

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

Criminal
Case No. 25/1302 SC/CRML

BETWEEN: PUBLIC PROSECUTOR

AND: OKIS NALAWAS
Defendant

Date of Sentence: 12 February 2026
Before: Justice M A MacKenzie
Counsel: Ms S Langon for the Public Prosecutor
Mr H Rantes for the Defendant

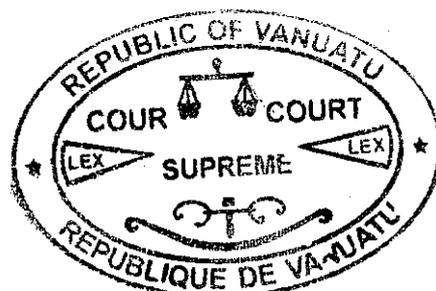
SENTENCE

Introduction

1. Mr Nalawas, you appear for sentence having entered a plea of guilty to one charge of sexual intercourse without consent contrary to ss 90(a) and 91 of the Penal Code [CAP 135]. The maximum penalty is life imprisonment.

The facts

2. On 22 October 2020, the victim was walking back to her village in Tanna when she saw you standing on the road with a friend. She walked past you but then heard you running after her. You grabbed the victim's t-shirt, told her to be quiet and dragged her into a nearby bush. You were holding a knife. You then removed the victim's clothing and had sexual intercourse with her. After that, you left the area.
3. The victim called for help once she was on the road. When she returned to her village, the victim told family members what had happened. A few days later, the victim was medically examined and made a complaint to police.



Sentencing purposes / principles

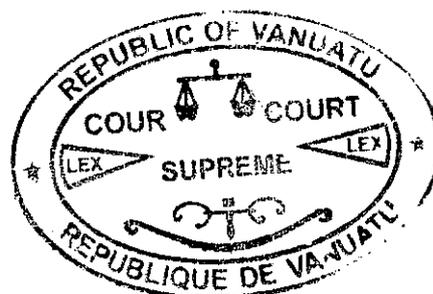
4. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

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.

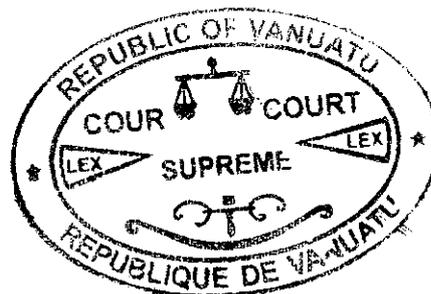
Starting point

6. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalty for the offence.
7. The aggravating factors of the offending are:
 - a. You were in possession of a knife, which you used to instil fear in the victim, and overcome resistance to the rape.
 - b. The victim was exposed to the risk of pregnancy and sexually transmitted diseases as the sexual intercourse was unprotected.
 - c. The rape was committed with a degree of force beyond the commission of the offence, as you dragged the victim into the bushes.
 - d. The victim was vulnerable in the sense that she was dragged into dense bushes, which made it difficult for her to get away. She was powerless in that situation.
 - e. Impact on the victim - this can only have been a traumatic experience for the victim.
8. There are no mitigating features of the offending itself.
9. Counsel have both cited cases to assist the Court with setting an appropriate starting point. Based on those cases, both counsel submit the starting point should be 8-9 years



imprisonment. For reasons which follow, I consider that starting point to be slightly too high.

10. Because the offending is rape, *Public Prosecutor v August* [2000] VUSC 73 and *Scott v Public Prosecutor* [2002] VUCA 29 apply. *Scott* is the guideline case for rape. According to *Scott*, where a rape is committed without any aggravating or mitigating factors, the starting point is 5 years imprisonment. As detailed in *Scott*, rape is aggravated by various factors, including the use of a weapon and when violence is used over and above the force necessary to commit rape. Both those factors are present here. The standout aggravating factor here is the fact that you were holding a knife at the time. The purpose can only to have been either to frighten the victim or to overcome resistance to the rape. Further, you used a degree of physical force to drag the victim into the bushes.
11. As the Court of Appeal said recently in *Meltek v Public Prosecutor* [2025] VUCA 41, sentencing is not an exact science because the circumstances will vary, so comparisons with other cases are at best an imprecise guide. Of the cases cited by both counsel, I consider that *Public Prosecutor v Moli* [2023] VUSC 42 is the most useful comparator case, as it also involved the use of a knife.
12. In *Moli*, the victim was invited to join the defendant. They went to the defendant's home. The defendant refused to allow the victim to go home and asked her to have sexual intercourse. She refused, which angered the defendant who then took a small pocketknife from a cupboard. He then threatened her that he would cut her with the knife and kill her. The victim then had sexual intercourse with the defendant as she was afraid. The starting point adopted by the Honourable Chief Justice was 7 years imprisonment. Here, the offending also involved the use of a knife. While no threats were made to the victim in the present case, some force was used by you when you dragged the victim into the bushes.
13. In setting the starting point, I take into account the aggravating factors I have referred to, and also that two of the factors identified in *Scott* which aggravate the offending are present; presence of a knife and violence over and above what is inherent in the offending. I have also considered the starting point adopted in *Moli*, given there are some factual similarities with the present case. Taking those matters into account, I adopt a starting point of 7 years imprisonment.

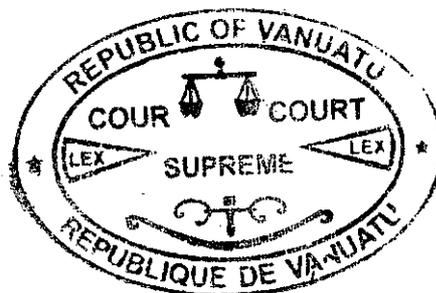


Guilty plea and personal factors

14. I assess that a very small reduction is available for the guilty plea. You initially pleaded not guilty and there was a trial. You asked to be re-arraigned after the victim gave evidence. That at least showed the victim that you accept responsibility for your actions. But the guilty plea was very late, and the victim was required to give evidence and re-live the trauma of the rape. The Court of Appeal has allowed a reduction for a guilty plea, even when the plea was entered after a victim has given evidence. See for example, *Nampo v Public Prosecutor* [2018] VUCA 43. The guilty plea is of benefit to the victim because it demonstrates contrition for your actions. Because it was so belated, there was not much of a saving of either time or court resources, and the victim still had to give evidence. Therefore, the sentence is reduced by 3 months, which is approximately 4 %.
15. You are aged 27 years and are a first offender. You are married and at the time of your arrest, your partner was pregnant. You are well regarded in your community. Given your prior clean record and good character the sentence is reduced by 4 months (5%). No reduction is available for remorse. While you did plead guilty, there is nothing to indicate you are genuinely remorseful for your actions. The presentence report shows that, despite the guilty plea, you do not accept responsibility and deny holding a knife.
16. You did perform a custom reconciliation ceremony with the victim and her family, which was accepted by them. You gave the victim and her family 2 pigs, 3 stems of kava, some root crops, some mats and baskets and calico. Custom reconciliation must be taken into account. The reduction should however be very modest given that you say the ceremony was to atone for having a sexual affair with a married woman, rather than for raping her, which made the custom process somewhat meaningless. The sentence is reduced by 2 months for this factor. (approximately 2.5 %).
17. You have been remanded in custody since 21 March 2025. Presentence detention must be taken into account. I intend to back date the sentence start date to reflect that factor.

End sentence

18. The end sentence is 6 years 3 months imprisonment.
19. Your counsel has rightly not sought suspension of the sentence. For the sake of completeness, I will however address the issue of suspension. Under s 57 of the Penal



Code, there is a discretion to suspend a prison sentence. I must take into account the circumstances, the nature of the offending and your character. In *Public Prosecutor v Gideon* [2002] VUCA 7, the Court of Appeal said that it will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. That was reaffirmed by the Court of Appeal in *Tulili v Public Prosecutor* [2024] VUCA 54.

20. You are a first offender and are well regarded in your community. However, this was serious offending, given the aggravating factors detailed above. You dragged the victim into the bushes, while holding a knife, and then raped her. You do not fully accept responsibility despite pleading guilty. The circumstances, both in relation to the offending and you personally, are a long way from being exceptional or extreme so as to warrant suspension of the sentence. Accountability, deterrence and denunciation are important sentencing purposes, given the nature of the offending. A stern response is needed. Exploitive sexual behaviour towards vulnerable females must be strongly condemned, as recognised by the Court of Appeal in *Public Prosecutor v Gideon* and *Scott*. Suspension of the sentence would send a very wrong message both to you and others. I decline to suspend the sentence in all the circumstances.
21. The sentence is to commence immediately. As indicated, the sentence start date is therefore backdated to commence on 21 March 2025.
22. You have 14 days to appeal against the sentence.
23. I make a permanent order suppressing the name and identifying details of the victim.

**DATED at Port Vila this 12th day of February 2026
BY THE COURT**

Justice M A MacKenzie

