



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

Criminal
Case No. 22/1934 SC/CRML

PUBLIC PROSECUTOR

v

CHRISTOPHER TENKON

Date: 23 May 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mrs B. Tamau
Defendant – Mrs M.G. Nari

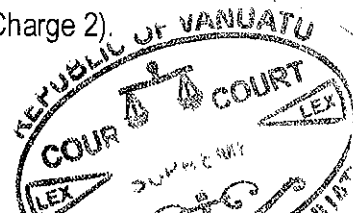
SENTENCE

A. Introduction

1. Mr Tenkon was convicted after trial of indecency without consent (Charges 1-4) and domestic violence (Charges 7-9) involving his 16 year old biological daughter TT (name suppressed).

B. Facts

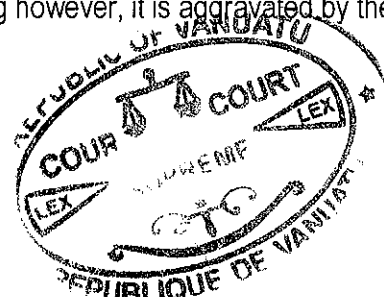
2. TT lived with her parents (Mr Tenkon and his wife) at Blacksands area in Port Vila.
3. In November 2021, TT was asleep at their house when Mr Tenkon sucked her breast and touched her private part through her clothes. She woke up and frightened, ran outside. He came outside after her to hit her but he did not. A father touching his daughter in such manner is indecent and Mr Tenkon simply could not have believed that TT consented to his actions (Charge 1).
4. In February 2022, Mr Tenkon told TT to sit down on the mat in their kitchen, he sat on a bucket in front of her and told her to suck his penis. He was wearing a lavalava with nothing on underneath and showed his penis to her. She immediately ran outside. A father showing his penis to his daughter and telling her to suck his penis is indecent and Mr Tenkon could not have believed that TT consented to his actions (Charge 2).



5. In February 2022, TT was asleep with her 2 sisters in the inside bedroom of their house when Mr Tenkon came and touched her breasts. She struggled to get away from his hands and Mr Tenkon hit her hard in the backside. Also in February 2022, Mr Tenkon told TT to sleep in the same bed as him and her mum. She was so frightened that she said yes. In the early morning, Mr Tenkon touched her breasts again, she woke up and struggled and pushed his hand away so that he could not touch her breasts. Then he went outside and broke a bucket with a chair. Mr Tenkon's acts to touch his young daughter's breasts were indecent and he knew that TT did not agree with him doing so (Charge 3).
6. On 11 June 2022, TT was sleeping when Mr Tenkon touched her breasts and vagina. She woke up and ran. She was frightened as he had done that many times already. TT had already made clear that she did not agree with Mr Tenkon touching her indecently. She showed that again by running away as soon as she woke up and realised what Mr Tenkon was doing to her. A father touching a young daughter's breasts and vagina is clearly indecent and Mr Tenkon knew that TT did not agree with his touching her breasts (Charge 4).
7. In February 2022, TT and her small sister went to get yam to make laplap and Mr Tenkon hit her on the back of her head and on the ear. She fled. Mr Tenkon looked for her but she ran up to her uncle's house. TT is Mr Tenkon's daughter. Mr Tenkon intentionally assaulted TT when he hit her as he did (Charge 8).
8. In June 2022, Mr Tenkon beat both TT and her mum with a phone charger. TT is Mr Tenkon's daughter. Mr Tenkon intentionally assaulted TT when he beat her with the phone charger (Charge 7).
9. In the morning of 31 July 2022, Mr Tenkon told TT and her mum that TT's mum was to go live with another man and he would take TT's virginity. TT and her mum were very frightened by this. TT was also surprised and cross. After this, TT's mum called the Police. Mr Tenkon's offensive words were against TT, his daughter as well as against his wife. Mr Tenkon intentionally behaved in an indecent and offensive manner to TT, his daughter, by telling her he would have sex with her to take her virginity. He also intentionally behaved in an indecent and offensive manner to his wife by telling her she had to find another man to live with and have sex with (Charge 9).

C. Sentence Start Point

10. The sentence start point is assessed having regard to the offending, its aggravating and mitigating features and the maximum sentences set by Parliament.
11. The maximum sentences provided are:
 - a. Indecency without consent – 7 years imprisonment; and
 - b. Domestic violence – 5 years imprisonment or VT100,000 fine or both.
12. There are no mitigating aspects to the offending however, it is aggravated by the following:
 - a. Serious breach of trust;
 - b. The 26-year age differential;



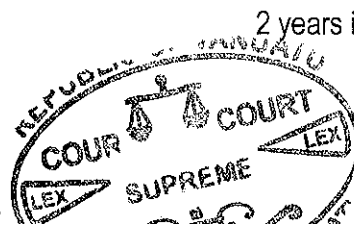
- c. Pre-meditation on the part of the defendant;
 - d. The defendant reacted with violence when the complainant objected to him touching her indecently;
 - e. The repeated nature of the offending;
 - f. The offending occurred at home where the complainant and her mother should have been able to feel and be safe and secure; and
 - g. The effect on the complainant.
13. Taking all matters into account, the global sentence start point adopted is 5 years 3 months imprisonment.

D. Mitigation

14. Mr Tenkon is 42 years old. He is married and has 3 daughters (1 in primary school and 2 in secondary school).
15. He has 15 years' experience working in restaurants and hotels. He is currently the President of the Vanuatu Indigenous Empowerment Wave ('V.I.E.W.'), a non-government organisation involved in youth activities. His wife suffers from ill health and is unemployed. His family including his elderly parents are reliant on him for their daily living.
16. He has no previous convictions although in cases of a sexual nature, that is of little mitigatory value.
17. Mr Tenkon performed a custom reconciliation ceremony with the complainant and her mother involving 5 mats, 2 local fowl, root crops and V2,000 which they accepted. Mr Tenkon is stated to be remorseful. He has the support of his wife, chief and church pastor. He has started thrice-weekly counselling sessions with his pastor.
18. Five months is deducted from the sentence start point for Mr Tenkon's personal factors.
19. Mr Tenkon has served 7 months in custody (3 August 2022 to 8 February 2023), effectively 14 months imprisonment. A further 14 months is deducted from the sentence start point.

E. End Sentence

20. The sentencing principles applicable in this case are holding Mr Tenkon accountable for his conduct, to denounce the criminal conduct and emphasize public disapproval of such offending, to protect the community, and to deter him and others from acting in this manner in the future.
21. Taking all of those matters into account, the following end sentences are imposed concurrently:
- i. Indecency without consent (Charges 1-4) 3 years 8 months imprisonment; and
 - ii. Domestic violence (Charges 7-9) 2 years imprisonment.

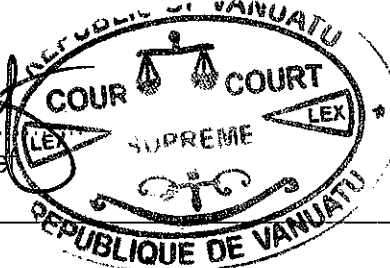


22. The offending is serious, involving as it did Mr Tenkon's 16-year-old biological daughter and which occurred during a 9-month period. Mr Tenkon's general good character, responsibilities to care for his family including for his wife (who suffers from ill health so does not work), daughters and elderly parents and to pay school fees, having the support of his wife, chief and pastor and his counselling sessions with his pastor are all strong mitigating factors but they cannot be regarded, either alone or together, as the very exceptional circumstances required for a suspended sentence: *Public Prosecutor v Andy* [2011] VUCA 14 at [25]. The effect on his family is an inevitable result which the Court cannot give weight to except in the most exceptional circumstances which do not exist here: *Public Prosecutor v Bae* [2003] VUCA 14 at p. 4. Accordingly, there will be no suspension of sentence.
23. This sentence of imprisonment may not be enforced until the time of appeal against sentence has expired or Mr Tenkon earlier elects to begin serving his sentence: s. 50 of the *Penal Code*.
24. Mr Tenkon has 14 days to appeal.
25. All details leading to the identification of TT are permanently suppressed.

DATED at Port Vila this 23rd day of May 2023

BY THE COURT

VM Trief
Justice Viran Molisa Trief

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR" and "COURT" are positioned on either side of the scale, with "LEX" written below each. The word "SUPREME" is written across the bottom of the inner circle.