

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

**Criminal**  
**Case No. 24/3769 SC/CRML**

**PUBLIC PROSECUTOR**

**v**

**PENAS JOHNAS DANIEL**

*Date of Plea:* 1<sup>st</sup> April 2025  
*Before:* Justice J. K. Naigulevu  
*Counsels:* Public Prosecutor – Ms. S. Langon  
Public Solicitor – Ms. C. Tovor

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**SENTENCE**

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**Introduction**

1. Ms. Penas Daniel, you pleaded guilty to a count of Intentional Assault contrary to section 107 (c) of the Penal Code Act, when you were arraigned on the 1<sup>st</sup> April 2025.
2. You were duly convicted on your plea.

**Facts**

3. The complainant had alighted the boat at Maroa Village on North Efate, which she had travelled in on the 17<sup>th</sup> June 2024. It was late in the afternoon. She held her 5-year-old daughter, her shopping bag and a bucket of biscuit in her hands as she made her way from the shore. A short distance away she was confronted by you. You were armed with piece of timber which you held in your hands. You told her, "Did they tell you to go and spread the rumours," and struck the victim's right leg with the timber. She fell on to the ground in pain and pleaded for help. Her daughter fell from her mother's grasp and was crying. You continued to abuse her.
4. The victim was then taken first to Paunagisu Health Centre before was conveyed to the Vila Central Hospital in an ambulance.



5. A scan of the injury revealed that she had suffered a fractured ankle.

### **Statutory Sentence**

6. A conviction for the offence of Intentional Assault contrary to section 107 (c) of the Penal Code will attract a sentence of 10 years imprisonment.

### **Sentencing purpose and Guideline**

7. There are several principles that guide the sentence to be imposed on you. They include the proposition that you must be held accountable and must take responsibility for your action. Additionally, your action is the kind that is denounced by society, and that similar future acts by you and others will be deterred.
8. Equally important is that you must be given ample opportunity to rehabilitate and reintegrate.
9. The approach taken in the present case follows the guidance that was given by the Court of Appeal in the case *Philip v Public Prosecutor* [2020] VUCA 40.

### **Aggravating Factors**

10. The following circumstances constitute the aggravating factors in the present case:
  - a) *The assault resulted in what has been accepted as injuries of a permanent nature, one that also required immediate medical assistance and hospitalization. The injuries included a fracture to the ankle bone and reduced range of motion over the ankle region;*
  - b) *A weapon, a piece of timber, was used to assault the victim;*
  - c) *The assault was completely unprovoked, and was perpetrated in vulnerable circumstances. The victim had just come ashore and was carrying her child and shopping in her hands;*
  - d) *The assault was carried out in the presence of her young daughter, who fell as the result of the assault on her mother;*
  - e) *The pain and suffering endured as a result of the assault from the injuries she sustained.*



## Starting Point

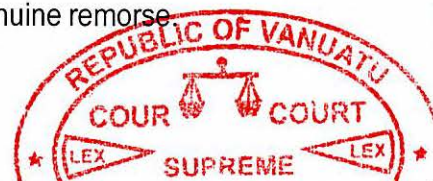
11. In assessing the appropriate starting point, I have taken into account the statutory maximum sentence, as well as the aggravating and mitigating factors of the offending.
12. I have also considered the submissions of counsel as well as the authorities they have referred to, for the Court's consideration.
13. Your counsel referred me to two cases. The facts were quite different to the facts in this case and therefore of limited assistance. In each of them, the starting points adopted by the Courts were 5 years. On the facts you accepted, I do not believe that your counsel can suggest a starting point within a range between 12 to 24 months proposed by counsel is appropriate.
14. The Prosecutor referred me to 4 cases for comparison. I found the case *Public Prosecutor v Nasei* [2019] VUSC 94 of some help. The starting point adopted in these cases ranged from 3 to 5 years imprisonment.
15. In the present case, the Court adopts a starting point of 4 years.

## Guilty Plea

16. You entered a plea of guilty at the earliest opportunity. It indicates that you have accepted responsibility for your wrong doing. I reduce your sentence by 25% from the starting point.

## Mitigating and Personal Factors

17. You are thirty-eight years old, and live with your defacto partner and three children. You help care for your 83-year-old sister-in-law.
18. You help support your family by selling food at night.
19. You are involved in women's church programs and women's community activities, and in the past three years volunteered to clean the Morou Community Hall.
20. You have never been convicted of any criminal offence in the past. The Court acknowledges that.
21. You performed a modest custom reconciliation ceremony. The victim accepted it as a token of your desire to make peace with her. It is a demonstration of genuine remorse.



Your family has also promised to give the victim 50,000vt after your partner returns from his seasonal work abroad. The Court notes also that you contributed towards the cost of transporting the victim from Emau Island to Vila Central Hospital.

22. For these personal and mitigating factors, I reduce the starting point by a further 12 months.

### End Sentence

23. Ms. Penas Daniel, I have taken all these matters into consideration and impose an end sentence of 2 years imprisonment. I now have to consider how this sentence will be served.
24. The prosecuting counsel has quite properly referred me to a Court Appeal case, Tari v Public Prosecutor [2011] VUCA 26. In that case the Court said:


*“Where an assault involves unprovoked violence and causes permanent serious injury, an immediate custodial sentence is appropriate.”*

25. Whilst careful not to diminish the gravity of your offending or the injury sustained by the victim. I do not believe that her injuries can be characterised as permanent serious injury, one that is life threatening or approximates to it.
26. In the light of recent cases referred to me by your counsel, where sentences of imprisonment were suspended in cases where the convicted persons were charged with the same offence. I am obliged to consider the provisions of section 57 of the Penal Code relating to the suspension of sentences of imprisonment. I take into account the circumstances of this case, the nature of the crime and your character, and have decided that I will suspend your sentence of two years imprisonment for 12 months.
27. I take into account the 16 days you have already served in custody. It reduces your end sentence to 11 months and 24 days. Perhaps important is that the days that you served in custody will serve as a reminder that persons who commit offences will ultimately be held accountable. You are warned against reoffending in the next 12 months.
28. During the interview with the probation officer, you admitted that at the time you committed the offence, you were unable to control your anger. You must learn to overcome anger, and avoid resorting to violence. It may only get you into trouble, as you might now understand.



29. You are ordered to serve a period of 6 months supervision, and carry out 50 hours of community work.
30. You have 14 days to appeal this sentence if you are dissatisfied.

**DATED at Port Vila this 23<sup>rd</sup> day of July 2025  
BY THE COURT**

  
.....  
Hon. Josafa Naigulewu  
Justice

