

PUBLIC PROSECUTOR

v

WILLIAMSON NIALA

Date of Plea: 2 December 2024
Date of Sentence 31 January 2025
Before: Justice M A MacKenzie
Public Prosecutor – Ms J Tete
Defendant – Mr L Tevi

SENTENCE

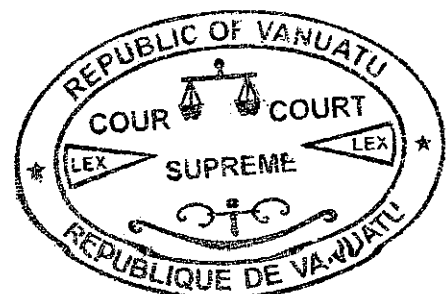
Introduction

1. Mr Williamson Niala, you appear for sentence having pleaded guilty to the following charges:
 - a. Unlawful sexual intercourse, contrary to s 97(2) of the Penal Code [CAP 135]. The maximum penalty is 15 years imprisonment.
 - b. Act of indecency contrary to s 98A of the Penal Code [CAP 135]. The maximum penalty is 10 years imprisonment.

The Facts

Victim One – MN (Unlawful sexual intercourse)

2. MN is your biological daughter. You started to sexually offend against her in 2017 and 2018 when she was aged under 15 years. In 2017, MN was 13 years. Due to the ongoing sexual intercourse, MN became pregnant, but had a miscarriage. The sexual intercourse took place in the family home whenever your wife was not around. You told your daughter not to tell anyone.



Victim Two- FN (Act of indecency with a young person)

3. FN is also your biological daughter. In 2013, when FN was aged under 15 years, you touched FN's breast and buttocks. The offending took place at different times when no-one else was around.

Sentencing purposes/principles

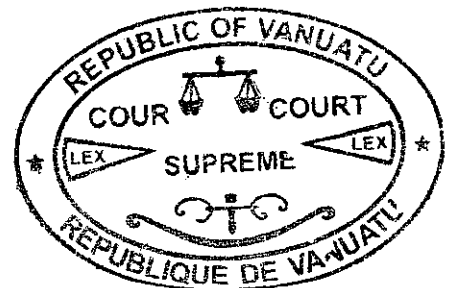
4. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

5. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

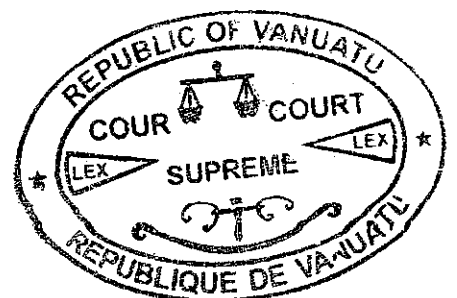
6. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending and taking into account the maximum penalties for the offences.
7. The Court of Appeal has discussed concurrent and consecutive sentences in a number of cases. See *Kalfau v Public Prosecutor* [1990] VUCA 9 and *Boesaleana v Public Prosecutor* [2011] VUCA 33. In summary, where sentencing involves more than one victim and a number of charges, the Court of Appeal has said that it is often beneficial to decide what is the most serious offending and to impose a lead sentence on that which properly takes account of all aggravating factors and then to impose concurrent sentences in respect of other offending as that is appropriate.
8. The lead offence is unlawful sexual intercourse. I will set a starting point on a global basis to reflect the totality of the offending.
9. The aggravating factors of the offending are:
 - (a) There was a gross breach of trust as both victims are your biological daughters. You should have been protecting your daughters, not using them as sexual playthings for your own gratification.
 - (b) Both victims were vulnerable because of their ages, and the age disparity.
 - (c) The offending took place in the family home where both victims were entitled to feel safe.
 - (d) The sexual offending against MN was repeated.



- (e) MN became pregnant and was exposed to the risk of sexually transmitted diseases.
 - (f) While the offending took place when opportunities presented themselves, there was premeditation, because it occurred when others were not around.
 - (g) Attempts at concealment- you told MN not to tell anyone.
 - (h) The offending against FN included touching of her breast, a private area.
 - (i) The emotional and psychological harm to both victims.
10. There are no mitigating features of the offending itself.
11. The prosecutor submits that the appropriate starting point for the unlawful sexual intercourse is 6-8 years imprisonment and 12-18 months for the act of indecency charge. Mr Tevi submits that the appropriate starting point is 4-5 years imprisonment, although he accepted that was based on digital penetration, which is not a feature of this case.
12. The leading cases in this area are *Public Prosecutor v Gideon* [2002] VUCA 7, and *Public Prosecutor v Andy* [2011] VUCA 14, although both involved a charge of unlawful sexual intercourse laid under s 97(1) of the Penal Code. In *Gideon*, the victim was 12, the defendant was in a position of trust in relation to the victim- although not a parent, the intercourse happened on 4 occasions, and the victim was told not to tell. The victim suffered harm. The Court of Appeal said the starting point should have been no less than 6 years imprisonment. In *Andy*, the sexual intercourse was a one-off incident of licking the 10-year-old victim's vagina and digital penetration. It was painful, the victim was young and there was a breach of trust. The maximum penalty at the time was 14 years imprisonment and the Court of Appeal said that the offending required a starting point of 6-7 years imprisonment. While MN is older than the victims in both *Gideon* and *Andy*, I consider the offending in the present case to be more serious comparatively, given the gross breach of trust, the repeated nature of the offending against MN, and that MN became pregnant as a result of her father's abuse.
13. Taking into account *Gideon* and *Andy*, and the aggravating factors I have referred to, particularly the gross breach of trust, the repeated nature of the offending, that your daughter became pregnant, and what can only be significant emotional harm, I adopt a starting point of 8 years imprisonment. This is a global starting point which reflects the totality of the offending, including the offending against FN.

Guilty plea and personal factors

14. You are entitled to a one-third discount for your guilty plea. There was an early guilty plea. The plea saved your daughters from the trauma of having to give evidence against you. The sentence is reduced by 2 years 8 months imprisonment.



15. There is no presentence report. The information I have is that you are now aged 50 years. Mr Tevi submits that you have a good work and community history, are remorseful and have learnt your lesson. For these factors, the sentence is reduced by 5 months (approximately 5 %).
16. You are not a first offender. In 2006, you were sentenced to 4 years imprisonment for intentional assault. Given the time that has passed and that the charge is different, there is no need to increase the sentence for this factor.

End Sentence

17. The end sentence is 4 years 11 months imprisonment.
18. Your counsel does not seek that the sentence be suspended pursuant to s 57 of the Penal Code. Under s 57, I must take into account the circumstances, the nature of the offending and your character. In *Public Prosecutor v Gideon* [2002] VUSC 7, the Court of Appeal said that it will only be in the most extreme or exceptional of cases that suspension could ever be contemplated in a case of sexual abuse. The approach to suspension of sentences for serious sexual offending has been recently reaffirmed in *Public Prosecutor v Tulili* [2024] VUCA 54. While I note that you accept responsibility, this is serious offending. You took advantage sexually of your vulnerable daughters. In particular, you used MN for your own sexual gratification. This must be strongly condemned. There is nothing exceptional about the circumstances, or your character so as to justify suspension of the sentence, and I decline to do so. Here, there is a need to impose a sentence which acknowledges the seriousness of the offending, and meets the need for accountability, deterrence and denunciation.
19. I impose an immediate sentence of 4 years 11 months imprisonment. You have been in custody since 6 September 2024. Therefore, the sentence is to be backdated to commence from that date.
20. You have 14 days to appeal against the sentence.
21. I make a permanent order suppressing the names and identifying details of the victims.

**DATED at Port Vila this 31st day of January 2025
BY THE COURT**

