

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

Criminal
Case No. 20/1886 SC/CRML

BETWEEN: Public Prosecutor

AND: Kati Sam Katena
Defendant

Coram: *Justice Aru*

Counsel: *Ms. M. Tasso for Public Prosecutor*

Mr. W. Kapalu for the Defendant

SENTENCE

Introduction

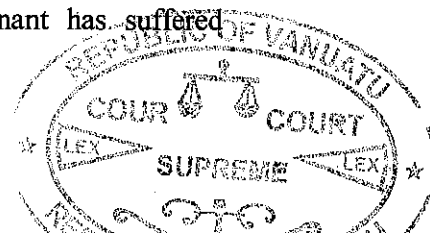
1. Following a trial, Mr Sam Kati Katena was found guilty of a single charge of sexual intercourse without consent. He now appears for sentencing.

The facts

2. Sometime in December 2011, the defendant called the complainant by phone then went to see her at Freshwater 4 where she resided with a relative of hers. Upon arriving, the defendant called the complainant to the entrance of the yard then forcefully pulled her by her hand into an old container sitting outside the gate. He forcefully removed her clothes and bend her over and had sexual intercourse with her by penetrating her anus with his penis. He continued the act until blood and faeces flowed from the complainant's anus and they were both covered in faeces. He wiped himself with a piece of cloth before leaving her. The act was done as revenge for the complainant marrying another man instead of him as her 'custom man' and he threatened to kill her if she reported the matter. The complainant suffered non-stop flow of faeces as a result.

Starting point

3. The maximum sentence available for sexual intercourse without consent is life imprisonment. The offending is aggravated by a number of factors. There is a breach of trust. There was some planning involved in the offending. There was use of force and the complainant was threatened with death. The complainant has suffered



physically and emotionally as a result of the continual and uncontrollable non-stop flow of faeces. There are no mitigating factors of the offending.

4. Taking these factors into account and noting what the Court of Appeal said in *Public Prosecutor v Scott* [2002] VUCA 29, I set the starting point of sentence at 9 Years imprisonment.

Mitigation

5. A pre-sentence report was directed to be filed by 16 September 2022 but I have not sighted a copy to date. Mr Kapalu submitted that the defendant is an elder of the Seventh Day Adventist church. He started a school brass band for the youth of his area on Tanna and he is the sole bread winner of his family. He is responsible for his children's school fees and the daily needs of his family. Taking these factors into account I reduce the sentence by 12 months.
6. There has also been some delay for the case to be prosecuted and the defendant has remained offence free for almost 9 to 10 years after the offending. For the delay, the sentence is further reduced by a further 12 months.

End sentence

7. The end sentence is therefore 7 years imprisonment and is effective from 2nd September 2022 when the defendant was remanded into custody. There will be no suspension. This sentence serves as punishment for the crime and a deterrence to the defendant and the public at large from committing similar offending in future.
8. The defendant has 14 days to appeal if he is not satisfied with the decision.

DATED at Port Vila, this 12 day of October, 2022.

BY THE COURT

D. ARU
Judge

