

PUBLIC PROSECUTOR

V

THOMAS API

NATASHA NABOUR

Date of Sentence: 15<sup>th</sup> September, 2023.

Before: Magistrate FSam

In Attendance: Ms. Kanegai\_G -OPP

Ms. Deheivanua\_C - Defence  
Defendants.



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SENTENCE

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**Introduction**

1. Mr. Thomas Api and Ms. Natasha Nabour, you both appear before me today for your sentencing, following your guilty pleas to counts of domestic violence and complicity in respect of threatening language charge.

**Facts**

2. The accepted facts are that the complainant is related to you Mr Thomas Api as cousins. The complainant learned of you having an affair with Ms. Natasha Nabour, the second defendant in this case, and that you were consuming alcohol at Paunangisu village. She then posted a story against your relationship on Facebook. Ms. Nabour saw the post from her mobile phone and showed it to you, Mr Api. You then used Ms. Nabour's phone to threaten the complainant with threatening languages, and threatened to kill the complainant, as well as burn her employer's house down. You, Mr Api, called the complainant, *cunt face*, *cunt*, *prostitute*

(*solmit*), and threatened to do something her if she did not delete her post, with further threats to against the complainant and her employer, Mr. Tawia.

3. You both accepted the facts as presented by prosecution, and pleaded guilty to both charges laid against you respectively, and in so considering, you Mr, Api, are convicted in respect of counts 1, of threatening language, and counts 2 and 3 of domestic violence, and you Ms. Nabour, are convicted of count 4 of complicity to the offending.

#### **Sentencing Starting Point**

4. I assess the appropriate sentencing starting point taking into consideration, the maximum sentences available, the mitigating and aggravating factors of the offending.

5. The offence of threatening language carries a maximum penalty of 3 years imprisonment, and for domestic violence, a penalty of 5 years imprisonment, and, or fine not exceeding VT100, 000. The length of prison terms for both offences reflect the seriousness of the offending in this case.

6. The accepted aggravating factors to the offending include:

- There emotional exploitation of vulnerable person – being a female member of the defendant, Mr. Api’s family;
- There was a serious breach of trust in the family relationship between you, Mr. Api and your complainant cousin, and inlaw, Mr. Tawia;
- The use of offensive language against Mr Api’s complainant cousin, and Mr. Tawia.
- Mr Api, you were intoxicated with alcohol when you committed the offending.

7. In respect to the charge of threatening language, and complicity against each of you, I set a starting point of 8 months imprisonment.



8. For the 2 domestic violence charges against you Mr. Api, a starting point of 12 months on concurrent basis.

**Personal/Mitigating Factors**

9. You both pled guilty at the earliest available opportunity, and I allow a one third deduction from the starting points.

10. It is submitted that you, Mr Api were provoked when you were shown by Ms. Nabour, what was posted by the complainant on Facebook, which stated the following: *'yu olsem dog nmo, yu putum faken leg blong you long plane kobak lo Santo'*... and in response you Mr Api, started sending her threatening messages as admitted in evidence. Section 27 of the Penal Code defines what constitutes provocation, and in this case, whilst the complainant's post may seem unlawful, Mr Api's own unlawful acts in respond by way of threatening languages seemed disproportionate to the degree of provocation alleged against the complainant, so I simply cannot accept this in mitigation.

11. You both were remorseful for your actions.

12. You are both first time offenders with no prior convictions and almost a month in pre-custody or remand.

13. For these mitigating factors, I allow 2 months deductions.

14. I accept that since you were both placed on bail, you have been appearing in court when required, showing possible changes in character and rehabilitation should you both continue to live within the communities you both reside in.

15. Ms. Nabour, you are also a single parent to two children of ages 6 and 2 years.



16. You are a recent graduate from the Vanuatu Institute of Technology, and are on the look-out for a job to support yourself and your children who are currently under the care of your parents in Santo.

17. And for these personal factors in respect to you both, I award further deductions of 2 months.

### **End Sentence**

18. Therefore, in respect of the charge of threatening language and complicity against you both, Mr. Api and Ms. Nabour, you are both sentenced to 1 month imprisonment.

19. And you Mr. Api, in respect of the domestic violence charges, are sentenced to 4 months imprisonment on concurrent basis. You are therefore sentenced to a total concurrent sentence of 4 months imprisonment for both the threatening language and domestic violence charges against you.

### **Suspension**

20. Given your personal factors, I allow a suspension of your sentence for a period of 1 year.

21. You are ordered to remain in good behaviour at all times and maintain the peace, especially towards your immediate family members, including your parents, and community members around you, and you must restrain from committing any further offences.

22. You are also informed that if you, for any reason, commit any further offending within the 1-year suspended period of your sentence, the suspension may be uplifted and you will have to be sent to prison to serve your sentence.

23. This sentence is appropriate to punish and deter you and other offenders like you from committing similar offences.



24. This sentence is also necessary to allow you a chance to rehabilitate, and see to making necessary changes for your life's betterment, as well as that of your family and community as a whole.

25. You have 14 days to appeal your sentence if you are not happy with it, and in the event, no appeal is lodged, your sentence should come into immediate effect thereafter.

**DATED at Port Vila, this 15<sup>th</sup> September, 2023.**

**BY THE COURT**



**FSam**

**Magistrate**

