



**IN THE SUPREME COURT OF NAURU  
AT YAREN  
[CRIMINAL JURISDICTION]**

**Criminal Case No. 17 of 2024**

**BETWEEN: THE REPUBLIC PROSECUTION**

**AND: ESAU DE-GAGORO TEMAKI ACCUSED**

**BEFORE: Keteca J**

**Date of Sentencing Hearing:** 06<sup>th</sup> February 2026

**Date of Judgment:** 13<sup>th</sup> March 2026

**Catchwords:** Indecent Acts in Relation to a Child under 16 years old: Contrary to Section 117(3)(a) (b) and (c) of the Crimes Act 2016 (the Act).

**Appearances:**

Counsel for the Prosecution: **W. Deiye**

Counsel for the Accused: **R. Tagivakatini**

**SENTENCE**

**BACKGROUND**

1. On 21<sup>st</sup> November 2025, the Accused was found guilty of 2 Counts of Indecent Acts in Relation to a Child under 16 Years old: Contrary to Section 117 (3) (a) (b) and (c) of the Act.
2. The facts are that for Count 1, the accused held the complainant against her will, kissed her lips and inserted his tongue into her mouth. On Count 2, the accused touched the complainants' stomach and moved his hand to her breasts. Noting that the gravamen of indecent assault is the element of indecency, I found that the accused's conduct of kissing the complainant and inserting his tongue into her mouth and touching her stomach and breast were 'indecent.'

### **MAXIMUM PENALTY**

3. The maximum penalty for this offence is 30 years imprisonment. Of this, at least one third is to be served without parole or probation.

### **SUBMISSIONS BY THE PROSECUTION**

4. The accused is 50 years old. There is no information submitted by the prosecution on whether the accused has any criminal convictions.
5. On the Victim Impact Statement, the complainant states that she has forgiven the accused. She does not want to see him 'ever again.'
6. Counsel submits that the penalty for this offence is:
  - i. If the child is 13 years old or aggravating circumstances apply- 15 years imprisonment; or
  - ii. In any other case- 12 years imprisonment.
7. Counsel is clearly mistaken here. This is the old law. Counsel is more than 5 years late in updating her Crimes Act 2016. On 23<sup>rd</sup> October 2020, the penalty was increased to 30 years imprisonment and at least one third is to be served before parole or probation. Counsels, in particular government legal practitioners, are reminded to keep updating their legislations.
8. Interestingly, at paragraph 15 of her submissions, the prosecutor states that case authorities show that this court has previously awarded between 30- and 10-years imprisonment!!

### **AGGRAVATING FACTORS**

9. The victim was 11 and 12 years old at the times of the offending. There is a serious breach of trust here as the victim looked up to the accused as her step- father. Further, the offending took place in their home' where they were supposed to feel safe and secure.'
10. In mitigation, Counsel submits that the accused has been in remand since November 2024.

### **CASE LAW**

11. Counsel referred to the following cases:
  - i. *R v Terinan Aruna Eri* Criminal case No 08 of 2024 (21<sup>st</sup> November 2025), the accused was convicted of 2 Counts of the same offence under Section 117(3)(a)(b)(c) of the Act. The accused attempted to insert his penis into the anuses of the 5 and 7-year-old victims. There was no penetration. The accused was sentenced to 15 years imprisonment with 10 years to be served before being eligible for parole or probation.
  - ii. *R v Jioji Gucake* [2025] NRSC 54, Criminal Case No 16 of 2024 (26<sup>th</sup> September 2025)- for 2 Counts of the same offence, the accused, the step father of the 15-year-old victim was sentenced to 15 years imprisonment with a minimum of 10 years to be served.
  - iii. *R v Mwareow* [2025] NRSC 38; Criminal Case 4 of 2024 (6 August 2025), the 39-year-old accused was the neighbor of the 13-year-old victim. For the same offence

as the present one, he was sentenced to 15 years imprisonment with 10 years to be served.

- iv. *R v Kam* [2024] NRSC 39; Criminal Case 05 of 2024 (17 December 2024)- the accused was found guilty and convicted on one count of Rape of a Child under 16 years, contrary to Section 116(1)(a)(b) of the Crimes Act 2016 and three counts of ‘Indecent Act in relation to a child under 16 years, contrary to Section 117(1)(a)(b)(c) of the same Act. He was sentenced to life imprisonment for rape and 15 years imprisonment for the indecent assaults.
- v. *R v Namaduk* [2024] NRSC 27; Criminal Case 24 of 2021 (4 October 2024)- the accused was found guilty and convicted on two counts of ‘Indecent Act in Relation to a Child under 16 years old’ and one count of ‘being found in a certain place without lawful authority or excuse.’ For the 2 Counts of indecent acts, the accused was sentenced to 15 years imprisonment with 10 years to be served.
- vi. *R v Raidinen* [2024] NRSC 3; Criminal Case 3 of 2022 (22 March 2024) – for the same Section 117(3) offence, the accused was sentenced by A/CJ Khan to **30 years imprisonment** with a minimum of 10 years to be served.
- vii. *R v Togaran* [2022] NRSC 20; Criminal Case 11 of 2020 (22 September 2022)-the accused was convicted after his plea of guilty to the same Section 117(3) offence. The 13-year-old victim was the accused’s step-daughter. The accused was sentenced to **30 years imprisonment with 10 years to be served.**

12. Counsel concludes that based on the factual matrix, the most relevant case to the present one is the Jioji Gucake case.

### **SUBMISSIONS FOR THE ACCUSED**

13. The accused has eleven children and ten grandchildren. He has been in remand since his arrest on 08<sup>th</sup> November 2024.
14. Counsel refers to three of the cases mentioned above and agrees that this Section 117(3) offence is to be denounced. He submits that a sentence of 15 years imprisonment with 10 years to be served before parole will be appropriate here.

### **CONSIDERATION**

15. Considering Sections 277 – 282 of the Act, the cases mentioned above and the prevalence of this offence in this jurisdiction, I convict the accused accordingly on both Counts.
16. From case law and the abovementioned provisions on sentencing, the accused will be awarded an imprisonment term.
17. Why an imprisonment term? I refer to Section 280 (a)(iv) and (b) of the Act which provides:  
‘A sentence of imprisonment may be imposed on a person only if:  
(iv) any other sentence would be inappropriate having regard to the gravity or circumstances of the offence; or  
(b) a sentence of imprisonment is necessary to give proper effect to Sections 278 (purposes of sentencing) and 279 (sentencing considerations).

18. On Section 278, I consider the following as the basis for my reasons as to why an imprisonment term is appropriate here:
- i. to ensure that the accused is adequately punished.
  - ii. to prevent crime by deterring the offender and other people from similar offences.
  - iii. to promote the rehabilitation of the accused.
  - iv. to make the accused accountable for his conduct.
  - v. As agreed to by Counsel for the accused, to ‘denounce’ the conduct of the accused.

19. In addition to the above statutory reasons, I’m also guided by case law. In *R v Radich* [1954] NZLR 86 (CA) the court said (at 87):

*“We should say at once that this last argument omits one of the main purposes of punishment, which is to protect the public from the commission of such crimes by **making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment.** In all civilized countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment.”*

The court added:

*“If a court is **weakly merciful**, and does not impose a sentence commensurate with the seriousness of the crime, **it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences.** On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment.”*

20. In *Yardley v Betts* (1979) 22 SASR 108; 1 A Crim R 329 (CCA) the Court said (at 112; 333):

*‘The protection of the community is also contributed to by the successful rehabilitation of the offenders. This aspect of sentencing should never be lost sight of and it assumes particular importance in the case of first offenders and others who have not developed settled criminal habits. If a sentence has the effect of turning an offender towards a criminal way of life, the protection of the community is to that extent impaired. If the sentence induces or assists an offender to avoid offending in the future, the protection of the community is to that extent enhanced.’*

21. I remind myself of what Kirby J said in *Ryan v The Queen* (2001)206 CLR 267 at 302:

*“A fundamental purpose of the criminal law, and of the sentencing of convicted offenders, is **to denounce publicly the unlawful conduct of the offender.** This objective requires that a sentence should also **communicate society’s condemnation of the particular offender’s conduct.** The sentence represents **“a symbolic, collective statement that the offender’s conduct should be punished for encroaching on our***

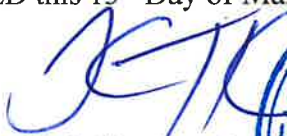
*society's basic code of values as enshrined within the substantive criminal law.' (my emphasis)*

22. I had mentioned before that this court takes a very stern and unsympathetic view on offending against children. Unfortunately, sexual offences against children are quite prevalent in this jurisdiction. This is a deplorable state of affairs. It is reprehensible. Despicable too. This type of conduct deserves harsh condemnation.
23. What I said in *Republic v Mwareow* [2025] NRSC 38; Criminal Case 4 of 2024 (6 August 2025), are equally apt here- *'The accused is a first offender. He has not yet 'developed settled criminal habits.' Parliament has exercised its jus dare role in providing very harsh sentences for those convicted of sexual offences against children. This court is not 'weakly merciful.' I have made it clear in the past and I do so again here- would be offenders who have certain sexual impulses against children, be warned- if you yield to such impulses and you are convicted, you will be incarcerated for a very long time.*
24. Further, as prescribed by parliament and implemented by this court in the past, this sentence 'will communicate Nauru society's condemnation 'of sexual offences against children. The sentence also represents 'a symbolic, collective statement' by Nauru society, that those that yield to unreflective sexual urges against children, will bear the most severe of penalties prescribed by law.

## CONCLUSION

25. The accused is sentenced as follows:
- i. Count 1- 15 years imprisonment;
  - ii. Count 2- 15 years imprisonment, concurrent to Count 1.
  - iii. The accused will serve a minimum of 10 years before he is eligible for parole or probation.

DATED this 13<sup>th</sup> Day of March 2026.

  
Kiniviliame T. Keleca  
Judge

