

PUBLIC PROSECUTOR

v

YVON KILMAN

Date: 16 October 2023  
Before: Justice V.M. Trief  
Counsel: Public Prosecutor – Ms M. Meltebury  
Defendant – Mr B. Bani

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SENTENCE

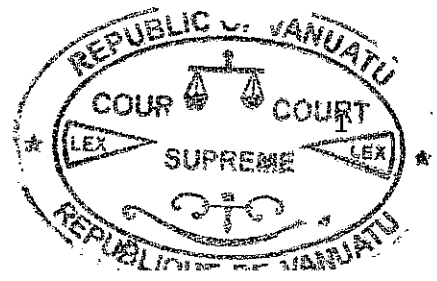
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A. Introduction

1. The Defendant Yvon Kilman pleaded guilty to domestic violence contrary to para. 4(1)(c) and s. 10 of the *Family Protection Act* No. 28 of 2008 (Charge 2) and malicious damage to property contrary to s. 133 of the *Penal Code* [CAP. 135] (Charge 3). He is convicted on his own pleas and the admitted facts.

B. Facts

2. Mr Kilman and the complainant Eva Rowsy have a 2-year old son Gaspian together. They were in a *de facto* relationship but are not together anymore.
3. On 5 April 2023, at Tautu village on Malekula, Mr Kilman took a knife from his truck, cut a nearby fruit tree and then a water tank, the louvres and fly screens at the complainant's house. He attempted to cut the complainant and their son but she managed to run away from him. Then Mr Kilman cut the main door into the complainant's house and went in. He damaged her plates, cups, thermos, electric and solar fans (Charge 3).



4. He then chased the complainant and their son around their house while holding the knife and was attempting to assault them (Charge 2).

C. Sentence Start Point

5. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.

6. The maximum sentences provided are:

a. Domestic violence – 5 years imprisonment or a fine not exceeding VT100,000 or both; and

b. Malicious damage to property – 1 year imprisonment.

7. It is an aggravating factor of the offending that Mr Kilman was holding a knife while attempting to assault the complainant and their child, that the offending occurred in the presence of the child, the fear caused to the complainant and their child, that the offending took place at the complainant's home where she is entitled to be safe, and that there is a gross breach of trust involved in the offending.

8. There are no mitigating aspects of the offending.

9. The global sentence start point that I adopt, taking all matters into account, is 2 years imprisonment.

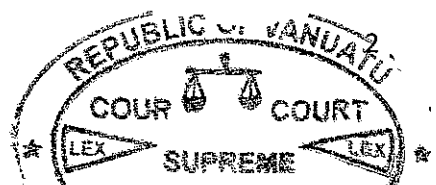
D. Mitigation

10. Mr Kilman pleaded guilty at the first available opportunity. This has spared the need for the complainant to give evidence and saved time therefore 33% is deducted from the sentence start point.

11. Mr Kilman is 32 years old, and has no prior convictions. He is currently employed by the Government department responsible for the provision of water utilities at Lakatoro, the Malampa provincial centre and has also assisted at the Water Section at Saratamata on Ambae, the Penama provincial centre. He has care-taking responsibilities for both his and the complainant's son and for his three nephews.

12. He has performed a custom reconciliation ceremony with the landlord of the house where he committed the damage to property involving a pig worth VT70,000, some mats worth VT2,000 and VT3,000 cash which was accepted. He has offered to compensate the damaged property but the cost has not been provided to him. He remains willing to perform a custom reconciliation ceremony with the complainant but that has not been accepted given the family protection orders which remain in place.

13. He is stated to be remorseful, to have insight into his offending, and is supported by his parents and family.



14. A further 30% is deducted from the sentence start point for Mr Kilman's personal factors.

15. Mr Kilman served 8 days in custody in the cell at Lakatoro Police Station, effectively half a month's imprisonment. A further 2 weeks is deducted from the sentence start point.

E. End Sentence

16. The sentencing principles applicable in this case are holding Mr Kilman accountable for his conduct, to denounce the criminal conduct and emphasize public disapproval of such offending, to protect the community, and to deter him and others from acting in this manner in future.

17. Taking all of those matters into account, the end sentences imposed are as follows:

a. Domestic violence (Charge 2) – 8 months 2 weeks imprisonment; and

b. Malicious damage to property (Charge 3) – 5 months imprisonment.

18. The Court has a discretion under s. 57 of the *Penal Code* to suspend all or part of the sentence where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender."

19. This offending was serious. On the other hand, Mr Kilman's previous clean record, custom reconciliation ceremony performed with the landlord, willingness to perform a custom reconciliation ceremony with the complainant and work responsibilities favour suspension of sentence. I am therefore prepared to exercise my discretion under s. 57 of the *Penal Code* to suspend the sentences for 18 months. Mr Kilman is warned that if he is convicted of any offence during that 18-month period that he will be taken into custody and serve these sentences of imprisonment, as well as the penalty imposed for the further offending.

20. In addition, Mr Kilman is to complete 100 hours of community work.

21. Mr Kilman has 14 days to appeal the sentence.

**DATED at Lakatoro, Malekula this 16<sup>th</sup> day of October 2023**

**BY THE COURT**

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Justice Viran Molisa Trief

