

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

Criminal
Case No. 24/2697 SC/CRML

PUBLIC PROSECUTOR
v
SPENLY SALEMUMU

Date of Verdict: 26 March 2025
Date of Sentence: 12 June 2025
Before: Justice M A MacKenzie
Counsel: Ms R Siri for the Public Prosecutor
Mr R Willie for the Defendant

SENTENCE

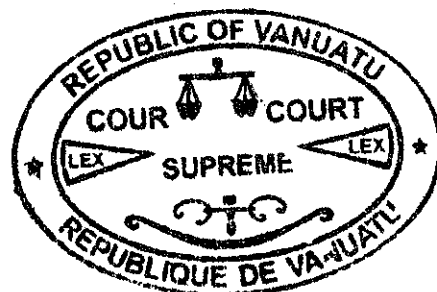
Introduction

1. Mr Spenly Saleumu appears for sentence having been found guilty following a trial of two charges of sexual intercourse without consent contrary to ss 90 and 91 of the Penal Code [CAP 135]. The maximum penalty is life imprisonment.¹

The Facts

2. In October 2023, Mr Saleumu had nonconsensual sexual intercourse with the victim RD, on two occasions. The victim and Mr Saleumu are related and are neighbours. Mr Saleumu is also the victim's chief.
3. The first incident took place at the home of the victim's daughter under the guise of a massage. Both were in Lakatoro at the time. The victim received regular massages from Mr Saleumu. On this occasion, the victim was told by Mr Saleumu that she had a sickness, and that they would go to her house and he would massage her. At the

¹ For the verdict judgment, see *Public Prosecutor v Saleumu* [2025] VUSC 71



daughter's home in Lakatoro, they went into the victim's room for the massage. Mr Salemumu massaged the victim, then removed her clothes and had sexual intercourse with her. She did not consent to the sexual intercourse and tried to push him away. Mr Salemumu maintains that the sexual intercourse was consensual.

4. The second incident took place at the Lakatoro school during a cyclone, shortly after the first rape. There is an evacuation centre at the school. The victim, various family members and Mr Salemumu went to the school to seek shelter. At nighttime, Mr Salemumu removed the victim's clothes, lay on top of her and had nonconsensual sexual intercourse with her. The victim tried to push him away, but that did not work. Mr Salemumu maintains that incident did not happen. I did not accept that.

Sentencing purposes/principles

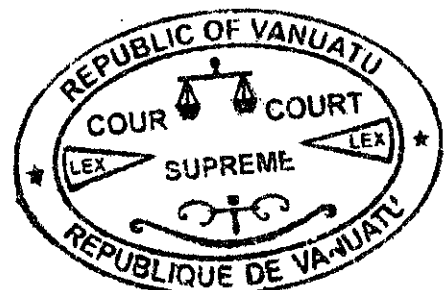
5. The sentence I impose must hold Mr Salemumu accountable and must denounce and deter his conduct. The sentence should ensure Mr Salemumu take responsibility for his actions and help him to rehabilitate. It must also be generally consistent.

Approach to sentence

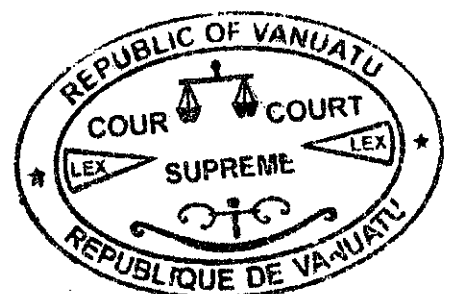
6. Sentencing involves 2 separate steps; Jimmy Philip v Public Prosecutor [2020] VUCA 40, which applied Moses v R [2020] NZCA 296.

Starting point

7. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalty for the offence.
8. The aggravating factors of the offending are:
 - a. There was a breach of trust as Mr Salemumu is the victim's chief.
 - b. There were two separate rapes.
 - c. The victim was vulnerable because of the power imbalance arising from the fact that not only is Mr Salemumu the victim's chief, but also the victim and her husband live on Mr Salemumu's land.
 - d. The first rape took place in the victim's bedroom where she was entitled to feel safe.



- e. The victim was exposed to the risk of sexually transmitted diseases as the sexual intercourse was unprotected.
 - f. There was a degree of premeditation. Mr Salemumu took advantage of the victim when opportunities presented themselves.
 - g. Impact on the victim- this was a traumatic experience for the victim. She told the presentence report writer that she was emotionally hurt by the offending and feels ashamed.
9. The prosecutor submits that the victim is particularly vulnerable, because she suffers from mental and physical conditions. I record that I do not take that into account as an aggravating factor, because there was no evidence about this in the trial. Clearly, giving evidence was a difficult experience for the victim. Ms Siri sought to adduce a medical report which the Court understands details the victim's health issues. However, this was opposed by Mr Willie, and the report writer was not called to give evidence.
10. There are no mitigating features of the offending itself.
11. The prosecutor submits there should be a starting point of 7-9 years imprisonment. Mr Willie submits that the appropriate starting point should be no more than 8 years imprisonment.
12. Because the offending is rape, Public Prosecutor v August [2000] VUSC 73 and Scott v Public Prosecutor [2002] VUCA 29 apply. *Scott* is the guideline case for rape. According to *Scott*, the offending here is aggravated by the fact that there were two rapes. Therefore, the starting point must be higher than the five year starting point for a rape without any of the aggravating or mitigating factors identified in *Scott*.
13. In Vuti v Public Prosecutor [2017] VUCA 14, the Court of Appeal confirmed that where there are two rapes, the starting point should reflect that factor. In Public Prosecutor v Welegtabit [2016] VUSC 48, the Court adopted a 10 year starting point for two charges of rape. The victim was a teenager and the defendant's daughter. It involved a gross breach of trust and a serious threat not to tell anyone. The offending in the present case is less serious than *Welegtabit*, given that the victim is an adult and the breach of trust is moderate.
14. Given the aggravating factors I have referred to, and in particular with reference to the cases I have referred to, I adopt a global starting point of 8 years imprisonment.

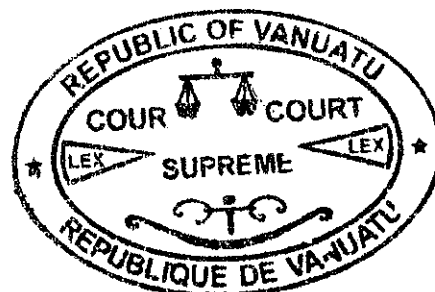


Personal factors

15. According to the presentence report, Mr Salemumu is aged 65 years and is a first offender. He told the report writer that he is the landowner and paramount chief of 12 tribes at Malwa Bay, Malekula. He grew up on Malo Island. Mr Salemumu is married with 12 children. Two of the children are still dependent, and his wife is a diabetic. I accept that Mr Salemumu is of otherwise good character and that the sentence should be reduced to reflect that, and his personal circumstances.
16. There has been a custom payment. Shortly after the two rapes, Mr Salemumu visited the victim and her husband. He gave the victim's husband VT 5000 and the victim VT 2000. He apologised to the victim's husband. The payment and the apology were not because Mr Salemumu acknowledged raping the victim but because he had sex with the victim. This must be taken into account under s 39 of the Penal Code. Even though the custom payment and apology were not for the offending, I will reduce the sentence to reflect this factor, because the victim and her husband accepted the apology and the payment and wanted to move on because they live on Mr Salemumu's land.
17. For all these factors I reduce the sentence by 10 months (approximately 10 %).
18. I do not think a separate credit for remorse is warranted. Mr Salemumu told the presentence report writer that he was remorseful, but it is not clear what he is remorseful for, given his position regarding the offending.
19. Mr Salemumu was first remanded in custody between 23 August 2024 and 18 October 2024, when he was then granted bail. That period of remand was approximately 2 months. That is an effective sentence of approximately 4 months imprisonment. The sentence is further reduced by 4 months for that factor.
20. Bail was revoked on 26 March 2025, and Mr Salemumu has been in custody since. I will back date the sentence start date to reflect that.

End Sentence

21. The end sentence is 6 years 10 months imprisonment for each charge of sexual intercourse without consent.
22. The defence submissions do not suggest that the sentence should be suspended pursuant to s 57 of the Penal Code, which in any event, is opposed by the prosecutor. Under s 57, I must take into account the circumstances, the nature of the offending and Mr Salemumu's character. In Public Prosecutor v Gideon [2002] VUCA 7, the Court of Appeal said that it will only be in the most extreme of cases that suspension could ever



be contemplated in a case of sexual abuse. That has recently been reaffirmed by the Court of Appeal in Tulili v Public Prosecutor [2024] VUCA 54.

23. Mr Salemumu is a first offender and as a chief, has an important position in the community. However, this was serious offending, given the aggravating factors detailed above. Mr Salemumu raped the victim twice. The circumstances, both in relation to the offending and Mr Salemumu personally, are a long way from being exceptional or extreme so as to warrant suspension of the sentence. Accountability, deterrence and denunciation are important sentencing purposes, given the nature of the offending. I decline to suspend the sentence in all the circumstances.
24. The sentence is to commence immediately. The sentence start date is backdated to commence on 26 March 2025, when bail was revoked.
25. Mr Salemumu has 14 days to appeal against the sentence.
26. I make a permanent order suppressing the name and identifying details of the victim.

**DATED at Port Vila this 12 th day of June 2025
BY THE COURT**

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Justice M A MacKenzie

