

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

**Criminal**  
**Case No. 17/3011 SC/CRML**

**PUBLIC PROSECUTOR**

**V**

**TOM SAIRUS**

*Date of Plea:* 20<sup>th</sup> November 2017  
*Dates of Trial and Verdict:* 2<sup>nd</sup> – 3<sup>rd</sup> July 2018  
*Date of Sentence:* 5<sup>th</sup> day of July, 2018 at 9:00 AM

*Before:* Justice Oliver A. Saksak  
*Counsel:* Mr Philip Toaliu for Public Prosecutor  
Mr Lorenzo Moli for Defendant

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## SENTENCE

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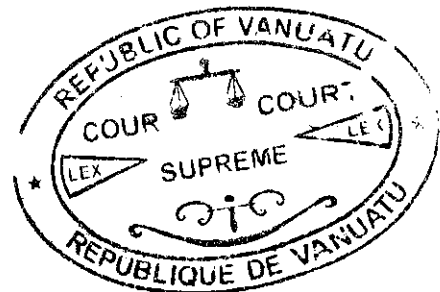
1. Tom Sairus you were found guilty yesterday after a 2 days trial for 2 counts of Sexual Intercourse without consent contrary to sections 90 and 91 of the Penal Code Act. The maximum penalty for this offence is life imprisonment.

The offence of threats to kill under Section 115 of the Penal Code carries a maximum penalty of 15 years imprisonment.

And the offence of kidnapping under Section 5(10) of the Penal Code Act carries a maximum penalty of 10 years imprisonment.

These are all very serious offences.

2. All incidents of Sexual Intercourse and threats happened at Worliluu Village, South Epi between February to 1<sup>st</sup> April 2015. Sexual Intercourse without consent happened twice, once in the garden when you approached the victim and had sex with her without her consent, and in the house about a week later when the husband of the victim discovered you in the act. And that is when you threatened to stab him with an iron rod.



The kidnapping happened at Forestry when you approached Mrs Lewia Fred with a knife and forced to take her 3 months old baby away with you to Rana Village.

3. I accept the aggravating features of these offendings as submitted by the Prosecutor.

Rape is always a serious offence and it calls for immediate custody (PP v Scott and PP v Ali August). Applying this principle I convict and sentence you as follows:-

- (i) For Sexual Intercourse without consent – Count 1: You are sentenced to a starting point of 9 years imprisonment. And for the same charge in Count 2 you are sentenced to 9 years imprisonment – concurrent with 9 years for Count 1.
- (ii) For threats to Kill – Count 3: You are sentenced to 2 years imprisonment consecutive to 9 years imprisonment for Count 1 and Count 2. This was a separate offence committed on the victim's husband.
- (iii) For Kidnapping – Count 4: You are sentenced to 3 years imprisonment consecutive to the sentences for Counts 1, 2 and 3.

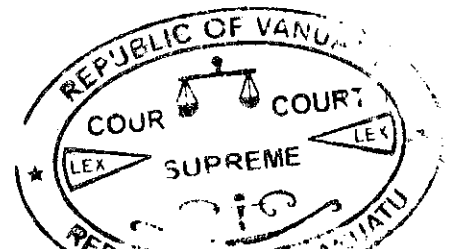
You are convicted and sentenced to total Sentence of 14 years imprisonment.

4. The purposes of this sentencing are to:-

- (i) Mark the seriousness of your offendings,
- (ii) Mark the Court's condemnation of your unlawful actions.
- (iii) Mark a deterrence for you and others,
- (iv) Protect women and the vulnerable members of society, and
- (v) Mark adequate punishment.

5. In mitigation there will be reductions for the following factors –

- (i) Custom reconciliation,




- (ii) Your old age, being 62 years old,
- (iii) Medical conditions (High blood and tooth aches), and
- (iv) Previous clean record.

For these, I allow 4 years reduction.

6. Your end sentence for all charges is 10 years imprisonment reduced by 5 months which you had spent in custody on remand. Your balance of the Sentence is 9 years and 7 months imprisonment.
7. Your Sentence of 9 years and 7 months is effective as of today 5<sup>th</sup> July 2018.
8. You have a right of appeal against your conviction and sentence within 14 days from today if you disagree with it.

**DATED at Laman Island, Epi this 5<sup>th</sup> day of July, 2018.**

**BY THE COURT**

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**Oliver A. Saksak**

**Judge**

