

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

Criminal  
Case No. 20/2768 SC/CRML

**BETWEEN: Public Prosecutor**

**AND: John Nikahi**  
Defendant

*Date:* 23 December 2021  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr G. Simeon for Mr T. Karae for the Public Prosecutor  
Ms K. Karu for Mr B. Livo for the Defendant

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**Sentence**

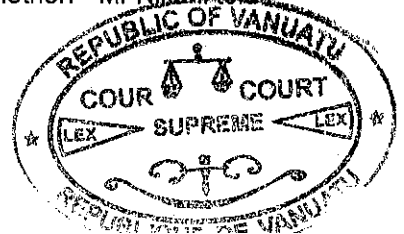
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**A. Introduction**

1. Mr Nikahi was found guilty after trial of 3 charges of sexual intercourse without consent.

**B. Facts**

2. On a Monday evening in March 2019, the complainant Joana, Mr Nikahi's step-daughter, returned home from school and prepared a meal before retiring to bed. Mr Nikahi later entered the room where she was sleeping, and removed her clothes. Joana said: "I call you Daddy. Don't do this sort of thing to me." He replied that he wanted to have sexual intercourse with her. Joana was scared at the time and resisted by kicking out at Mr Nikahi, but he held her tightly and proceeded regardless to have sexual intercourse with her.
3. Subsequently, on a Thursday lunchtime in March 2019, Joana entered the kitchen, followed by Mr Nikahi. Her mother was at work, and the other occupants of the home were outside. Mr Nikahi closed the kitchen door, removed Joana's clothes and proceeded to have sexual intercourse with her. Joana said: "This is not good. I'm going to tell my mother." Mr Nikahi told

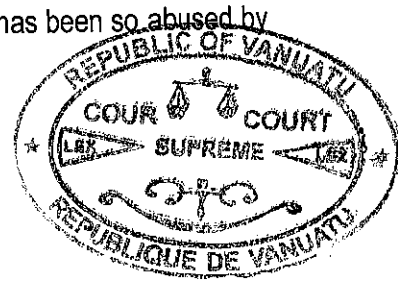


Joana to not tell her mother, that it was just between them. The incident took about a minute in Joana's estimation.

4. There was a further incident in June 2019. Joana was staying with her grandmother and her mother at the time. The wider family had gone to the gardens, leaving Joana behind at home. Mr Nikahi pulled her into the house. She kicked out at him and said she did not want to go inside with him, but he held her fast and pulled her inside. He removed her clothes and said: "I'm going to have sex with you and you must not tell your mother." He then lay down on top of her and had sexual intercourse with her. Joana went back outside afterwards and Mr Nikahi went to a nakamal.
5. These matters came to light following a dispute between Mr Nikahi and Joana's mother, which involved an assault on her mother by Mr Nikahi. The next day, while obviously still angered by what had happened to her, Joana's mother questioned her about what she had been told by Joana's grandparents and also what her mother had suspected herself. Joana then related to her mother what Mr Nikahi had done to her. That led to the police becoming involved.

C. Sentence Start Point

6. The sentence start point is to be assessed by having regard to the maximum penalty available for the offending and factoring in the aggravating and mitigating aspects of the offending.
7. The maximum sentence for sexual intercourse without consent is life imprisonment.
8. There are no mitigating aspects to the offending. There are however aggravating factors which include:
  - The gross breach of trust, completely undermining the relationship of step-father and step-daughter;
  - Instructing Joana to not report the matter to her mother;
  - There was pre-meditation involved;
  - Mr Nikahi was 51 years old: Joana was only 19 – the age differential made it more difficult for Joana to resist;
  - The repeat nature of the offending;
  - The offending occurred at Joana's home, where she should have been able to feel safe. On one occasion the offending occurred at nighttime;
  - The lack of protection used, thereby exposing TB to sexually transmitted disease and unwanted pregnancy; and
  - The effects of the offending on Joana. This is the second time she has been so abused by her step-father.



9. I am guided as to the appropriate sentence start point by the Court of Appeal authority: *PP v. Scott* [2002] VUCA 29. The sentence start point I adopt is 8 years imprisonment on a global basis, taking the 3 offences into account concurrently. I consider that the principles of deterrence and holding Mr Nikahi accountable for his actions are the paramount sentencing principles, closely followed by the need to protect members of the public.
10. In setting that start point I excluded from my considerations the other incident that Joana gave evidence about. It was relevant to the trial, but cannot be used as part of the sentencing exercise.

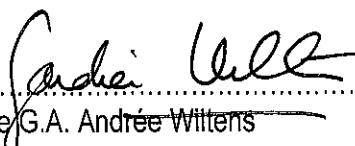
D. Mitigation

11. Mr Nikahi is now 53 years old, married, with 3 children. He is unemployed. Previously he worked as a security guard, and he has some skills in gardening. He is said to have good relations with his wider family and his community.
12. He shows no remorse, advising the PSR writer that he disagrees with the findings of guilty. He blames his wife suggesting she wanted him back in prison. He went on the state that the previous conviction suffers from the same deficiency, although it is notable that he pleaded guilty on that occasion. These protestations are not accepted.
13. There has been no custom reconciliation ceremony.
14. For Mr Nikahi's personal circumstances, the sentence start point is reduced by 2 months.
15. However, Mr Nikahi has a previous conviction, for the same type of offending and with the very same complainant. He was convicted of unlawful sexual intercourse with his then 9 year old step-daughter and sentenced to 5 years 4 months imprisonment. He was released on parole, which continued until December 2017. This current offending occurred only some 15 months later. There needs to be an uplift to reflect this factor, which I set at 6 months imprisonment.

E. End Sentence

16. The end sentence I impose is 7 years 4 months imprisonment. I impose that on all 3 charges concurrently.
17. Mr Nikahi has been incarcerated for this offending since 9 September 2020. Accordingly, to preserve his parole rights, his sentence will commence to run as from that date.
18. In certain circumstances the Court can suspend all or part of the sentence. However, that is not possible due to the seriousness of the offending and the type of criminal conduct involved: *PP v Gideon* [2002] VUCA 7.
19. Mr Nikahi has 14 days to appeal the sentence.

Dated at Port Vila this 23rd day of December 2021  
BY THE COURT

  
Justice G.A. Andrée Wiltens

