

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

**Criminal  
Case No. 22/2198 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Michael Able**  
*Defendant*

**Coram:** *Justice Aru*  
**Counsel:** *Mr. G. Simeon for the Prosecutor*  
*Mrs. P. Malites for the Defendant*

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**SENTENCE**

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**Introduction**

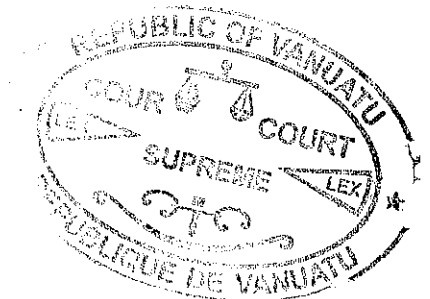
1. Mr Michael Abel pleaded guilty to a single charge of act of indecency with a young person. He now appears for his sentence.

**The Facts**

2. On the 13 May 2022 at Freswota 4 area at around midday the defendant approached the victim who was inside the house and tried to lift up her dress. The victim reacted by holding tied to her dress. The defendant then proceeded to touch the victim's vagina through her clothing. The victim later reported the incident to her mother on the same date who then reported the matter to the Police. The defendant admitted the offending to the Police during his cautioned interview.

**Sentence start point**

3. The maximum sentence available for acts of indecency with a young person is 10 years imprisonment. The offending is aggravated by the fact that there is a huge age disparity of 53 years. There is an element of planning involved and the offending occurred in a home where the victim should feel safe and protected. There are no mitigating factors of the offending.
4. The starting point of sentence is therefore 3 years imprisonment.



### Mitigation

5. The defendant pleaded guilty at the earliest available opportunity as a sign of remorse therefore the end sentence will be discounted by one third.
6. Counsel submits that the defendant is now 64 years old and is a first-time offender. He is a widower and also the breadwinner in looking after his children. Taking these factors into account I deduct 11 months from his end sentence and a further 1 month is also deducted to reflect the time spent in custody.

### End sentence

7. The end sentence is 12 months imprisonment. Counsel submits on the defendant's behalf that the end sentence should be suspended pursuant to s57 of the Penal Code [CAP 135]. It was submitted that the defendant is now 64 years old and suffering from a number of health issues namely: high blood pressure, chronic bilateral hearing impairment and ischemic heart disease as confirmed in his medical report prepared by Dr Minado Paul on 2 September 2022. He has suffered a stroke and a heart attack which are likely to occur again as observed by his doctor.
8. As to the nature of his offending, the defendant did not expose himself to the victim. The offending involved a one-off non- invasive touching through clothes of the victim's vagina. Taking these factors into account, I am of the view that this is an exceptional case which I am prepared to suspend the sentence. I will therefore suspend the sentence for a period of 2 years.
9. The defendant has 14 days to appeal if he is not satisfied with the decision.

**DATED at Port Vila this 15<sup>th</sup> day of December, 2022  
BY THE COURT**

**D. Aru  
Judge**

