

IN THE MAGISTRATES COURT
OF THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 21/2952 MC/CRML

PUBLIC PROSECUTOR

V

PAUL JASON NIKAHI

Date of Sentence: 11th of February, 2022.

Before: Fsam

In Attendance: Ms Tete_J for the OPP

Mr Amos Kalo for the Defence,
And Defendant.

Copy: The Public Prosecution, The Public Solicitor, Defendant.

ORDER FOR SENTENCE OF COMMUNITY WORK
(Section 58N, 58Q, 58V 58X, 58Z Penal Code Amendment Act 2006)

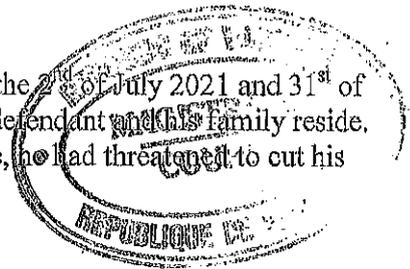
INTRODUCTION

1. The Defendant Paul Jason Nikahi is charged with one count of Domestic Violence, and one count of Malicious Damage to Property, and wherefrom he had pled "yes i tru" to both counts on the 24th of January, 2022, and as was recorded his guilty plea. Having considered the facts and the defendant admitting them and his guilty pleas, he is found guilty and convicted accordingly.

AGGRAVATING FACTORS

2. The maximum penalty imposed for the offence of domestic violence is 5 years imprisonment, or a fine not exceeding VT100,000 or both, and for the offence of Malicious damage to property, the penalty imposed is 1 year, or a fine of VT5,000 or both fine and imprisonment. Such penalties of prison terms reflected in this case constitute the seriousness of such offending's as committed by the defendant, Mr Nikahi.

3. Accordingly, the offending happened around the 2nd of July 2021 and 31st of August, 2021 respectively, at Pango area, where the defendant and his family reside. Firstly, in relation to the offence of domestic violence, he had threatened to cut his



younger brother with words to the effect “*yu no stap ko long internet tumas, stpos no bai mi save cut cutem yu, yu ded long ples ia.*” and in relation to the offence of malicious damage to property, the defendant broke a table leg and a pink bucket belonging to his family.

4. The defendant shows no respect to the complainants, being his immediate family members, and especially his father who is also a victim in this case. His use of threats is reportedly an on-going attitude which usually happens within the confinement of the family home, and towards his parents and all his brothers and sisters, wherefrom they are constantly victims of verbal abuses and threats from the defendant himself. His actions at home towards his immediate family members also raises fear within themselves, wherefrom they often feel they are no longer safe within their own home with the defendant’s constant threats.

5. There is no factors in mitigation to the offending.

PERSONAL & MITIGATING FACTORS

6. For factors in mitigation and personal factors, I take into account his guilty plea, and the fact that he is a young offender, and he may have a chance to rehabilitate, given this is the first time he has appeared in court over these offending. I adopt the approach of the Court of Appeal case *Heromanley v PP* [2010] VUCA 25:

“17. Whilst the sentencing of young offenders is never an easy task...It is to enable young offenders to be rehabilitated and grow up to become responsible law-abiding members of the society. This purpose is discernible from the provisions of sections 37, 54 and 58H of the Penal Code Act [Cap 135. In sentencing of young offenders we consider that the dual purposes of punishment and deterrence may need to give way to reform and rehabilitation.

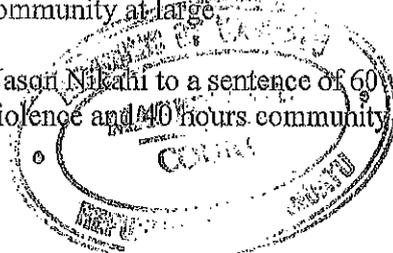
18 We consider that the imposition of an immediate sentence of imprisonment on these young first offenders with the inevitable consequence of exposing the appellants to long term hardened criminals would be counter-productive and inappropriate. “

7. I also consider the defendant’s personal factors including his on-going medical treatment given the report submitted by defence relating to the defendant’s mental state of mind, and the support by his parents with regards to his on-going treatments.

SENTENCE

8. In considering the appropriate sentence for this defendant, especially in relation to the offence of domestic violence, this court will not condone domestic violence and like every other perpetrators of domestic violence, they have to be punished for their actions. Therefore, discharging the defendant in this case would be unfair and would send a wrong message to the community at large.

9. I therefore order the Defendant Mr Paul Jason Nikahi to a sentence of 60 hours community work for count 1- Domestic Violence and 40 hours community



work for count 2 – Malicious Damage to Property. These sentences are to be served concurrently. This sentence is appropriate to reflect the seriousness of his offending and to deter the defendant and likeminded offenders from committing such offences in our society.

10. Mr Nikahi is informed briefly of the requirements in place in respect of his community work sentence, according to relevant section 58 on community work and is warned not to reoffend and to maintain peace at all times.

11. The Defendant is also informed of his right to appeal this sentence within 14 days if he is not happy with it.

DATED at Port Vila, this 11th day of February, 2022.

BY THE COURT OF VASSIATA
MAGISTRATE
COURT
REPUBLIQUE DE VANUATU
Magistrate

