

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

**Criminal  
Case No. 21/3505 SC/CRML**

**BETWEEN: The Public Prosecutor**

**AND: Emil Talsis Tabimwell  
Defendant**

**Coram:** *Justice Aru*

**Counsel:** *Ms. M. Taikie for the Public Prosecution  
Mr. J. Garae for the Defendant*

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**SENTENCE**

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**Introduction**

1. Mr Emil Talsis Tabimwel was charged with 3 counts of sexual intercourse with a child under care or protection (Counts 1, 2 and 3) and one count of sexual intercourse without consent (Count 4). He pleaded guilty to counts 1, 3 and 4. Count 2 was nollied by the prosecution.

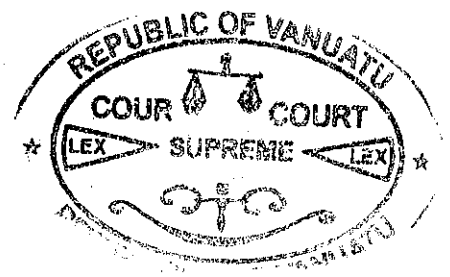
**The facts**

**Count 1**

2. Sometime in 2011 at Vilvil area, Fanafo when the complainant was around 8 years old, whenever her mother went to the market to sell her food crops, the defendant would tell her to suck his penis. When the complainant refused, he would cut a branch of the lemon tree with thorns and tell her if she refused, he would hit her. As a result of the threat, she would suck the defendant's penis until he ejaculated in her mouth.
3. This was repeated until 2017 when she was 14 years old.

**Count 3**

4. Between 2019 and 2020 the defendant on multiple occasions asked the complainant for sex. When she refused, he would force her to remove her clothes and insert his penis into her vagina then make her suck his penis. She refused and cried but the defendant swore at her and spoke aggressively and she feared him. He told the complainant if she told her mother or reported the matter to anyone, he would kill her.



#### Count 4

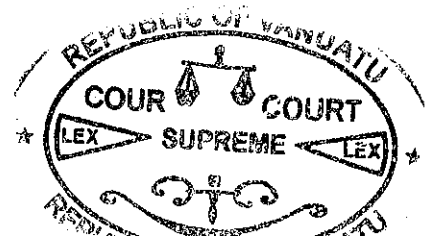
5. In January 2021 to March 2021 the defendant forced the complainant every week to have sex with him. When she refused, he would make the complainant lie down on her stomach and insert his penis in her anus. The defendant knew the complainant was not consenting to such activity but he continued to have sexual intercourse with her. The complainant felt pain around her anus and vaginal area as a result of the defendant's actions.
6. In April 2021 the complainant was tired of the defendant's actions and told her aunty Collette of what the defendant had been doing to her. When the defendant was arrested by the Police and interviewed, he admitted the offending.

#### Starting point

7. The starting point of sentence is determined by considering the maximum sentence available for the offending and taking into account any aggravating or mitigating factors. For sexual intercourse without consent the maximum sentence available is life imprisonment. Sexual intercourse with a child under care or protection is punishable by a maximum sentence of 10 years imprisonment.
8. There are a number of aggravating factors. First there is an age disparity as the offending began when the complainant was around 8 years of age. The offending was repeated over time. There is also a breach of trust. The defendant is the complainant's step father a man she expects to protect her. The offending occurred in her home where she should be safe. There is an element of planning involved and the offending exposed the complainant to the risk of unwanted pregnancy and sexually transmitted diseases. The complainant was also threatened and feared for her life.
9. There are no mitigating factors of the offending.
10. The lead offence in this case is sexual intercourse without consent. The overall starting point of sentence is 10 years imprisonment.

#### Personal factors

11. For the guilty plea, it was entered at the earliest opportunity. This saved the complainant from the trauma of recounting the details in open Court. The sentence will be reduced by the full 1/3 discount.
12. The Pre-sentence Report states that the defendant is from Central Pentecost but now lives at Vilvil area at Fanafo, Santo. He left school at year 6. He is a first-time offender and is married with two children of his own and the complainant, his step daughter. He is the breadwinner in his family and earns his living by gardening and selling kava and



food crops. He also makes and sells bread to earn income. He is the assistant chief of his community.

13. The defendant told the writer that he performed custom reconciliation by giving five (5) pigs to the victim, his wife, the chiefs nakamal, his in laws and relatives but this could not be confirmed with the victim and others. Counsel submitted the defendant was penalised by the Vivil community nakamal and ordered to pay the following:

- VT 20, 000 natamata of Vilvil nakamal
- VT8000 to the victim
- VT 8000 to defendant's wife
- VT 5000 to victim's uncle
- 1pig to victims' brother (valued at VT 15 000)
- VT 2000 to Mr Austine

14. The defendant is yet to pay the 1 pig to the victim's brother, VT 3000 to his wife and VT 2000 to Mr Austine.

15. The defendant was remanded into custody on 7 October 2021 and remains on remand.

16. Taking these factors into account, the sentence is further reduced by 12 months.

#### **End sentence**

17. The end sentence on the lead offence is rounded of to 6 years imprisonment and shall be effective from 7 October 2021 when the defendant was remanded into custody. The defendant is sentenced to 3 years imprisonment for sexual intercourse with a child under care or protection and is to be served concurrently.

18. The sentence will not be suspended. A custodial sentence is warranted to mark the gravity of the offences and to serve as a deterrence to the defendant and public at large. It is also to punish the defendant and to emphasize public disapproval of such offending.

19. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Luganville this 26 day of November, 2021

BY THE COURT

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D. Aru  
Judge

