

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

Criminal  
Case No. 23/2386 SC/CRML

**BETWEEN: THE PUBLIC PROSECUTOR**

**AND: KONISH TETE TARI**  
Defendant

*Date:* 22<sup>nd</sup> September 2023  
*By:* Justice W.K. Hastings  
*Counsel:* Mr G Simeon for the Public Prosecutor  
Mr J Garae for the Defendant

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**SENTENCE**

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1. Konish Tete Tari has pleaded guilty to one charge of committing an act of indecency with a young person contrary to s 98A of the Penal Code, which carries a maximum penalty of 10 years' imprisonment. He has also pleaded guilty to one charge of unlawful sexual intercourse contrary to s 97(2) of the Penal Code, which carries a maximum penalty of 15 years imprisonment.
2. The facts with respect to the first charge are as follows. The victim ("victim A") is an 11 year old girl who attends primary school in Ambae. At 7am on 1 August 2023, she was walking to school with her friend. Mr Tari started to follow them and walked closely behind them. He called out to them. When they turned to look at him, he removed his trousers and showed them his penis.
3. The second charge concerns a different victim ("victim B"). The prosecution's brief of facts was amended by an agreed statement of facts. I had a telephone conference to confirm with both counsel the facts on which the plea was based. These are the facts. The victim is 14 years old and attends primary school. Mr Tari is related to her. At midday on 4 August 2023, Mr Tari came to the victim's house and told her to come outside. She did. He showed her a VT 1000 note. No force was used and they walked to a nearby plantation. Although he had a big knife with him at the house, he did not use it or take it to the plantation. When they reached the plantation, he removed all her clothes. He put his penis on her vagina but did not insert it. He instead licked and played with her vagina with his fingers while he masturbated himself until he



ejaculated. He also sucked the victim's breasts. She felt pain. After the incident, he told her not to tell anyone what he had done to her.

4. There are no mitigating aspects of this offending. I identify the following aggravating factors:
  - a. There are two victims (three counting victim A's friend who saw what victim A saw);
  - b. The victims are young. One is 11 years old, the other 14.
  - c. There is a considerable age differential. Mr Tari is 53 years old, victim A is 11, and victim B is 14.
  - d. The second, more serious offending took place only 3 days after the first;
  - e. There is a breach of trust with respect to victim B as she is related to Mr Tari;
  - f. There appears to have been pre-meditation in both instances – he followed victim A and her friend for some distance, and he took advantage of victim B being at home at lunchtime by luring her out of the house with a VT 1000 note. Both offences have a distinctly predatory aspect to them;
  - g. With respect to victim B, there was skin-on-skin contact on two areas of her body;
  - h. Mr Tari exposed victim B to the risk of sexually-transmitted disease through oral-genital contact;
  - i. Mr Tari's offending would have caused significant psychological and emotional injury to both victims, in addition to the physical pain suffered by victim B;
  - j. He told victim B not to tell anyone.
5. The lead offence is the unlawful sexual intercourse with victim B. I will take a global approach to the sentence for both incidents because they are close in time and, according to Mr Tari's statement to the pre-sentence report writer, resulted from his "stimulated mindset" at the time. I will treat the offending against victim A as a discrete uplift because it is less serious than the lead offence in the sense it involved no contact.
6. The sentence for this offending must denounce Mr Tari's conduct, hold him accountable for the harm he has caused, deter him and others from the same or similar offending, and provide for his rehabilitation.
7. I turn now to consider the starting point.
8. The prosecution submitted a starting point of 7 to 8 years imprisonment is appropriate. Mr Simeon submitted this case is more serious than the offending in *Public Prosecutor v Bule* [2021] VUSC 311. In that case, a school teacher was charged with committing an act of indecency on



a student when he digitally penetrated her at school. The starting point adopted in that case was 3 years and 6 months.

9. The defence submitted a starting point of 4 to 6 years is the appropriate concurrent starting point for both charges. Mr Garae's submissions discussed cases in which defendants were sentenced on charges of sexual intercourse without consent involving digital penetration. This case of course concerns a charge of unlawful sexual intercourse contrary to s 97(2) which carries a lower maximum penalty. Mr Garae submitted on that basis that a starting point lower than those in the comparator cases should be adopted. He submitted that it is now well established in Vanuatu law, as it is elsewhere, that a distinction is drawn in sentencing between digital and penile penetration. In *Public Prosecutor v Jeffrey* [2010] VUSC 41, a starting point of 5 years was adopted for offending involving digital penetration of the victim's vagina. In both *Public Prosecutor v Too* [2012] VUSC 219 and *Public Prosecutor v Moise* [2016] VUSC 5, starting points of 4 years were adopted for offending which involved digital penetration. The victim in *Moise* was 12 years old.
10. The defence referred to *Gigina v Public Prosecutor* [2017] VUCA 15 in which a starting point of 15 months imprisonment was considered appropriate for an indecent assault involving the defendant touching the victim's breasts and vagina over her clothing, after which he dragged her out of her house. The Court of Appeal in *Gigina* referred to *Tangiat v Public Prosecutor* [2014] VUCA 15 in which a starting point of 9 to 12 months was adopted for an indecent assault that involved touching the victim's breasts, also outside clothing. As the indecency charge in the present case concerned no touching at all, it is at the low end of the spectrum of offending and would on its own warrant no more than 6 months' imprisonment. An uplift of six months is appropriate to recognise the offending against victim A.
11. Taking into account the precedent cases brought to my attention by counsel, and the aggravating factors in this case, I consider a starting point of 4 years and 6 months imprisonment on both charges to be appropriate.
12. I turn now to personal factors. They are all mitigating:
  - a. Mr Tari is 53 years old and has no previous convictions. His previous good character warrants a reduction of 3 months, from the starting point.
  - b. The pre-sentence report writer writes that Mr Tari is very remorseful and acknowledged his wrongdoing at a custom reconciliation ceremony on 11 September 2023 in the presence of Chief George Tambe. One pig valued at VT 30,000 and 20 kava stems valued at VT 20,000 were given to the victims and their families. His expression of remorse and the successful custom reconciliation ceremony warrant a discount of 8 months from the starting point.
  - c. Mr Tari is married with 3 children, all of whom have their own families. He is also the caretaker of his deceased brother's 11 children whom he regards as his own and who

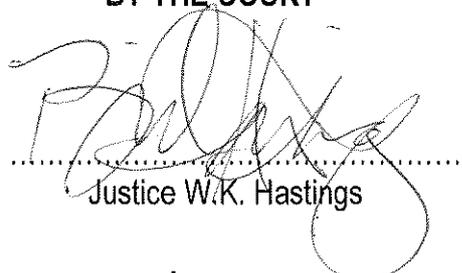


live with him and his wife. He is a community leader and Deacon of the Church of Christ. He built his own church in his community on Ambae. He earns his living from planting and selling kava. These personal factors warrant a further 3 months reduction from the starting point.

- d. Mr Tari was remanded in custody for 25 days between his arrest and his release on bail. A further month is deducted from the sentence starting point.
13. Those reductions bring me to 39 months. Mr Tari pleaded guilty at an early opportunity. This saved the state the expense of a trial and the victims having to give evidence. This warrants a further 33% reduction or 13 months, which brings me to an end sentence of 26 months, or 2 years and 2 months, imprisonment.
14. I turn now to consider whether I should exercise my discretion to suspend this sentence, or any part of it, under ss 57 and 58 of the Penal Code. Section 57 requires the Court to consider the circumstances, the particular nature of the crime, and the character of the offender in deciding whether it should suspend the sentence.
15. These young victims were merely going about their daily lives when Mr Tari offended against them. As a church leader he should have known better. On the other hand, Mr Tari has lived for 53 years without offending and has done good works in the community. He looks after 11 of his brother's children and has engaged in a custom reconciliation ceremony. The nature of the crime is serious, but the indecency charge involved no contact and the unlawful sexual intercourse charge involved no penile penetration or force. On balance, I consider it appropriate to suspend his sentence for 2 years and 2 months. Mr Tari is to understand though that he needs to remain offence-free for 2 years and 2 months in order to remain in the community.
16. Mr Tari is also sentenced to 12 months supervision with a special condition to undertake rehabilitation modules on sexual offending as recommended in the pre-sentence report to give him better insight into his offending and the effect such offending has on victims.
17. Mr Tari has 14 days to appeal the sentence.
18. All details leading to the identification of victims A and B are permanently suppressed.

**Dated at Luganville this 22<sup>nd</sup> day of September 2023**

**BY THE COURT**

  
Justice W.K. Hastings

