

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

Criminal Case  
No.18/1412 SC/CRML

**PUBLIC PROSECUTOR**  
**V**  
**NOEL ISAAC**

*Before:* **Justice D. V. Fatiaki**

*In Attendance:* *Counsel – Ms. M. Taiki for the State*  
*Counsel – Mrs. K. Karu for the Defendant*

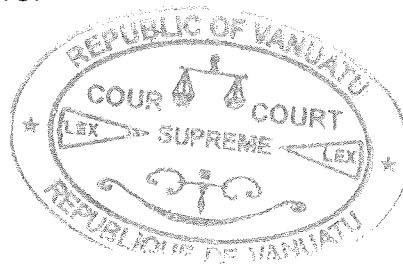
*Date of Sentence:* *22 November 2018*

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**SENTENCE**

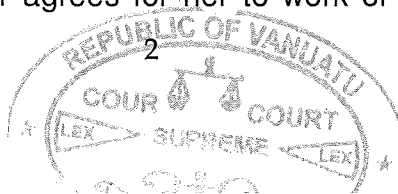
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1. Noel Isaac, you appear for sentence today. You were convicted after trial for an offence of Sexual Intercourse Without Consent committed on the P & O Cruise liner "*Pacific Dawn*" while it was berthed in Vanuatu waters on 6 December 2017.
2. You and the victim were then crew members on the ship. You were about to disembark from the ship after completing your tour. Your victim was supposed to continue on from Port Vila but, instead, she was so traumatized by the incident that she left the ship and did not return to duties.
3. The Court in its verdict accepted the complainant's sworn testimony over your sworn denials. The Court was satisfied beyond reasonable doubt that you trespassed into the complainant's cabin on the morning of 6 December 2017 and, despite the complainant's pleas, you overcame her resistance and had forceful sexual intercourse with the complainant without her consent. Shortly thereafter you disembarked from the ship.
4. Several hours later, the complainant disembarked and once comfortable, she related the incident to her family members including her husband. After informing her employer of her leaving the ship, a detailed typewritten complaint was laid with the police on 12 December 2017. Investigations had to await the return of the "*Pacific Dawn*" before the ship's records, CCTV footage, and on-board cabin photographs could be obtained at the end of January 2018. The defendant gave a police caution statement on 6 February 2018.



5. Upon your conviction the Court ordered a pre-sentence report which discloses the following personal details:
- You are originally from Sulphur Bay village on Tanna but you now live at Tagabe area in Port Vila;
  - You attended White Sand Ianamakel Primary School and Isangel Junior Secondary School which you could not complete owing to financial problems;
  - You are 35 years of age living in a “*defacto*” relationship with 3 children. You are the sole breadwinner of your family;
  - You attended training and you have cooking skills which you freely utilize during community functions;
  - You are a respectful and useful member of your community;
  - You are a first time offender and you tearfully told the probation officer that you feel sorry for what you have done and you promise never to commit any offence again. You are deeply remorseful.
6. Defence counsel also records that you were remanded for 4 months from 6 February 2018 until 5 June 2018 before you were released on bail and counsel submits that 5 years is an appropriate starting point and that you should receive a discount of 12 months for mitigating factors giving an end sentence of 4 years imprisonment which would be consistent with similar cases involving a first time offender convicted for a single incident of sexual intercourse without consent, after a trial. In particular, counsel referred to Public Prosecutor v Kombe [2015] VUSC 53; Public Prosecutor v Raynold [2012] VUSC 193 and Public Prosecutor v Keimit [2017] VUSC 99 where starting sentences of 6 years were considered appropriate.
7. Prosecuting counsel submits that an appropriate starting point would be between 5 to 8 years imprisonment considering the following aggravating factors:
- (i) Planning and use of force;
  - (ii) Breach of Trust;
  - (iii) Unprotected sex; and
  - (iv) Victim Impact.

In this latter regard the complainant describes how she lost her only means of earning money. How she feels unsafe and fearful in the company of strange men and is easily distracted and has lost interest in doing her housework. Her relationship with her husband has also deteriorated and he no longer trusts her to be alone and no longer agrees for her to work or go out on her own. The



complainant says after the incident she feels shame and concern as she is a mother and fears that people will gossip about her.

8. Noel Isaac the offence of Sexual Intercourse without Consent is one of the most serious offences in the Penal Code. It carries a maximum sentence of life imprisonment like Premeditated Intentional Homicide which is the intentional killing of a human being.
9. I have considered the guideline tariff set out in the judgment of the Court of Appeal in Public Prosecutor v Scott [2002] VUCA 29 and in your case Noel Isaac, I adopt a starting point of 7 years imprisonment since you have shown little insight into your offending and you continued to justify yourself to the probation officer.
10. From that starting point, I deduct 1 year for mitigating factors including your unblemished past and community works leaving an end sentence of:  $(7 - 1) = 6$  years imprisonment which is further reduced by the 4 month that you were remanded in custody, giving a final end sentence of 5 years and 8 months imprisonment with effect from 28 September 2018 to be immediately served.
11. You have 14 days to appeal against this sentence to the Court of Appeal if you do not agree with it.

**DATED at Port Vila, this 22<sup>nd</sup> day of November, 2018.**

**BY THE COURT**



**D. V. FATIAKI**  
**Judge.**

