

**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU**  
*(Criminal Jurisdiction)*

**Criminal  
Case No. 23/169 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Sanick Asang**  
*Accused*

*Date of Hearing:* 31<sup>st</sup> day of October, 2023  
*Date of Judgment:* 15th day of March, 2024

*Before:* Justice E.P. Goldsbrough

*In Attendance:* Tasso, M for Public Prosecutor  
Makward, M for the Defendant

---

**JUDGMENT**

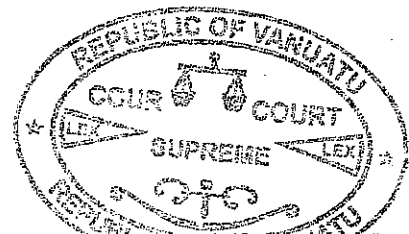
---

1. Sanick Asang is charged with four offences arising from what is said to have occurred during the night of 19 November 2021. Those four offences are unlawfully entering a dwelling house with intent to commit an offence therein, two offences of committing domestic violence against family members Priscilla Bowi and Noah Saitol and, finally, failing, as a leader, to obey the law. The final charge only arises as it is said that the accused was a Member of Parliament at the time of these alleged offences. He no longer occupies that privileged position.
2. Several issues are not disputed in this trial, which was set down after Sanick Asang pleaded not guilty to all charges. It is agreed that Priscilla Bowi and Noah Saitol are part of Sanick Asang's family. It is agreed that he was a Member of Parliament as of 19 November 2021. It is agreed that he visited the home of Priscilla and Noah that night.
3. In dispute is whether he made two visits to the same house that night and, if he did, what took place during each visit. To that end, the Court heard evidence from Priscilla and Noah and a police officer, Kevin Kerry Boe, who

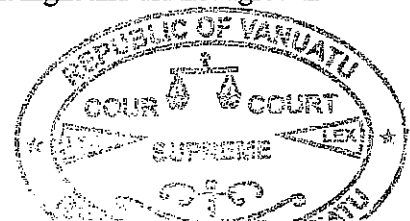


Office taken by Sanick Asang as a Member of Parliament and his warned and cautioned statement to the police in which he said nothing significant.

4. Priscilla Bowi gave evidence that she was at home with other family members on Thursday night going into Friday at Ohlen Whitewood, where they used to live. She was with Noah Saitol and Papa Adam in their rented house. She had retired to bed when Sanick Asang arrived, although she gave evidence about his arrival, which she could not have observed from her sleeping room.
5. Her evidence continued that he had not been expected, nor did she know why he arrived when he did. The noise of his arrival awoke her, as the doors were made of iron sheeting and noisy when kicked. When she heard any kicking, she could not have known who that was, but she may have made assumptions when she was awakened and found Sanick Asang in her sleeping room. She asked him what he was doing, and he asked her to follow him outside. She followed him to the main door.
6. From where she stood at the main door, she could see a small car where Sanick's wife, Ros, sat. Then Sanick asked her to go with him to his house in Erakor. She did not want to do that, and so refused his offer. She gave no further evidence of that encounter save that Sanick left in the vehicle with his wife.
7. Her evidence turned to a repeat visit at 3.00 a.m. when, according to her, Sanick returned with his wife. Her evidence was that Sanick kicked the main door open again, and, as she was asleep in her room, Noah called her into the main living area. Her evidence continued of Sanick making an improper suggestion about sex, which she found unacceptable and which made her upset and cross. He again asked her to go with him to the Erakor house, and again, she declined. She returned to her sleeping quarters and went back to bed.
8. She saw Sanick again when a meeting convened the following Sunday. Sanick attended that meeting at which the story was told to the Chiefs, where Sanick apologised to her, and a fine of VT 40,000 was imposed on him for his behaviour.
9. His behaviour was reported to the police because his behaviour towards herself and her brother (Noah) was inappropriate in custom and because he was a leader and a big man and should know better than to behave in this manner.



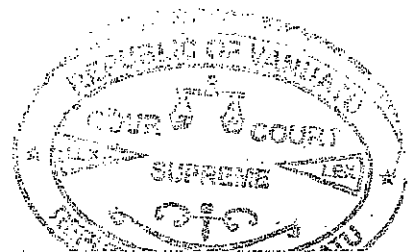
10. She agreed that there was no physical contact, merely words, but words that she found unacceptable and which made her feel uncomfortable.
11. Noah Saitol gave evidence next. Sanick Asang is also his cousin. He described Sanick as drunk when he arrived around midnight in a motor vehicle RV 2n. After stopping the car, he blew the horn before entering the house, pushing the locked door open. He watched Asang go towards his sister's (Priscilla's) room. He advised his sister not to follow Asang to Erakor since he was drunk and because of the time of night. His evidence continued that Sanick responded to the refusal to accompany him with "Sipos mi fuckem you", which caused his sister to cry and return to her room.
12. According to Noah, Sanick Asang returned around 03:00 hrs in the same manner, blowing the motor vehicle's horn and pushing the locked door open. This time, the abusive language was said to be "Yufala fuckem all bubu blo yu" This Noah regarded as offensive in custom towards family members. He felt distraught.
13. His other evidence was of the locks to the doors, how they were only nails but usually effective in keeping the door closed but knocked out after Sanick pushed the door open. He spoke of the custom meeting the following Sunday, when, according to Noah, Sanick admitted his behaviour. He went on to say that a police report was filed because not all of the VT 40,000 fine imposed was paid.
14. Kevin Boe's evidence was not of the night's events but of what Sanick Asang said to the meeting after hearing what Priscilla and Noah had to say. According to Kevin, Asang admitted what he had done after hearing from Priscilla and Noah, agreeing with what they said happened and saying he was sorry for his behaviour.
15. He recollected that a fine of VT 60,000 was imposed, not all of which he saw handed over.
16. No further witnesses were called for the prosecution.
17. Sanick Asang gave evidence on his own behalf. Whilst he agreed that he did visit his relatives that night, together with his wife, he did not agree that he behaved in any inappropriate way, did not agree that he entered the house, although he did agree that the door opened. He did not agree that he returned later that night and did not agree that



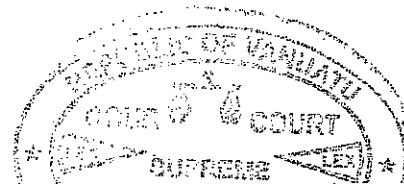
- he used foul language or made indecent remarks. Of the one visit, he said his wife, who was with him, spoke to Priscilla. Again, he insisted that there was no second visit. He did not agree to kicking the front door or banging on it to open it. He said that he called Noah first and then called out for Priscilla when there was no answer.
18. He agreed that the meeting took place the following Sunday and that he heard Noah and Priscilla give their version of events to the Chief. He did not dispute the version offered, but that was because he did not want to have an ongoing dispute. He says that he made no admission of guilt at the same time. He gave no evidence about what, if anything, he handed over at the end of the meeting. He told the police that he would tell his story in court.
19. He agreed that as he left for the only time he visited that night, he left making a joke that should be understood in custom using words similar to those that he is alleged to have used. In English, that was "How about me having sex with you" or something similar. In Bislama, it was "Man sipos mi fuckem you naya". That, he said, would be understood by his brother-in-law (Noah) as a joke, but he agrees that perhaps Priscilla would not necessarily see the joke.
20. No other evidence was called on his behalf.

### **Discussion**

21. Priscilla, when she gave evidence, had clearly made several assumptions. Because she saw Sanick Asang in the house, she assumed he had made the noise on arrival. She did not try to say that she saw this, but as he was the one who arrived and who she saw, she assumed that he had made the noise when opening the door and waking the occupants. Or was she saying what Noah had said to her? If she made an assumption, it was not an incorrect assumption. Noah was closer to the door and could give direct evidence of what happened.
22. The significant divergence comes when the evidence of the second alleged visit that night. That is denied. Both Priscilla and Noah gave evidence that it did happen a second time. Sanick Asang gave evidence that it did not. He says that he returned home after the first visit and remained there.



23. His wife, who he says went with him to the house and spoke to Priscilla, who was effectively his alibi for remaining at home for the remainder of the night, did not give evidence.
24. Sanick heard what Noah and Priscilla said about the two visits at the Sunday morning meeting, and he chose not to say anything to dispute what was said and handed over part of the fine imposed by the chief. He might have taken that opportunity to disagree with their version but chose not to. He says that was to avoid a continuing future dispute within the family.
25. The first visit, which all agreed took place, was to allow Sanick Asang to ask Priscilla if she wanted to go to his house for food. Priscilla agrees that this was the question. How boisterous Sanick was in attracting her attention when she and maybe others were already asleep is in question, but that was his intent. It was only after his suggestion met with a refusal that things turned sour. Until the refusal, there was nothing afoot save a little too much noise for that time of night.
26. This scenario indicates that it was not for any unlawful purpose when he gained entry. His intention was not then to commit any offence. He intended to find out if Priscilla and Noah wanted to party with him, but only after he found out that they did not, did his tone change.
27. Even when returning to the same house later, Sanick Asang's intention, if he was in a fit state to form criminal intent, was to try and persuade the occupants to party with him.
28. Applying those facts as established by evidence to the charge under section 143 (1) of the Penal Code, Sanick Asang did not enter the dwelling house with any intention to commit an offence, so the first charge brought must be dismissed.
29. The alleged second visit is a question to be determined on the evidence. Sanick Asang says he did not return, while Noah and Priscilla provided evidence that he did. They also gave evidence suggesting that he, Sanick, was drunk. They arrived at that conclusion because of his behaviour. In his evidence, Sanick, during cross-examination, contradicted himself. Then, there is his explanation of why, when given the opportunity, he did not attempt to put the story right in front of the Chief. Finally, there is no evidence



from the person he says he remained home with after the first visit. The evidence that I accept is that the second visit took place.

30. An act of domestic violence is defined in the legislation in an extensive fashion. Section 4 of the Family Protection Act provides that: -

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) *not relevant*

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

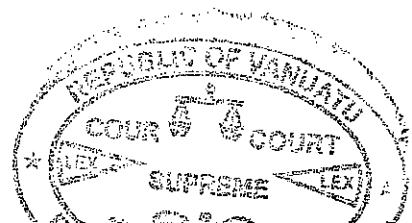
(c) and (d) *not relevant*

(e) behaves in an indecent or offensive manner to the family member;

(f) damages or causes damage to the family member's property;

31. The prosecution alleges intimidation in the charge alleging domestic violence towards Priscilla. On the evidence, the Court finds that he asked Priscilla more than once to go with him to his home, but she refused and stood her ground, encouraged by the other witness, Noah. It is difficult to see how that amounts to intimidation. Still, given the remarks about having sex, it is clear that Sanick Asang's behaviour could amount to behaving indecently or offensively. That would not be the case were the Court to find that he intended to make a joke, as he said in his evidence. The remark, I find, was not intended as a joke. It was an offensive remark made following the refusal to go with him to party.

32. The information alleges an offence under section 4 and section 10 of the Family Protection Act. Section 4 describes what an act of domestic violence is, and section 10 creates the offence. The conduct found after trial is that the accused, after trying to persuade Priscilla to follow him, was rebuffed, after which he resorted to foul and insulting language. That is behaving indecently or offensively. The particulars of the charge stipulate intimidation. Whilst the Court would have little difficulty in convicting the accused of an offence under section 4 (1) (e) on this evidence, the same cannot be said for an offence under section 4 (1) (b). Does it matter? I believe that the answer is yes, it does.



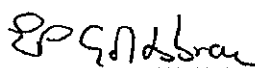
33. The prosecution alleged intimidation. That was a choice. Intimidation has not been made out. The same offence charged as indecent or offensive behaviour is not a lesser offence which might have been a verdict available.
34. Regarding the remaining domestic violence charge, section 4 (1) (f) appears to be applicable if the Court finds damage to the door. The evidence was that the door itself was not damaged, but some nails on the door were made to fall off the door when Sanick Asang forced the door open. On the evidence, the Court finds Sanick Asang applied that force to open the door, which did open. According to the evidence, it had been fastened shut sufficiently to sleep inside the house. Then, the door was pushed open, which meant that the method of holding the door closed was disturbed. Does that amount to intentional damage to the property? Did Sanick Asang intend for nails to be dislodged as he tried to gain entry? I am not sure that this intent has been established beyond a reasonable doubt, so that remaining charge of Domestic Violence must also be dismissed.
35. The final charge is brought under the Leadership Code. As a leader, there are additional requirements to be seen to obey the law. The basis of this charge is that he did not obey the laws when he was guilty of the Domestic Violence charges. As the charges under the Penal Code and the Family Protection Act have been dismissed, the same verdict of acquittal must be entered in respect of this charge.

## DECISION

36. Sanick Asang is found not guilty on the charge of unlawfully entering a dwelling house, not guilty of domestic violence by property damage and not guilty of domestic violence through intimidation as charged and not guilty of the offence under the Leadership Code through failing as a leader to obey the law. An acquittal is entered in respect of all charges.

**DATED at Port Vila this 15th day of March, 2024.**

**BY THE COURT**

  
.....  
E.P. Goldsbrough  
Judge of the Supreme Court

