

PUBLIC PROSECUTOR

v

**ADINO KIELY NARWAYENG
BATHELEMY KAPALU**

Date: 18 August 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr C. Shem
Defendant – Mrs P. Malites

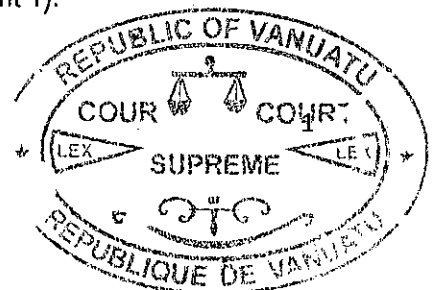
SENTENCE

A. Introduction

1. Mr Narwayeng pleaded guilty to one charge of act of indecency without consent (Count 1) and of domestic violence (Count 2).
2. Mr Kapalu pleaded guilty to one charge of act of indecency without consent (Count 1).
3. Both accepted the summary of facts and were accordingly convicted on their own pleas and the admitted facts.

B. Facts

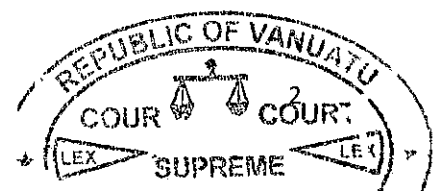
4. Mr Narwayeng, Mr Kapalu and the complainant Brightly Johnson are all aged 19. Mr Narwayeng and the complainant are family members.
5. In the evening of 14 November 2020, Mr Narwayeng, Mr Kapalu, the complainant and other friends consumed liquor. The complainant eventually passed out inside a nakamal at Fresh Wota area owned by Mr Kapalu's father's brother.
6. On 15 November 2020, while the complainant was passed out, Mr Narwayeng and Mr Kapalu partly removed his trousers, removed his penis from his clothing and masturbated it. They caused Mike O'Brian to record their actions on video. The complainant had no knowledge at the time of Mr Narwayeng and Mr Kapalu's actions as he was unconscious. He did not consent to their actions (Count 1).



7. Mr Narwayeng then cut off the complainant's hair and beard. The complainant woke up some hours later and saw his hair on the ground. He asked what had happened and was told that Mr Narwayeng and Mr Kapalu had cut off his hair and beard. The complainant stated that he did not consent to Mr Narwayeng cutting off his beard as he had been growing it so that his uncles could remove it after a customary ceremony (Count 2).
8. Other persons were present and witnessed the offending.
9. Mr Narwayeng and Mr Kapalu made full admissions to the Police.

C. Sentence Start Points and Personal Factors

10. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
11. The maximum sentence provided in s. 98(a) of the *Penal Code* [CAP. 135] for an act of indecency without consent is 7 years imprisonment.
12. The maximum sentence provided in ss 4 and 10 of the *Family Protection Act* No. 28 of 2008 for domestic violence is 5 years imprisonment or VT100,000 fine or both.
13. There are no mitigating factors related to the offending.
14. The offending is aggravated by:
 - The victim was unconscious and therefore vulnerable, having passed out after drinking alcohol;
 - The offending was committed in a public place in full view of others;
 - The offenders took video footage of their acts on the victim;
 - Skin-to-skin contact; and
 - The effects on the victim including feeling ashamed and humiliated, and he felt bad as he had grown his beard for the purpose of his uncles shaving it off for the first time after a customary ceremony.
15. Given the factors set out above, I adopt a global sentence start point of 42 months imprisonment for Mr Narwayeng and sentence start point of 36 months imprisonment for Mr Kapalu.
16. In view of the strong Prosecution case, I reduce the sentence start point by 25% for the prompt guilty pleas (10.5 months for Mr Narwayeng; 9 months for Mr Kapalu).
17. Mr Narwayeng and Mr Kapalu are both 19 years old and single. Both are students at the Vanuatu Institute of Technology. Mr Kapalu is aiming to complete his mechanics studies this year. Mr Narwayeng's parents and siblings reside at Tanna and are trying their best to earn monies to pay his school fees. Neither has any previous convictions.



18. Mr Narwayeng and Mr Kapalu are stated by the pre-sentence report writer to be remorseful and that due to their consumption of alcohol, they had no knowledge of their actions at the time of the offending. They found out later what they had done. Mr Narwayeng and Mr Kapalu jointly performed a custom reconciliation ceremony to the complainant, his families and chiefs involving 5 mats, 2 blankets, 3 basket kumala, calico, 2 kilograms chicken wings, 1 head of kava and VT5,000 cash.
19. I reduce the sentences by a further 18 months for Mr Narwayeng and Mr Kapalu's young age and immaturity, and by another 3 months for their personal factors.
- D. End Sentences
20. Taking all of those matters into account, the end sentences imposed concurrently for Mr Narwayeng are:
- a. Act of indecency without consent (Count 1) – 10.5 months imprisonment; and
 - b. Domestic violence (Count 2) – 6 months imprisonment.
21. The end sentence imposed for Mr Kapalu for act of indecency without consent (Count 1) is 6 months imprisonment.
22. The sexual nature of the offending counts against suspension of the sentences. However, in view of the prompt guilty pleas, no previous convictions, their youth and immaturity, the offending occurring as a result of their taking advantage of an opportunity that presented itself, their current enrolment in school, customary reconciliation ceremony and positive prospects of rehabilitation, I suspend Mr Narwayeng and Mr Kapalu's sentences for 18 months.
23. Mr Narwayeng and Mr Kapalu are warned to remain offence-free for the next 18 months or they will need to serve their sentences of imprisonment as well as the penalty imposed for the further offending.
24. In addition, Mr Narwayeng and Mr Kapalu are ordered to complete 50 hours of community work and 12 months of supervision, including attendance at any rehabilitation or awareness programs required by the Department of Correctional Services.
25. Mr Narwayeng and Mr Kapalu have 14 days to appeal their sentences.

**DATED at Port Vila this 18th day of August 2021
BY THE COURT**

VM Tref
Justice Viran Molisa Tref

