

**PUBLIC PROSECUTOR  
v  
NAIO KIRI**

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

**Counsel:** *M Meltebury for the State  
C Dehinavanua for the Defendant*

**Date of Trial:** *5 April 2024*

**Date of Verdict:** *8 April 2024*

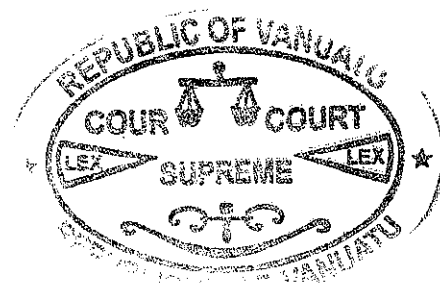
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**REASONS FOR VERDICT**

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**I. Introduction**

1. Mr Naio Kiri, you are charged with the following offences:
  - Domestic violence, contrary to Sections 4(1)(a) and 10 of the Family Protection Act No. 28 of 2008;
  - Malicious damage to property, contrary to Section 133 of the Penal Code Act;
  - Unlawful entering dwelling house, contrary to Section 143 of the Penal Code Act; and
  - Theft, contrary to Sections 122 and 125 of the Penal Code Act.
  
2. On the 8<sup>th</sup> of March 2024, you pleaded not guilty to the offences of domestic violence, unlawful entry into dwelling house and theft in counts 1, 3 and 4. You pleaded guilty to the offence of malicious damage to property (in Count 2). The offence in count 2 is adjourned pending the outcome of the trial in counts 1, 3 and 4.
  
3. The trial took place on 5<sup>th</sup> April 2024.



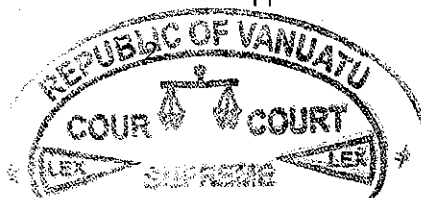
4. The prosecution has to prove each and all essential elements of the offences beyond a reasonable doubt. The defendant is not required to prove anything. If there is a reasonable doubt it will be interpreted in the benefit of the defendant.

### Elements of the offences

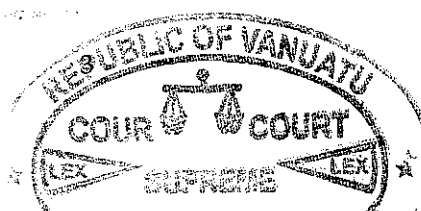
5. Before the defendant is convicted, the Prosecution must prove the elements of the following offences on the criminal standard of beyond a reasonable doubt:
- (i) Offence of domestic violence (Count 1)
    - (a) The complainant woman and the defendant live in a domestic relationship;
    - (b) Throughout the domestic relationship the defendant committed the act of domestic violence – here, the act of domestic violence is an assault.
  - (ii) Offence of unlawful entry into a dwelling house
    - (a) The defendant entered into a house the complainant lives in;
    - (b) When the defendant entered the house, he had intention to commit a criminal offence in that house.
  - (iii) Offence of theft
    - (a) The defendant on 24 December 2023, at Anamburu area, Efate, took a bag of clothes with a tablet device;
    - (b) Carry away the bag of clothes and tablet with intention to permanently deprived the owner of the clothes and tablet device.

### Evidence

6. The prosecution called the complainant as the only prosecution witness.
7. The complainant is Shirley Walter. She gave evidence that she now lives at Manplace area. She works at Bred Bank. In December 2023, she lives at Anamburu area. She rented a room at Anamburu. She lived in a defacto relationship with the defendant. She said on 23 December 2023 (I took it that she meant Friday 22 December 2023), she got up early morning, ready to go to work. It was 4 – 5 am o'clock in the morning. The defendant assaulted her. The complainant and the defendant argued at the house. The defendant assaulted her on the back of her head and slapped her on her ears when she got up.

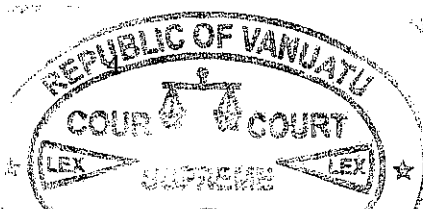


8. She cried. She dressed up and came outside. She walked to go to her work. The defendant rushed behind her and assaulted her again on the road. The defendant threatened to kill her. They argued on the road till they arrived at her work place. She told the defendant that she will not return at the house.
9. She went to work. She was angry, then she came back with her sense.
10. At lunch time, she returned at her house at Anamburu. She arrived at her house at Anamburu, the landlord (a lady from the other side of Efate Island) told her that she could not control Naio Kiri (the defendant). She heard loud music. The lady landlord told her that they have made an arrangement that they should not consume alcohol drinks, drink kava and smoke cigarettes in the rented room.
11. She opened the door of the house, she saw the defendant and three (3) of his friends were inside the house drinking alcohol. The friends of the defendant saw her. They told the defendant that his wife came. The defendant came outside and met the complainant. She described Naio Kiri as her man (husband). The defendant came outside and swore at her. She felt bad about the abusive words at her. She told the defendant she will go to her work and she will not return at home after work.
12. The defendant followed her with three (3) pieces of middle size bricks and threw them (stoned) her with the bricks. He missed her head.
13. She was afraid. She needed to go away as he frightened her at home most often. She related that one time he cut her with a knife. She was injured. Another time, with the use of a hammer, he used it to lock her in the room with the threat to kill her. He kicked her with his safety boots on her arm and it was swollen up. He assaulted her on her ears causing damage to her ears which is still there now.
14. She lived together with the defendant for 2 months.
15. She stated after the defendant stoned her with the bricks, she returned at her work. Later that day, some of the boys working at Bred Bank informed her that they saw her husband (defendant) drunk in the middle of the road at Tebakor area blocking the vehicles in the middle of the road, there.
16. She got afraid. When she finished work that day, she did not return to her house. She finished work, went with her friends. She went and checked her house at Anamburu at 11:00PM in the night. The door was locked. She did not enter the house. She waited outside the house until 4:00AM o'clock in the morning. The defendant did not come. She went and slept at her



mother's house at Anamburu's clinic. The defendant locked the door of the house and hid the key from her.

17. On Saturday 23 December 2023, she went back and checked the house at 5:00PM o'clock in the afternoon. She found the key. She went inside the house. She cleaned the house and she hid the key from the defendant.
18. On Sunday at 11:00AM, she came back and checked the house. She saw the door was broken. The door was open. The neighbours told her of what the defendant told them after he broke the door, got inside the house and left.
19. The complainant went into the house. She asked some of the girls at Blacksands area, whether they saw the defendant. They told the complainant they saw the defendant at Blacksands in the house of his ex-woman. She told the girls to tell the defendant she did not need the clothes but she needed only the tablet. The girls informed the complainant, the defendant said "*bai mi tekem spell blong mi*". She told the defendant through the girls that if he did not return the tablet she will report him to the police.
20. Few days after, on a Wednesday, she reported the defendant to the police. The police took the tablet from the defendant. The complainant sent the tablet to her son in Santo.
21. Under cross-examination, she confirmed she had a domestic relationship with the defendant. She agreed to live with the defendant as husband and wife so they moved from Blacksands to Anamburu. They lived at Anamburu as husband and wife.
22. At Anamburu, the defendant did not work. He cleaned up and cooked for them. She paid the rent, water and electricity. She confirmed they lived together from November – December 2023. In November 2023, the defendant got some money. The money is used for kava but not for paying rent.
23. The complainant confirmed that she paid the tablet for her son who is at school in Santo. The defendant knew it. She confirmed she allowed the defendant to use the tablet until such time they find a way to send it to her son in Santo. She confirmed the defendant used the tablet but it was for her son in Santo.
24. The defendant, Mr Naio Kiri, elected to give evidence. He gave evidence to the following effect. He is 33 years old and he comes from Tanna Island.
25. On Friday 22<sup>nd</sup> December 2023, he was drinking alcohol drinks with two (2) friends at the house at Anamburu. Three of them drunk alcohol at the house at Anamburu. The landlord was a lady from Naraside. He rented the house with the complainant Shirley. Shirley paid a



deposit of VT10,000 and she asked him to assist her to pay the rent. He said he got VT25,000 from his brother McRen. He gave that amount to Shirley to pay for the rent.

26. They moved to Anamburu house in December 2023. The complainant Shirley Walter is his wife.
27. On December 2023, he drank alcohol with his friends at the house at Anamburu. At lunch time, Shirley came and talked to him outside behind the house. Shirley told him that she will not return. He felt bad about what Shirley told him. He said he too run away to his parents at Tebakor.
28. On 22 December 2023, at 11:00PM o'clock, he same back to the house. The door was locked. He returned to Tebakor. On Saturday 23 December 2023, he came back and checked. The door was still closed. He returned to Tebakor. On Sunday 24 December 2024, he came back to the house, the door was still closed.
29. He broke the door with a piece of iron and went inside. He put his clothes in a black bag and returned to Tebakor.
30. He decided not to stay because he was afraid of a statement made by Shirley toward him that she will cause him to become crazy and follow the road like one of his uncles who became mad and followed the street.
31. He took his clothes with the tablet. The tablet was for Shirley's son. Shirley gave him the tablet to use until they find a way to send the tablet to Shirley's son in Santo.
32. He described his relationship with Shirley. He said Shirley did not listen to him.
33. Naio was cross-examined. On 22 December 2023, he confirmed he was living with Shirley at Anamburu. He did not work. Shirley was working. He confirmed there are rules of the rented house. One of the rules is that Shirley and him must not drink kava in the house. They both drunk kava, at the house and the landlord complained to both of them at it. He denied swearing at Shirley. He denied he was cross at Shirley. He denied stoning Shirley with the bricks.
34. On Friday 23 December 2023, when he saw that Shirley did not return, he went away.
35. On Sunday, he returned at the house. The door was closed. He confirmed he broke the door and went inside. He took his clothes and went away.
36. As to the tablet, he said when he was drunk on Friday 22 December 2023, he got the tablet with him. He went out with the tablet. He knew the tablet was for Shirley's son in Santo. They



will sent the tablet when they will find a way to do it. He said, he could not leave the tablet inside the house because he was afraid people will go in the house took it away or steal it.

37. He denied he has intention to take it away and deprive Shirley's son from the tablet. He knew that the tablet is going to be sent to Shirley's son in Santo. He said he took the tablet with him in his care and when Shirley will tell him of when her son was on holiday he will just pass on the tablet to her.
38. He confirmed they were living together for about two (2) months.
39. He said he also paid the rent with Shirley.
40. Of the statement, Shirley made towards him, he said after Shirley made the statement, he thought about people of Epi spoiling his uncle causing him to lose his head and following the road. He said he was afraid of that.
41. He explained in his re-examination that on 24 December 2023, he had his clothes and the tablet with him because he was afraid because the door was open and if he left the tablet in, somebody could steal it so he took it with him.

### **Finding of Facts**

#### **Offence of Domestic Violence**

42. On the facts, there is evidence that the complainant and the defendant had a domestic relationship. The facts are not in dispute. Element 1 of this offence (DV) is proved on the criminal standard.
43. On the evidence and facts, there is overwhelming evidence that throughout the domestic relationship, the defendant committed the act of domestic violence by assaulting the complainant. I do not accept the general denial of the defendant that he did not throw the bricks on the complainant. I believe the details set of accounts given by the complainant to that specific fact (throwing bricks on the complainant). The other aspects of assaults by the defendant on the complainant are not challenged. They are accepted as facts.
44. The prosecution proved each and all essential elements of the offence of domestic violence beyond a reasonable doubt.

#### **Offence of unlawful entry into a dwelling house**

45. On the evidence as accepted by the court, the complainant and the defendant moved together to that house sometimes in 2023. They lived together in that house in November

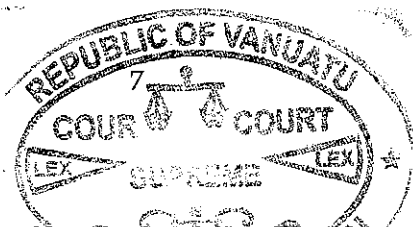


2023 – December 2023 as husband and wife. The complainant paid the rent, water and electricity. The defendant did not work. He cleaned up and cooked the food for him and his wife at home.

46. The defendant contributed to the rent payment by giving to the complainant an amount of VT25,000 towards the rent. I reject the evidence of the complainant that that amount was used only to pay kava. That amount of VT25,000 was not disputed by the complainant.
47. On Saturday 23 December 2023, the complainant at 5:00PM, opened the door, cleaned the house and locked the door of the house. She hid the key from the defendant. The complainant's evidence is that normally, she had the key as the defendant was at home. But when they were out, they put the key in a place they both know.
48. On 23 December 2023, the complainant hid the key from the defendant.
49. On 22 December 2023, the defendant came to the house the complainant was not there. He did not go inside. He was still with the same clothes on him. On 23 December when he came to the house, the door was locked. The defendant was still with the same clothes. He could not get inside and could not take a bath and change. On Sunday, he came, the door was still locked. He was still with the same clothes. On the evidence, he took a piece of iron and broke the lock and went inside (the defendant pleaded guilty to this fact).
50. The defendant entered into the house he and the complainant rented out and lived in as defector husband and wife. The wife hid the key from him. The defendant forced his entry into the dwelling house, he lived in with his wife.
51. The prosecution failed to prove the elements of the offence of unlawful entry and in particular, the intention to commit a criminal offence.

#### Offence of theft

52. Evidence is that the defendant on 24 December 2023, at Anamburu area, took a bag of clothes with a tablet.
53. Prosecution failed to prove that the bag of clothes are the clothes of the complainant. The evidence is that the bag of clothes are the defendant's clothes and some clothes of the defendant are given or paid by the complainant. The complainant gave evidence that she did not claim the return of those clothes.
54. As to the tablet, there is no evidence of permanently depriving the owner of the tablet. The defendant gave explanation as to how and why he took the tablet with him.



55. He had the tablet with him since Friday when he consumed alcohol liquor and they used it to play music with his two friend at the house at Anamburu. So when he left on Friday evening he had the tablet with him. When he came back on Sunday and broke the lock of the door, he had that tablet with him already. On that Sunday, he explained, the door was opened and could not be locked. He said he could not leave the tablet in the house as he was afraid someone could get into the house and steal it. So, he kept the tablet with him when he left the house on Sunday. The defendant also understands that the tablet was paid by the complainant for her son who attends school in Luganville, Santo; and, that the tablet will be sent to the complainant's son in Santo when they make arrangement to send the tablet.

56. The prosecution failed to prove the elements of the offence of theft beyond a reasonable doubt.

### Verdict

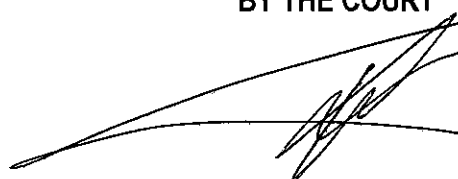
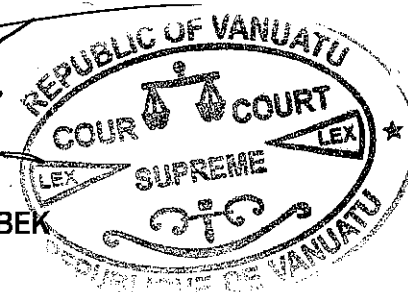
57. Defendant is guilty of the offence of domestic violence, contrary to ss. 4(1)(a) and 10 of the Family Protection Act.

58. Defendant is not guilty of the offence of unlawful entry, contrary to s.142 fo the Penal Code Act.

59. Defendant is not guilty to the offence of theft, contrary to ss.122 and 125 of the Penal Code Act.

**DATED at Port Vila, this 8<sup>th</sup> day of April, 2024**

**BY THE COURT**

**Hon. Chief Justice Vincent LUNABEK**