

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

Criminal Case No. 22/3124 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Port Vila

State

AND: Samuel Tari
Port Vila

Defendant

Date of plea: 9 June 2025
Before: Justice B. Kanas Joshua
Counsels: Ms Josephine Tete, for the State
Ms Barbara Taleo, for the defendant

SENTENCE

Introduction

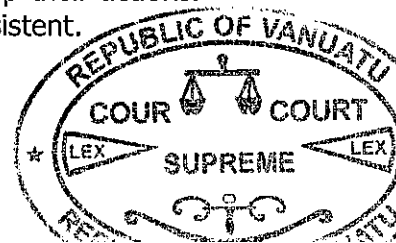
1. Mr Samuel Tari, you appear today for sentence having pleaded guilty to two counts of acts of indecency without consent, contrary to Section 98 of the Penal Code Act [CAP 135].
2. The maximum sentence for the offence is 7 years of imprisonment.

Facts

3. You admitted and confirmed the following facts read out to your court (in Bislama):
 - a. The complainant is Angeline Wai, who is the little sister of your wife, Moro Wai. You all live at Labultamata village, North Pentecost. The complainant was a student at Ranwadi High School, during the time of the incident.
 - b. The incident occurred on 12 March 2022, at night, when you went to where the complainant was sleeping, at her grandmother's house. You stood outside the room where she was sleeping and opened the window and pushed your hand inside and touched the complainant's vagina through her clothes. She pushed your hand away but you proceeded on to touch her breast, which she again rejected. You then went away when the complainant called out for help to her grandmother.
 - c. The complainant recognized you when you had spoken to her during the act and said "spell nomo".

Sentencing purposes/principles

4. You must be held responsible for your actions so others who also behave this way can see that this is against the law which has serious consequences, and stop their actions. This sentence should help you to rehabilitate, and must be generally consistent.



Approach to sentence

5. The sentence approach taken is in two steps, as in *Jimmy Philip v. Public Prosecutor*¹, which applied *Moses v. R*².

Step 1 – Starting point

6. The first step is to set a starting point. Reference is made to the aggravating and mitigating factors of the offending and the maximum penalty of the offence.
7. The aggravating factors here are:
 - a. Breach of trust;
 - b. Some degree of planning;
 - c. Psychological effect on the victim; and
 - d. Loss of dignity for the victim.
8. There are no mitigating factors of the offending.
9. Prosecution submitted a starting point of 16-30 months imprisonment. Four cases were referred to as guidelines. In *PP v. Gideon*³, the court of appeal considered 9-12 months imprisonment to be an appropriate starting point. The appellant was initially charged with indecent assault, abusive/threatening language and sexual intercourse without consent. Prosecution acknowledged that the case of *Gideon* is more serious than the current case, however, the underlying principle that sexual offences warrant immediate custodial sentences was emphasized. The second case referred to was *Tangiat v. PP*⁴, the court of appeal stated that the touching of a victim's breast on the outside of her clothes "*falls at the lower end of the scale for this offence*" and it allowed the appeal against the sentence. It considered that 9-12 months imprisonment was the appropriate starting point. Prosecution pointed out that in the current case, the defendant had touched the victim's breasts and vagina through her clothes. In the third case, *PP v. Johnson*⁵, a starting point of 2 years, 6 months imprisonment was imposed. The defendant was charged with one count of an act of indecency, when he touched the victim's breast and vagina over her clothes. The last case referred to was *PP v. Natiang*⁶, a starting point of 16 months imprisonment was given to the defendant for one count of an act of indecency. The defendant was the victim's brother-in-law who entered the kitchen where the victim was sleeping and touched her breast through her clothes and demanded sex from her.

¹ [2020] VUCA 40.

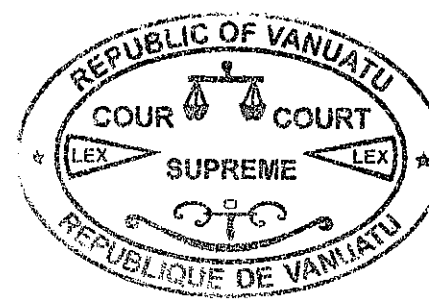
² [2020] NZCA 296.

³ [2002] VUCA 7.

⁴ [2014] VUCA 5.

⁵ [2024] VUSC 373.

⁶ [2021] VUSC 116; Criminal Case 1095 of 2021 (25 May 2021).



10. Defence conceded to the *Tangiat* was conceded to, in addition to three other cases as guidelines to a starting point. The first case is *PP v. James*⁷, where the court gave a starting point of 5 years imprisonment for 4 counts of acts of indecency without consent. This is more serious than the current case. In *PP v. Maleb*⁸, the court gave a starting point of 30 months imprisonment for one charge of act of indecency without consent. The defendant had acted aggressively and assaulted the victim with a wooden chair, and tore off the victim's pants and touched her vagina. In *PP v. Job*⁹, the court gave a starting point of 2 years imprisonment for one count of act of indecency without consent. The defendant is the victim's stepfather who grabbed the victim and started to kiss her and then attempted to remove her tshirt and squeeze her breasts and sucked them. He then tried to undress and touched her vagina through her clothes. Regarding the case of *Tangiat*, defence agreed that the 9-12 months imprisonment was the appropriate starting point. This was affirmed and applied in the case of *Wenu v. PP*¹⁰.
11. The defendant is the victim's brother-in-law, as in the case of *Johnson*. However, I agree with prosecution that this case is slightly more serious as there are 2 counts of acts of indecency. There is a breach of trust between family members but more so the eldest sister of the victim, who is the de facto partner of the defendant. For this, I adopt a starting point of 2 years imprisonment.

Step 2 – Personal factors

12. The second step is to make the appropriate deductions for personal factors. Prosecution submitted there are no aggravating factors, however, in mitigation they submit that the offender is a first time offender.
13. Prosecution also submitted that the defendant entered an early guilty plea and should be entitled to 20-25% reduction. A helpful guide in sentencing principle is referred to in the case of *PP v. Samuel*¹¹. Defence referred to the case of *Gideon* where a reduction should be allowed for mitigating factors, the first being the guilty plea. Defence submitted that a reduction of 1/3 or 33% be given.
14. I give a reduction of 25% for his guilty plea. In the Pre-Sentence Report he stated that he was angry at his wife which led him to the offending. He also stated that he knew this behavior is against the law. His sentence is reduced to 18 months imprisonment.
15. The other mitigation factors are:
 - a. Custom compensation/reconciliation was performed to the victim and her family and an amount of VT30,000 was given with 5 mats which equates to VT20,000. The victim's family accepted this;
 - b. The defendant is a first time offender;
 - c. He is remorseful and realizes the wrong committed;

⁷ [2018] VUCA 44.

⁸ [2015] VUSC 91.

⁹ [2023] VUSC 132.

¹⁰ [2015] VUCA 51.

¹¹ [2019] VUCA 76.

- d. He has three children and is the sole provider for his family;
 - e. He contributes well to his community by participating in church and school activities; and
 - f. He does gardening and farming for a living.
16. You are 27 years old, and a first time offender. You are described as a resourceful person in your community. You have three children who are very young and depend on you to provide for them. Your wife describes you as a good husband who cares for his children. You hope to be a chief in your community. You realize that you are wrong and you performed a custom reconciliation to the victim and her family.
17. Given the above, I give a further reduction of 1 months. I take into account that you were in remand for 9 days. This equates to an effective sentence of 18 days imprisonment.

End sentence

18. Mr Samuel Tari, you are sentenced to 16 months, 12 days imprisonment.
19. As a 27-year-old man you are in your prime years. You understand that your behavior is wrong and you broke the law. You are mentally and physically fit and can contribute to your community in a positive way. You can turn this experience to help others in the community to stop such behaviours, as a way to become a good leader in the community. For this, I am suspending your sentence for 24 months, under Section 57 of the Penal Code Act CAP 135. You must take this as an opportunity to be a better person for your children, your wife and your community. If you offend within the 24 months, you will be arrested and this sentence will be activated, in addition to any other penalty imposed for the further offending.
20. To assist with rehabilitation, I order
- a. That you must do 40 hours of community work;
 - b. That you must attend an appropriate program offered by Probation services, to help you be accountable for your actions.
21. You have 14 days to appeal.

Dated at Port Vila on this 15th day of July 2025

BY THE COURT

Justice B. Kanas Joshua
Justice B. Kanas Joshua

