



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

Criminal  
Case No. 25/10 SC/CRML

PUBLIC PROSECUTOR

v

BRANDON MAOH MOLISAH

Defendant

Before: Hon. Justice Oliver A Saksak  
Counsel: Josephine Tete for Public Prosecutor  
Rollanson Willie for the Defendant  
Date of Trial and Oral Verdict: 3rd October 2025  
Date of Judgment: 27<sup>th</sup> October 2025

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**JUDGMENT AS TO VERDICT**

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**Introduction**

1. The defendant Brandon Maoh Molisah was found guilty of one count of sexual intercourse without consent on 3<sup>rd</sup> October 2025. A short written verdict was issued on that date. I now provide reasons for reaching that verdict.

**Charge and Elements**

2. On a charge of sexual intercourse without consent under sections 90 and 91 of the Penal Code Act, Prosecution had the duty of proof on the balance of proof beyond reasonable doubt the guilt of the defendant by proving the following elements:
  - (a) Whether the defendant had sexual intercourse with the complainant Helen Komao?
  - (b) Whether he did so without her consent?
  - (c) Whether the defendant had reasonable belief the complainant was consenting?

**Evidence**

3. The complainant gave the following evidence in chief:-

*"My name is Helen Komao. I am 16 years old. I live at Wunpuku. I do no work. Yes I know why I am in Court this morning. I am here because of what defendant Brandon did to me. Yes he is in Court – (points to the defendant). That is Brandon. He had*



sex with me. That was in June last year (2024). It happened in the bush at Wunpuku. At the time I was walking to the garden to see my mum and dad who were doing gardening. I cooked food for my elder sister's two children. They ate and we walked together to school. I left them off and went towards the sea and saw Brandon sitting on the beach. I walked past him and heard the breaking of wood behind me. I looked but there was no one. I kept walking and then heard someone cough behind me. I looked back and saw Brandon walking behind me. I kept walking and he followed me. I heard him call my name. He asked me if I had seen Jeffrey go down that way. I said no. He then said he and Jeffrey had planned to move his cocoa seedlings. We kept walking and I gave way for him to go ahead of me. He then grabbed me, his one hand on my neck and the other behind my legs, like a father carry a child. I called out for my mum and dad, I struggled to get free, but he held me tightly with his full strength. There was no one around at the time. He carried me to some rotting timber and laid me down. He sat on my legs and held my two hands tightly with one hand and with the other he removed my panty. I wore a shirt, a skirt and panty. He pushed his hand into my body. He then removed his clothes half-way down and pushed his "balls" into my body. He then had sex with me. He ejaculated into my body. I cried and struggled, calling out to my mum and dad but he did not stop. He then told me I would go see him in the afternoon to receive my money but I did not respond to him. He told me a second and I lied to him that I would go. I then managed to push him off. I got up and ran away but my panty was hanging onto one of my legs. I took my slippers and ran. He came after me calling me. I went to see mum and dad in the garden. They asked me what had happened because they saw me crying. My mother saw dirt on my hair and asked who held me? I told her it was Brandon. My dad asked me what happened and I told him everything that happened to me. Then mum told me to go and see the nurse who told me to make a formal complaint. Then we went to see the Police who dealt with the case. Police came down in September."

4. In cross-examination, Mr Willie examined the complainant:-

Q: You took oath on the the Bible to tell the truth. Is everything you told the court, true?

A: Yes

Q: You said Brandon sat on your legs?

A: Yes

Q: And when he did, one hand held your hand?

A: Yes

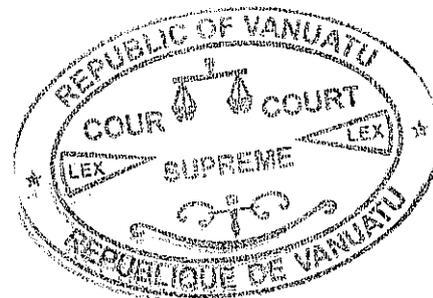
Q: The other hand he used to remove your panty?

A: Yes

Q: You said he pushed his hand into your body?

A: Yes

Q: You mean by that he only touched your vagina?



A: Yes

Q: He did not push his hand into your body, only touched?

A: He pushed his hand into my body.

Q: Defendant said he never did that?

A: He is lying

Q: He accidentally touched your vagina?

A: No, he removed my panty and pushed his hand into vagina.

Q: You said he removed your panty and pushed his balls into your vagina?

A: Yes

Q: And he caused his sperm to go into you?

A: Yes

Q: When defendant removed his trousers, he could not have sex with you because he could not have an erection?

A: A lie

Q: You know that person sitting at the back there?

A: Yes

Q: Did he make some actions to you (to help her answer questions)?

A: No, not true.

Q: I put to you that the story you've told the court is not true? Brandon did not have sex with you?

A: Brandon had sex with me.

Q: Families forced you to make a report?

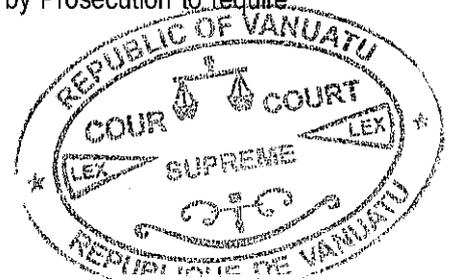
A: Yes

5. In re-examination Ms Tete asked:

Q: Why did you answer the last question as "Yes"?

A: Because he has done this three times now. The first time he did to a missus, another time he did it one of my mums and then now to me. So the family forced me to make a report.

6. The Court was satisfied a prima facie case was made out by Prosecution to require the defendant to put up a defence.



7. The defence case was simply that there was no sexual intercourse because the defendant did not have an erection. He admitted carrying the complainant and removing her panty. He tried to have intercourse with her but could not get an erection and therefore he let her go.
8. The defendant gave the following evidence:-

*"My name is Bandon Maoh Molisah from Wunpuku, Santo. I am 38 years old. Yes I have a partner, Mere is her name. Yes we have 4 children. We have lived together for 6-7 years. I am here in Court because of Helen. Her case of rape – where sex with a woman is done without her agreement. For this case what I am saying is true. It is not true that I had sex with her. At the time I was at the beach, may be around 8 O'clock in the morning. It was last year (2024) but I've forgotten the actual date. Jeffrey told me we would go for his cocoa, so I waited for him there. Jeffrey is a brother of mine. He told me this at the house the day before. He said we would go and carry his cocoa from his plantation. I thought Jeffrey had gone so I waited. As I was going down, I saw Helen. I asked her if she saw Jeffrey go down. She did not answer. We walked on then I asked her a second time. I went along beside her and heard her say "No, Jeffrey has not gone down yet" I got up and held her hand, then I carried her and put her down by the road side. Then I removed her clothes, her trousers, then I went on top of her. I held my penis but it was weak, no erection. I felt my penis did not arouse as she was moving against my body, so I let go. I let her go and told her that if she returned, I would give her money. I did not have sex with her or even put my fingers into her. I have a situation that when I drink kava, my penis cannot be erect for 1 or 2 days. The night before we were drunk kava with one in laws at tawi's house. There was Simeon, Jimmy Ansen, Edward, Isaiah and Esrom. Helen told the Court that I've done this twice already, the first one was 15 years ago, the second was not a rape, there was no report made. I know why Helen reported me. It is true I touched her but it is a lie that I had sex with her. I say it is a lie that I had sex with her. I did not finger her or put my penis into her. It is not true."*

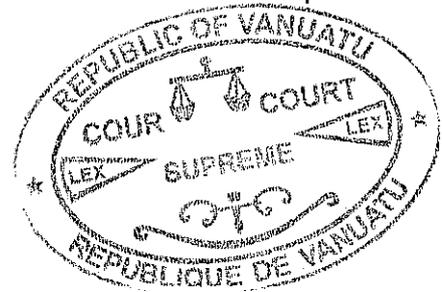
9. In cross-examination Ms Tete examined the defendant:

Q: You were on the beach smoking? Yes.

Q: You saw Helen come around? Yes, I was sitting around waiting for Jeffrey. He did not come so I got up and walked up behind Helen. I was walking slowly in the hope Jeffrey would come. Yes I saw Helen and asked her if she saw Jeffrey. She said no. I went close to her and asked her again, she said no, then I held her and carried her up with my hands.

Q: You blocked her mouth as she was crying? Yes, I blocked her mouth and then put her down.

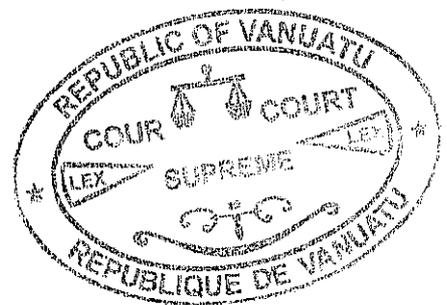
Q: You laid her on timber? No, on the ground.



- Q: Put to you it was rotting timber? No, on the ground.
- Q: She was crying? Yes, she was crying.
- Q: You sat on her legs? No, I knelt down where she had laid down.
- Q: Ref to Question 40 and the answer is you sat on her legs? Yes I knelt down.
- Q: You held her and removed her trousers? Agreed.
- Q: She was crying but you did not stop? Yes.
- Q: You removed your trousers? Yes, I did.
- Q: You told her not to cry? Yes.
- Q: After you put your fingers into her? No.
- Q: I put to you that you pushed your finger? No.
- Q: Ref to Q 36, you had intention to have sex with her? That is what I thought but my body could not do so.
- Q: After you pushed your finger, you pushed your penis into her? No.
- Q: I put to you that you pushed fingers and had sex with Helen? No, I did not.
- Q: Sometimes you drank kava, at other times? At other times it was okay. Only when I drank kava my body would not react that way.
- Q: When she cried, she was indicating to you a "No"? Yes.
- Q: That is why you left her? When you followed her you had intention to have sex with her? Yes, I did.
- Q: You had an erection when her body was moving close to you? I did not have sex with her.
- Q: First incident happened 15 years ago? Yes.
- Q: So you did this to two women already? Yes.
- Q: Helen was the third? Yes, the previous 2 I only acted but it did not happen.
- Q: I put to you that you had sex with Helen by putting your finger and your penis?

10. In re-examination Mr Willie asked:

Confirm what you mean by "sometimes" when I drank kava but when I don't-it is good a little what action do you mean? That I pushed her to the ground but did not have sex with her. Second case? Second case it was around 30 July, it happened on a public road. I pulled her hand she cried, she went to report me but I was only making fun with her as a "tawi".



11. Mere Maoh gave the following evidence:

*"My name is Mere. I am 21 years old, from Banks. Yes I know the defendant, he is my "man". We have been together for 15 years. He is a good person. I know why Brandon is in Court because of his case. I stopped him to drink kava but he is disobedient. So we could not look after the children well. When he drinks kava, he has sickness, his body becomes 'ded', so I stopped him. I mean his private part. When he drinks kava this happens to him. In the afternoon he drank kava. There is a nakamal close to our house where he goes to drink kava with his relatives."*

12. In cross-examination, Ms Tete asked the witness:

Q: You have lived together 15 years, not 6-7 years as Brandon said? Yes, 7 years.

Q: So your answer of 15 years not true? (Shakes her head)

Q: You said Brandon has sickness for 7 years? Yes.

Q: Did you bring him to hospital? (Shakes head) – He came to pass at hospital.

Q: Where you there at the time of incident? No.

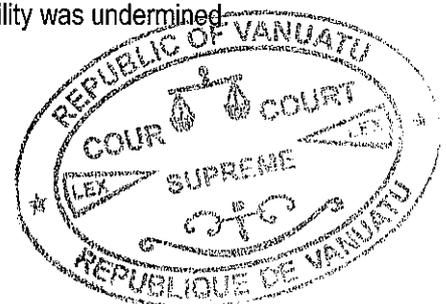
Q: That you called him from nakamal is not true? No, I went to call him.

Q: And you have 4 children? Yes.

13. In re-examination he was asked to clarify the 15 years. She said they were in a relationships 4 years before staying together. Asked whether 15 years includes the period of friendship with him. She answered "Yes."

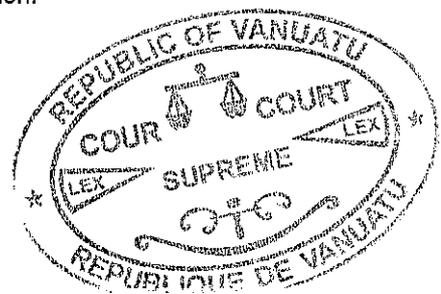
### Submissions

14. Prosecutions submitted they had proved on the balance of proof beyond reasonable doubt all the elements of rape and that the Court should find the defendant guilty. As to credibility, it was submitted the complainant was a credible witness and that the Court should believe her story as the truth instead of the evidence of the defendant and her partner.
15. Mr Willie submitted on the other hand that the Court should believe the defendant's evidence that there was no sexual intercourse due to inability to have an erection due to drinking kava the night before as confirmed by the evidence of the partner. It was submitted that from the complainant's demeanor, her credibility was undermined.



## Discussion

16. First, did the defendant have sexual intercourse with the complainant? The answer is "Yes". The complainant gave clear and consistent story in chief and in cross. She saw an erect penis. She felt the penis pushed into her. She felt the difference between the fingers and the penis. She said there was ejaculation inside her. I had no reason to not believe that she was telling the truth. She used "hand" instead of "fingers" and "balls" instead of "penis" but that is the normal way of responding by a young girl who are normally shy to use the right descriptions of the human body in order to be more respectful to the Court. Indeed when the Court asked her to distinguish between the "hand" and "fingers" and "balls" and "penis", it appeared to me from her answer that the complainant was no stranger to sexual activities.
17. Second, did the complainant consent to the sexual activity? Her evidence was that she cried and struggled. She called out for mum and dad. Those facts were admitted by the defendant.
18. Third, did the defendant have reasonable belief the complainant was consenting? The crying, the struggling, the calling out and the running away with a party down on one leg are clear indications the complainant did not consent to sexual intercourse.
19. The Court did not believe the defendant's story. First, that he did not have an erection. If it was true, he should not have carried the girl in the first place. Second, he should not have knelt down in front of her and slept on top of her. Third, only he knew his situation at the time. If he had drank kava the previous night knowing he had the situation, why go to the extent of carrying the victim into the bush, put her down, removed her clothes and his, knelt down and laid on top of her. At best he could have stayed away from the girl in the first place but that is not what happened. Instead his actions indicated he was active sexually. Fourth, his story that he drank kava the previous night did not appear in his caution statement or record of interview. He could have said it but did not. He only said it in Court and brought his partner along to try and help him out. But without any medical certification from a doctor, it was pretty hard to believe the defendant's story as supported by his partner. Fifth, why did the defendant ask the victim to return in the afternoon to be paid money? The only possible explanation is that he had had sexual intercourse with her and to give her money was a way to keep her quite about it.
20. For those reasons the Court believed the complainant as the credible witness for the Prosecution. Her evidence did not need any corroboration.



21. Accordingly, the Court found the defendant guilty of the charge of sexual intercourse without consent and entered conviction against him.

**DATED at Port Vila this 27<sup>th</sup> day of October, 2025.**

**BY THE COURT**

  
.....  
Hon. Justice Oliver A Saksak

