

**PUBLIC PROSECUTOR**

**v**

**NAIO KIRI**

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

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

**Date of Pleas:** *8 April 2024*

**Date of Sentence:** *24 June 2024*

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**SENTENCE**

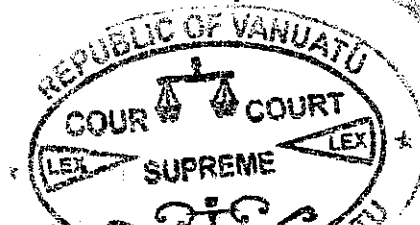
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**I. Introduction**

1. Mr Naio Kiri ("*Mr Kir*"), you appear for sentence after you pleaded guilty to one count of malicious damage to property, contrary to Section 133 of the Penal Code Act [CAP. 135] (Count 2) on 28 March 2024 and after trial on 5<sup>th</sup> April 2024, you were found guilty and convicted on one charge of domestic violence, contrary to Sections 4(1)(a) and 10 of the Family Protection Act No. 28 of 2008 (Count 1).

**II. Facts**

2. Mr Kiri, you and the complainant were in a defacto relationship at the time of the offending. You were living with the complainant at Anamburu area in the house she was renting with you.
3. On Friday the 22<sup>nd</sup> day of December 2023, your defacto wife returned home from work and found you and your friends drinking alcohol at home. She told you that the landlord did not permit drinking alcohol in the house.



4. You became upset by this and threw a brick block at her. Your wife then left the house as she was afraid of you. As you had threatened to kill her numerous times, she feared for her safety. She came back to the house and stayed around until 4:00am in the morning, she did not find the key, so, she went to her mother's house to sleep for the night. You and your friends also left the house.
5. On Sunday the 24<sup>th</sup> of December 2023, you returned to the house and discovered that there was no one at home. The door of the house was also locked. So you took an iron rod lying somewhere in the yard and hit the lock until it broke. Then you opened the door and entered the house.
6. You took a bag of clothes and a tablet device which you had with you since Friday the 22 December 2023 when you used it to play music with your friends when you drank alcohol liquor at the house. The complainant did not consent to you taking the tablet. The tablet device belonged to her son.
7. The offence of domestic violence, contrary to ss.4(1)(a) and 10 of the Family Protection Act carries a maximum sentence of a term of imprisonment not exceeding 5 years or a fine not exceeding VT100,000 or both such imprisonment and fine.
8. The offence of malicious damage to property, contrary to Section 133 of the Penal Code Act, carries a maximum sentence of 1 year imprisonment.
9. I have read and perused the prosecution submissions and the defence submissions on comparable similar type cases.
10. In the present case, there is no mitigating factor leading to the offending, but the following aggravating factors exist:
  - (a) There is a breach of trust (husband and wife relationship) the defacto wife trusted you, Mr Kiri, to keep her safe in the home, instead you assaulted her and damaged the property at home (lock of the house);
  - (b) The offence of assault was repeated – Mr Kiri, you had assaulted your defacto wife numerous times on the 22<sup>nd</sup> of December 2023;
  - (c) Mr Kiri, you had used chunks of bricks as weapon to assault the complainant;
  - (d) The offending occurred within the confines of the home where the complainant was entitled to feel safe and protected;



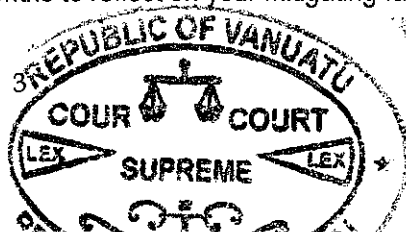
- (e) You did not attend the court when the court ordered you to attend to receive sentence. You caused arrest warrants to be issued against you on 20 May 2024 and for the police to arrest you and brought you before the court on 10 June 2024 at 9:00AM. On that date, the police could not find you; another warrant was issued for the police to arrest you and bring you for sentence on 24 June 2024. You were arrested and appeared before the Court this morning on 24 June 2024 at 9:00am;
- (f) There is the effect of the offending on the victim – with the threats to kill her (although) Mr Kiri, you were not charged with, as part of the circumstances of this case, the complainant feared being dead and was affected by post traumatic stressed disorder (PSTD).

### III. Sentence Start Point

- 11. In this case, I fix a sentence start point at 3 years imprisonment for the offence of domestic violence as the leading offence and 6 months imprisonment for the offence of malicious damage to property. On overall assessment, as there is more than one charge, the sentences are considered on current basis.

### IV. Personal Mitigating Factors for the Defendant

- 12. On mitigation, Mr Kiri, you are from Imaki, Tanna Island. You are 39 years old. You currently reside at Blacksands area, Efate with your defector partner. You attended Imaki Primary School in 1991. You did not continue with your education. You have skills in gardening or farming the root crops. Your ambition is to build a house and start a business to sustain your living. You have good relationship with your family, chief and community. You have a daughter of two years old with your defacto partner and you are all living together at Blacksands.
- 13. You are working at the China Civil Engineering Construction Corporation (CCECC) in Tanna Island. You also sell kava juice at your father-in-law's kava bar at Blacksand area to earn income to supporting your living.
- 14. You have not performed a custom compensation ceremony to the victim complainant. You are willing to perform a custom compensation ceremony if you are given a chance. It is noted the victim – complainant is willing to accept a custom compensation ceremony if Mr Kiri, you are prepared to perform one. You are a first-time offender. You do not have previous convictions before.
- 15. I give you a credit reduction of 4 months to reflect on your mitigating factors.



16. I give you a further reduction of 15% to reflect on one guilty plea in Count 2.

**V. End Sentence**

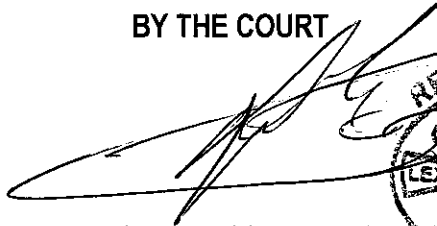
17. The balance of your remaining sentence is 27 months i.e., 2 year and 3 months imprisonment.

18. I decline to suspend that imprisonment sentence. I order that you serve that term of imprisonment of 2 years and 3 months with immediate effect.

19. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts on the date of this sentence.

**DATED at Port Vila, this 24<sup>th</sup> day of June, 2024.**

**BY THE COURT**

  
Hon. Chief Justice Vincent LUNABEK

