

**PUBLIC PROSECUTOR**  
**v**  
**LEAH MAEL**

**Coram:** *Hon. Chief Justice V. Lunabek*

**Counsel:** *Mr J Aru for the Public Prosecutor*  
*Mr E. Molballeh for the Defendant*

**Date of Plea:** *22 August 2022*

**Date of Sentence:** *13 October 2023*

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**SENTENCE**

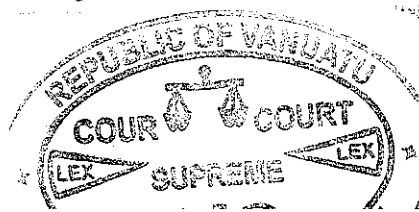
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**Introduction**

1. Ms Leah Mael ("*Ms Mael*"), you appear for sentence having pleaded guilty to one count of unlawful entry into a dwelling house with intent to commit a crime, contrary to Section 143(1) of the Penal Code (Count 2) and one count of intentional assault, contrary to Section 107(b) of the Penal Code (Count 3).

**Facts**

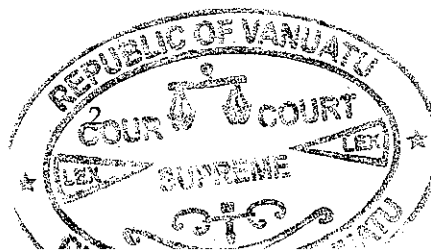
2. The complainant is Frida Kalo. Frida Kalo was in a defacto relationship with one Jenneck Nimala ("*Mr Nimala*"). They have 4 children together and they lived together at their home in Rangorango area, Efate.
3. Mr Nimala was in a sexual relationship with Ms Mael (the defendant). Mr Nimala kept the sexual relationship a secret from the complainant, Frida Kalo, his de facto wife.
4. The complainant has come to know about the affair on 15<sup>th</sup> May 2021.
5. On 16<sup>th</sup> June 2021, around 10:00pm, the complainant was confronted by Ms Leah and Mr Nimala at a road in Rangorango area. Mr Nimala was driving a bus. Ms Mael was seated in the bus as well. The complainant approached the bus.



6. In her state of anger, the complainant assaulted Ms Mael. Mr Nimala was angered by this and tore off the complainant's clothes.
7. On 17<sup>th</sup> June 2021, around 6:30pm to 7:00pm, the complainant and her children were at home at Rangorango. They were ready to have dinner on the verandah. Ms Mael entered the compound unnoticed and entered the verandah. She then stabbed the complainant with a broken beer bottle twice. The complainant sustained a cut to the left side of her neck which left her covered in blood.
8. The daughter of the complainant and Mr Nimala, Ms Melinda Kalo, was present on 17 June 2021 and she witnessed when Ms Mael intentionally assaulted her mother, the complainant.
9. A forensic examination was issued on 13 April 2022. The report confirmed the presence of a 4cm scar on the left side of the complainant's neck.
10. The report also confirmed that the injuries sustained by the complainant were consistent with the injuries caused by a sharp object.
11. A medical report was issued on 25<sup>th</sup> June 2021. The report indicated the presence of:
  - (a) A long scar below the ear;
  - (b) Scarred scalp.

### **Sentence Start Point**

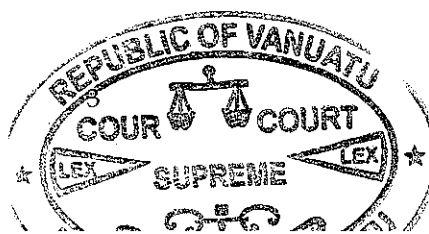
12. Unlawful entry into a dwelling house where the place is used for human habitation carries a maximum penalty for 20 years imprisonment. The offence of intentional assault, contrary to Section 107(b) carries a maximum penalty for 5 years imprisonment.
13. In this case, there are more than one charge. I need to assess the overall culpability of the offending on a concurrent basis. This will be reflected into two steps approach considerations as set out in Philip v Public Prosecutor [2020] VUCA 490 adopting Moses v R [2020] NZCA 296).
14. Here, the maximum term available is a term of 20 years imprisonment.
15. In this case, there is no personal mitigating factors leading up to the offending, but the following aggravating factors exist:
  - (a) The offences occurred at night. The actions in the night were serious intrusions into private dwelling house where the victim was supposed to feel safe and protected in her house with her children;



- (b) The offending occurred in the presence of the victim's young children;
  - (c) The victim sustained injuries of temporary nature. The victim's medical report and Forensic photographs annexed to the prosecution submissions as "annexure A" reflected the nature of the injuries she sustained;
  - (d) The offender used a broken beer bottle as a weapon;
16. I take all these matters into account, on a global basis taking into account all the offences, I fix the appropriate sentence start point for you, Ms Mael, at 4 years (48 months) imprisonment.
17. I have perused and considered the prosecution submissions for a sentence start point between 2 years and 4 years imprisonment for the offence of unlawful entry and 6 months to 2 years imprisonment for intentional assault under Section 107(b) of the Penal Code. I have also perused and considered the defence submissions for a sentence start point of 2 years imprisonment for unlawful entry and 6 months imprisonment for intentional assault under Section 107(b) of the Penal Code with an end sentence to be suspended.
18. Both the prosecution and the defence counsel referred the Court to the Supreme Court case of Public Prosecutor v Tari [2021] VUSC 314 as a comparable case. The facts of that case involved unlawful entry into a dwelling house in a day time coupled with assaults on the woman victim without injuries on her body and the use of a pair of scissors by one of the defendants to cut the victim's hair.
19. The facts of the present case are more serious than the facts of PP v Tari [2021] VUSC 314. Here, the unlawful entry into the dwelling house happened in the night, the victim woman was with her children ready to have dinner at the veranda of her house when the assault took place with a broken bottle (weapon) used to assault her causing injuries on her body (the victim). The children witnessed directly the assault on their mother (the victim).

**Personal mitigating Factors**

20. There are no personal mitigating features to the offending as mentioned above.
21. Ms Mael, you are 34 years of age and you are originated from Waileli Village, South Paama Island. You are in a defacto relationship with your de facto husband. Your defacto husband was sick and you had to support him. You have also two children from your previous relationship and, you have an adopted daughter. Your three children attended Vila North Primary and Secondary School. You were employed by the Youth and Sports Department as a receptionist for a period of one year. You were involved with the Regional Workers Scheme (RSC) from 2017 – 2022. You had ceased travelling due to this present case.



22. You do gardening to help support your family. You are the main bread winner for your family. You have good relationship with your family and your church (Presbyterian Church).
23. You are a first-time offender. You do not have previous conviction. You are very sorry for your wrongdoing.
24. Your sentence is reduced by 6 months to reflect the mitigating factors.
25. Your sentence is further reduced by 33% to reflect your guilty pleas at the first opportunity given to you by the relevant authorities. The remaining balance of your sentence is 29 months (2 years and 5 months) imprisonment.
26. The Pre-sentence report shows that you are on bail awaiting your sentence. You were never remanded in custody since the commission of these offences.
27. I note that you committed the offences in 2021 and you were prosecuted in August 2023. I reduce your sentence further for 3 months to reflect the delay of 2 years in the prosecution of your case.

#### **End Sentence**

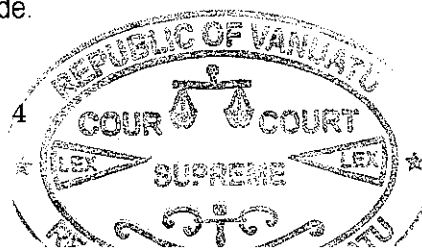
28. Your end sentence is 2 years and 2 months (i.e., 26 months) imprisonment.

#### **Considerations of wholly or partly suspension of imprisonment term (ss57 - 58 PC)**

29. Is it appropriate to suspend wholly or partly your imprisonment term sentence of 26 months?
30. I consider the nature and seriousness of your offending, your character as an offender. In the circumstances of the present case, I decide to suspend only partly your sentence of 26 months imprisonment. I, thus, suspend one third of that sentence applying section 58 of the Penal Code.
31. You are ordered to serve the two third of your sentence of 26 months imprisonment, that is, you shall serve 17 months imprisonment. The imprisonment is necessary to mark the seriousness and gravity of your offending and it is a deterrence for you and others not to commit such offences again in the future.
32. The balance of that sentence (i.e., 9 months) is suspended for a period of one year.

#### **Sentence effective date (s.50 PC) - enforcement if failing to start on effective date**

33. Your sentence of 17 months imprisonment shall be effective on Saturday 28<sup>th</sup> October 2023 in accordance with section 50 of the Penal Code.



34. You can start serving your sentence of 17 months imprisonment today on 13<sup>th</sup> October 2023 if you elect to do so. Otherwise, you shall have 14 days grace period from the date of this judgment (i.e., 13 October 2023 to Friday 27 October 2023). This means that you must serve your sentence of 17 months imprisonment by Saturday 28 October 2023 by presenting yourself to the Correctional Services Centre in Port- Vila.
35. The Correctional Service Centre is to monitor, manage and record the date, you, Ms. Mael (the detainee), start serving your sentence. If you fail to start serving your imprisonment term of 17 months on Saturday 28 October 2023, the Correctional officers may apply directly to the Supreme Court or request the Public Prosecutor's Office to apply for a warrant of arrest against you, Ms. Mael, for failure to start serving your imprisonment sentence as ordered by the Supreme Court on Saturday 28 October 2023.
36. Once arrested, you (Ms. Mael) shall be brought directly into the Correctional Centre to start serving your imprisonment term of 17 months. Any date that you would spend outside the correctional Centre after 28 October 2023 before you were arrested and brought into custody, is not to be counted in your favour.

**Appeal right**

37. Ms. Mael, you have 14 days to file an appeal against this sentence, if you are unsatisfied with it. The 14 days starts at the date of this sentence.

**Dated at Port Vila, this 13<sup>th</sup> day of October 2023**

**BY THE COURT**

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**Hon. Chief Justice Vincent LUNABEK**

