

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

Criminal
Case No. 24/3665 SC/CRML

PUBLIC PROSECUTOR

V

WILLIAM JOHN

Date of Plea: 29 April 2025
Date of Sentence: 29 April 2025
Before: Justice M A MacKenzie
Counsel: Ms S Lagon (Holding papers for G Kanegai) for the Public Prosecutor
Mrs K. Karu for the Defendant

SENTENCE

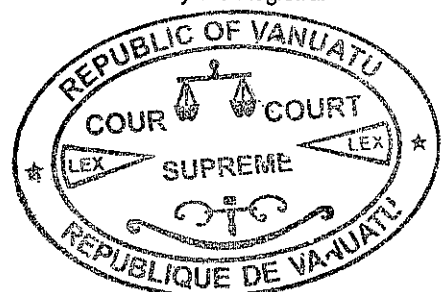
Introduction

1. Mr William John, you appear for sentence having pleaded guilty today to a charge of breach of a Domestic Violence Order contrary to s 21 of the Family Protection Act.¹ The maximum penalty for this offence is a term of imprisonment not exceeding 2 years or a fine not exceeding 50,000 Vatu, or both.
2. The prosecutor entered a nolle prosequi for charge 2.

The Facts

3. You and the victim are married and have 5 children. The two of you started living apart after the victim applied for a Family Protection Order. She went and lived at another address at Erakor Half Road area.

¹ Following a resolution, Mr John was rearraigned this morning. The charge was read out to him by the Registrar in Bislama. Mr John entered his own plea of guilty to charge 1.



4. On 11 April 2024, a Family Protection Order was made in the Magistrate's Court, after the Court found you had a history of emotional and physical violence towards your wife. The order included conditions that you:
 - a. Must maintain good behaviour towards the victim at all times.
 - b. Must not commit another Domestic Violence offence against the victim.
5. The Order was extended to 9 August 2024. In July 2024, you breached the Family Protection Order by entering onto the victim's property and removing the victim's gas bottle without her consent.

Sentencing purposes/principles

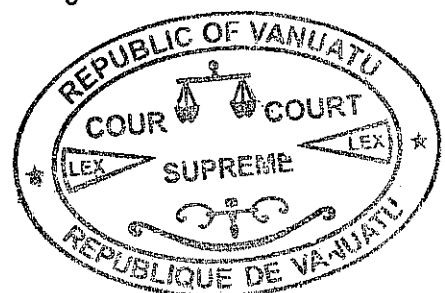
6. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

7. Sentencing involves 2 separate steps; Jimmy Philip v Public Prosecutor [2020] VUCA 40, which applied Moses v R [2020] NZCA 296.

Starting point

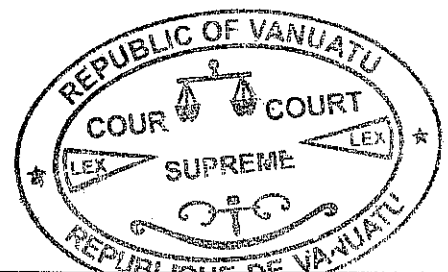
8. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalty for the offence.
9. The aggravating factors here are:
 - a. Breach of trust, given the family relationship.
 - b. Entry onto the victim's property where she was entitled to feel safe.
 - c. The taking of the victim's property.
 - d. There was planning and premeditation because you can only have made a conscious decision to go to the victim's home to get the gas bottle.



- e. The emotional and psychological harm to the victim. While there is no specific information about the impact, it is well recognised that ongoing domestic violence causes cumulative harm. The victim could only obtain the Family Protection Order because there had been some form of domestic violence towards her before this incident.
10. There are no mitigating features of the offending itself. In the defence submissions, there is additional information as to the fact that you were with your children when the gas bottle was taken and that one of the children took it at your direction. That does not mitigate the offending itself.
11. In Public Prosecutor v Pita [2017] VJSC 177, the Court said that if a Family Protection Order is going to be of any value, then a breach should have severe consequences. Sawia v Public Prosecutor [2021] VJSC 161 is of assistance in selecting an appropriate starting point, because it also involved a breach of a domestic violence order, which did not consist of physical violence. In Sawia, the breach was that the defendant swore at the victim. Here, the breach comprised of you going to the victim's property and taking a gas bottle without consent. The Supreme Court in Sawia upheld the 12 month starting point adopted in the Magistrate's Court and in doing so, rejected an argument that the starting point should be less than 12 months, because it did not involve physical violence. Trief J noted that the Family Protection Act does not provide that one form of violence is more serious than another. While your actions may not seem to be at the serious end of the spectrum, as I have said, it must be recognised and understood that domestic violence causes cumulative harm. After all, there was a reason the victim obtained the Family Protection Order and that is because there had been qualifying domestic violence.
12. Taking into account Sawia, and the aggravating factors I have referred to, I adopt a starting point of 12 months imprisonment. I do not agree that the offending in the present case is less serious comparatively than Sawia. You breached the order designed to protect the victim by deliberately going to her home where she was entitled to feel safe and took her property.

Guilty plea and personal factors

13. There was a resolution to the charges a matter of days before trial, which resulted in you entering a plea of guilty to the breach of Family Protection Order charge. You could always have pleaded guilty to that charge earlier on. So, I consider that the sentence reduction can be no higher than 10 percent. The sentence is reduced by 1 month for that factor.
14. You are aged 54 years and have a health issue. Your counsel seeks recognition of the health issue, together with the fact that you participated in a reconciliation ceremony.



While I accept there may be causative link between your health issue and the breach of the order, there is no basis to reduce the sentence for the reconciliation ceremony because it predated the offending. The breach of the order rather negates the benefit of the reconciliation process and what you are being sentenced for is breaching the order that was in place and that the victim should have been able to rely on.

15. The sentence is reduced by one month to reflect your health issues.

End Sentence

16. The end sentence is 10 months imprisonment.
17. Your counsel does not consider that the offending here warrants consideration of imprisonment and proposes that a fine of VT 20,000 be imposed. In light of the observations in *Pita*, I do not think that a fine adequately meets the need for deterrence, denunciation and accountability.
18. Pursuant to s 57 of the Penal Code, there is a discretion to suspend a sentence taking into account your character, the nature of the offending and the circumstances. I consider that suspension of the sentence for a period of 6 months will meet the sentencing needs I have identified. I take into account your health issue and that breaching the order is a serious matter, although I consider that the nature of the breach does not warrant a term of imprisonment without suspension. However, the Courts must take breaches of Family Protection Orders seriously if they are to have any effect. They are made to protect someone who is vulnerable because there has been domestic violence in a family context.
19. If you offend again in the next 6 months, you will need to serve the sentence of imprisonment in addition to any other penalty that may be imposed for the further offending.
20. You have 14 days to appeal against the sentence.

DATED at Port Vila this 29th day of April 2025

BY THE COURT

Justice M A Mackenzie

