

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

Criminal  
Case No. 22/1938 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Moses Windiu  
Accused

*Date of Sentence:* 22<sup>nd</sup> September 2022

*Before:* Justice EP Goldsbrough

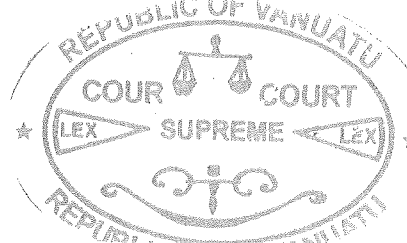
*Appearances:* Taiki, M for Public Prosecutor  
Garae, J for the Accused

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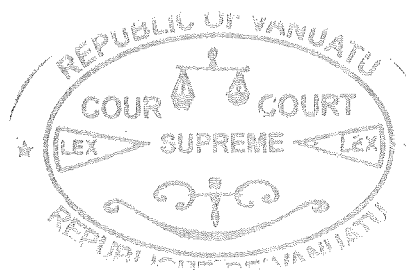
**SENTENCE**

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1. Moses Windiu has pleaded guilty to three counts of having unlawful sexual intercourse with a thirteen-year-old girl. He is around 23 years of age. The girl, who shall not be identified, lived with her brother who took care of her. Moses Windiu also lived with them for a short time and was regarded as a brother that brother.
2. In November 2021 when she was away from school having finished her exams, the defendant asked her to go into the bush with him. She was reluctant but followed. In the bush not far from the house he cut a banana leaf and laid it on the ground and told the girl to lay down and remove her clothes. She did so, and the defendant had sexual intercourse with her, penetrating her vagina with his penis. This conduct was repeated the following day and continued until Friday of the same week.
3. The following week, Moses Windiu took to having sexual intercourse with the same girl in her bedroom. That happened on Saturday, Sunday and Monday.



4. The following year, in January 2022 Moses Windiu was again having sexual intercourse with the young girl in her bedroom when her brother became suspicious and asked her if anything was going on. She told her brother that she and Moses were having sexual intercourse and received a beating from her brother for saying that truth. The following day, having left the house to attend a bereavement, Moses Windiu did not return to the house.
5. When arrested and cautioned, Moses said that he did not know that it was wrong to have sex with a 13-year-old girl because they had both agreed to it.
6. The maximum penalty for unlawful sexual intercourse with a girl who is 13 years of age is 15 years imprisonment. The aggravating features here are the abuse of the family with which the offender was living, the repeated nature of the offences and the dangers to which the child was exposed through repeated unprotected sex.
7. A starting point for these offences is set at seven years.
8. The defendant has pleaded guilty to his offences. He is entitled to credit for that. He is a first-time offender. There has been no customary reconciliation as the brother is not yet prepared to participate in one. Perhaps that will change in time. For the early guilty plea, he will be granted a reduction of his sentence by one-third.
9. Moses Windiu is known in his community and is a member of a church and yet he says that he did not know that sex with children under the age of sixteen, regardless of whether the child agrees or not, is unlawful. What is he taught by his chief, and what is he taught by the church? It is surprising that it is not within the teaching of either of these authorities that underage sex is not only morally but also legally reprehensible. Perhaps a little more public education, especially directed at young men, should be undertaken by both the chiefs and the church.
10. Moses Windiu will serve a sentence of fifty-six months imprisonment for his crimes, each offence receiving the same penalty and all penalties to be served concurrently. There is nothing in this judgment that allows identification of the victim and that

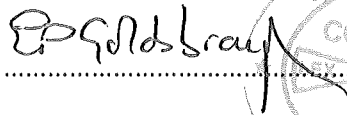


should remain the case, with nothing to be published which might lead to the identification of the victim.

11. The defendant has the right to appeal against this sentence but must do so within 14 days from today. The sentence of imprisonment shall be deemed to have started on the day on which he was arrested for these offences which was 1 July 2022.

Dated at Luganville this 22<sup>nd</sup> September 2022

BY THE COURT



Justice EP Goldsbrough

