

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

**Criminal  
Case No. 24/1156 SC/CRML**

**BETWEEN: The Public Prosecutor  
Prosecutor**

**AND: Edwel Yoan  
Defendant**

**Coram: Justice Dudley Aru**  
**Counsel: Mr. L. Young for the Public Prosecution**  
**Mr. H. Vira for the Defendant**

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**SENTENCE**

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**Introduction**

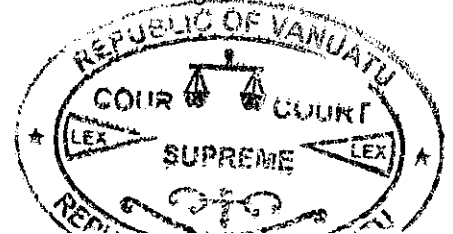
1. Following the trial in this matter, the defendant was found guilty of one count of sexual intercourse without consent. He now appears for sentencing and this is his sentence.

**Facts**

2. The brief facts found at trial are that the complainant LL refers to the defendant as father. In July 2023 LL was living with the defendant and his wife at Moriu village Epi. On one occasion while LL entered the house to tidy the bed, the defendant followed her and closed the door. He removed her clothes and pushed her onto the bed then removed his clothes and inserted his penis into her vagina. A medical examination confirmed a tear in her hymen. She described what the defendant did to her as "nogud" as he was her father.
3. After the offending LL returned to Pinky village and reported the matter to her relatives who took her to the hospital for medical examination then filed a complaint with the Police at RoVo Bay.

**Sentence start point**

4. Sexual intercourse without consent is punishable by a maximum sentence of life imprisonment. The prosecution submits that the offending is aggravated by the following factors: -
  - Breach of trust as LL is related to the defendant and calls the defendant her father;
  - Age disparity. LL was around 14 to 15 years old at the time of the offending while the defendant was 25 years old at that time. An age difference of around 11 years.
  - There is some form of planning involved. When LL entered the house to tidy the bed, the defendant followed suit and closed the door and undressed her before having sexual intercourse with her.



- The impact of the offending on the complainant will have long lasting psychological effects on the complainant.
  - LL was exposed to the risk of unwanted pregnancy and sexually transmitted diseases.
  - The defendant took advantage of LL's young age as a vulnerable young girl to advance his sexual desires.
5. The defendant concedes to the above aggravating features as submitted by the prosecution.
  6. There are no mitigating factors of the offending.
  7. The prosecution submitted that this court must be guided by what the Court of Appeal said in **Public Prosecutor v Gideon [2002] VUCA 7** and **Public Prosecutor v Scott [2002] VUCA 29**. The Court in *Gideon* said: -

*"There is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuse young people in the community.....men who take advantage sexually of young people forfeit their right to remain in the community."*

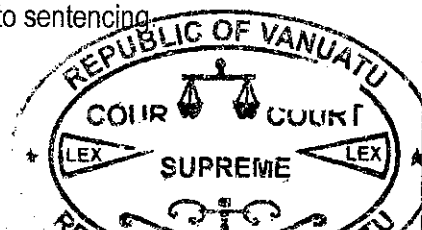
8. Similarly in *Scott* in relation to rape cases, the Court said: -

*"The offence of rape is always a most serious crime. other than in wholly exceptional circumstances rape calls for an immediate custodial sentence...."*

9. The prosecution also referred to **Public Prosecutor v Katena [2022] VUSC 178** where the court set a starting point of sentence at 9 years imprisonment for one count of sexual intercourse without consent. The prosecution submitted that I adopt a similar starting point in this case.
10. The defence acknowledged the case authorities of *Gideon* and *Scott* and also submits that a 9 years starting point is appropriate.
11. I adopt a starting point of 9 years imprisonment.

### Mitigation

12. I am grateful for the assistance of the Probation Officer in providing a Same Day Report as directed. The Same Day report gives the following personal factors about the defendant. He is a first-time offender and is now 27 years old and married. He resides at Moriu village Epi with his family. He has 2 daughters and his wife is currently eight months pregnant with a third child. He completed his primary education at Nikaura Primary School and could not continue due to financial difficulties. He currently earns his living by fishing and gardening to support his family and his parents.
13. His chief speaks highly of him as an active member of the Moriu community.
14. As a first-time offender I reduce the sentence start point by 12 months. A further 6 months is deducted for his other personal factors including two weeks in custody prior to sentencing.



## End sentence

15. The defendant is therefore sentenced to an end sentence rounded of to 7 years imprisonment. A custodial sentence is warranted for a variety of reasons as highlighted in *Scott*. It is to mark the gravity of the offence and emphasize public disapproval of such offending. Thirdly it is to serve as a deterrence or warning to others, fourthly is to punish the offender and finally to protect women and girls.
16. I also order that all details leading to the identification of LL are permanently suppressed.
17. The defendant has 14 days to appeal if he is not satisfied with the decision.

DATED at Rovo Bay this 22<sup>nd</sup> day of May, 2025  
BY THE COURT

  
Dudley Aru  
Judge

