

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

Criminal
Case No. 21/241 SC/CRML

PUBLIC PROSECUTOR

v

WESSAO MOSES

Date: 11 June 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr D. Boe
Defendant – Mr J. Garae

SENTENCE

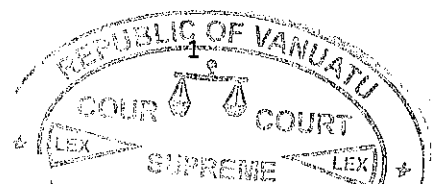
A. Introduction

1. Mr Moses was convicted after trial of one charge of sexual intercourse without consent.

B. Facts

2. The following is a summary of the facts, from the Verdict dated 10 June 2021:

- On 27 December 2019, at the Showground area at Luganville, Mr Moses and the complainant GA had sexual intercourse.
- GA did not consent to the sexual intercourse. Mr Moses forced her to have sex. He pulled her by the hand into the elephant grass. He shouted strongly at her to remove her clothes and to quickly lie down. He made her lie on the ground after forcing her to remove her clothes. She told him that she could not do it but he forced her to lie down on the grass. Then he removed his clothes too and lay on top of her chest. He had sex with her which was very painful ('mi filim I sore tumas'). He also put his penis in her mouth ('hemi pusum bol blo hem lo maot blo mi').
- In these circumstances, Mr Moses could not have believed on reasonable grounds that GA was consenting at the time that the sexual intercourse occurred.

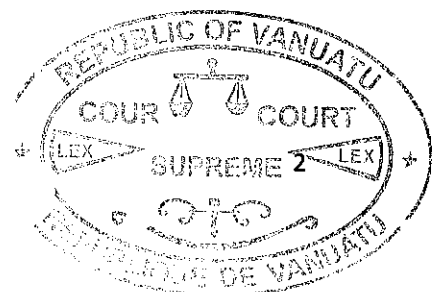


C. Sentence Start Point and Personal Factors

3. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.
4. The maximum sentence available is life imprisonment.
5. There are no mitigating aspects of the offending.
6. The offending is aggravated by the following:
 - The 16-year age differential between Mr Moses and the complainant;
 - Serious breach of trust as Mr Moses is the complainant's father and pastor. He was in a position of responsibility towards the complainant;
 - Force was used to effect the rape;
 - The complainant was subject to further sexual indignities or perversions in Mr Moses putting his penis into her mouth after having sexual intercourse with her;
 - Exposing the complainant to the risk of sexually transmitted infection and pregnancy; and
 - The effect upon the complainant of being made pregnant and the continued sexual intercourse with her after their return to Gaua and even after a reconciliation ceremony had been performed with GA's father and family.
7. The factors set out above require a sentence start point of 8 years imprisonment.
8. Mr Moses is 34 years old. He is married and has three children. He does not have any previous convictions. He is a youth pastor in his church. Mr Moses makes a living and sustains his family and pays his children's school fees through his kava and peanut farming, and from making bread and gato. Mr Moses' peanut business stopped while he was in custody in Santo but he wants to restart it now. His wife and children are dependent on him. He is stated to have a good relationship with his family and community.
9. Mr Moses performed a reconciliation ceremony with GA's father and family involving 2 live pigs (worth VT15,000 each), VT12,000, a big bag of yams (worth VT2,000), 2 mats (worth VT3,000) and 1 roll calico. Mr Moses also made a public apology for his having sex with GA. For Mr Moses' personal factors, I deduct 1 year 2 months from the sentence start point.

D. End Sentence

10. Mr Moses is sentenced to 6 years 10 months imprisonment. The sentence is to run from 14 February 2021 to take into account the 118 days already spent in custody (11 November 2020 to 8 March 2021).



11. The sentence is imposed to mark the gravity of the offence, to denounce such criminal conduct, to serve as a warning to others, to deter Mr Moses and others from such offending, to hold Mr Moses accountable for his criminal conduct, and to protect women and girls.
12. The end sentence will not be suspended. This offending is far too serious and due to the nature of the offending, suspending any or all of the sentence would be simply inappropriate: *Public Prosecutor v Gideon* [2002] VUCA 7 and *Public Prosecutor v Scott* [2002] VUCA 29.
13. Mr Moses has 14 days to appeal the sentence.
14. All details leading to the identification of GA are permanently suppressed.

DATED at Naveto, Gaua Island this 10th day of June 2021

BY THE COURT

UMTrief

Viran Molisa Trief
Judge

