should have known better. I do not think a supervision sentence is appropriate because as a pastor you are well versed in Christian teachings of kindness and non-violence. I have considered that sending you to prison will affect your wife and children, but I have also considered parliament's expectation that domestic violence be met with a stern response. For these reasons, I will not suspend your sentence, but I will give you 2 weeks credit for the time you spent in custody before you were granted bail. You are sentenced to 8 months and 2 weeks imprisonment.
14. Under s 50 of the Penal Code, no sentence of imprisonment is to be enforced until the time to appeal against such sentence has expired or you earlier elect to begin serving your sentence.
15. You have 14 days to appeal this sentence.

**Dated at Port Vila this 12<sup>th</sup> day of July 2023**

**BY THE COURT**

  
Justice W.K. Hastings

