

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

Criminal
Case No. 20/542 SC/CRML

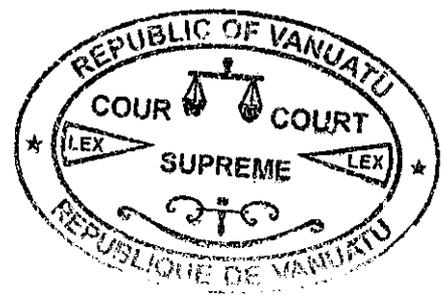
BETWEEN: Public Prosecutor

AND: 1. Patrick Kapiel
2. Moli Aru
3. Richard Pakoa
Defendants

Date: 22 July 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr L. Young for the Public Prosecutor
Mr R. Willie for the Defendant

VERDICT

1. Mr Aru was charged with sexual intercourse without consent – Charge 1.
2. Mr Pakoa was charged with an act of indecency without consent – Charge 2.
3. Mr Kapiel was charged with sexual intercourse without consent – Charge 4.
4. All pleaded not guilty, maintaining that the complainant had consented to the acts that took place. They had previously said exactly that to the police when first interviewed.



5. Additionally Mr Pakoa was charged with intentional assault, and he pleaded guilty to that charge.
6. The complainant gave evidence. She was unconvincing and inconsistent. Her husband was called to give evidence of recent complaint, but what she supposedly complained of to him shortly after the offending was inconsistent with what she told me in her evidence. Accordingly, his evidence did quite the opposite of what was intended and did not support the complainant's version of events.
7. The complainant related that she did protest and tell the defendants to cease their acts, but only after the event. There was no evidence of righteous indignation, of a woman fighting off assailants.
8. I found the prosecution had not proved beyond reasonable doubt that the complainant had not consented to the various acts complained of. Further, the prosecution had not proved beyond reasonable doubt that each defendant must have known at the time that the complainant was not consenting.
9. Accordingly, I acquitted Mr Moli Aru of Charge 1, Mr Richard Pakoa of Charge 2 and Mr Patrick Kapeil of Charge 4.
10. Mr Pakoa pleaded guilty to biting the complainant's hand. There was no evidence led as to the severity of this assault. There is clearly no lasting injury. Given that most of the acts perpetrated by the three men was of a sexual nature, it is difficult to imagine this particular aspect as being very serious, as anything more than a playful bite.
11. In the circumstances I simply convicted Mr Kapeil and fined him VT 5,000, which he is to pay within 21 days.

DATED at Luganville this 22nd day of July 2020

BY THE COURT

Justice G.A. Andrée Wiltens
Justice G.A. Andrée Wiltens

