

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

**Criminal**  
**Case No. 22/1934 SC/CRML**

**PUBLIC PROSECUTOR**

**v**

**CHRISTOPHER TENKON**

*Date of Trial:* 7-9 February 2023  
*Before:* Justice V.M. Trief  
*In Attendance:* Public Prosecutor – Mrs B. Tamau  
Defendant – Mrs M.G. Nari (initially Mr L. Moli)  
*Date of Decision:* 28 March 2023

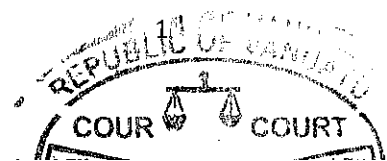
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**VERDICT**

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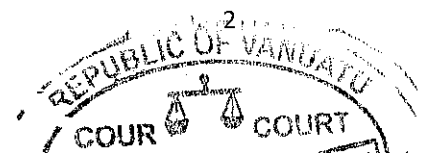
A. Introduction

1. The accused Christopher Tenkon pleaded not guilty to act of indecency without consent (Charges 1-4), threat to kill (Charge 5) and domestic violence (Charges 6-9) involving his biological daughter TT (name suppressed).
2. Before trial commenced, Mr Moli's Memorandum filed on 3 February 2023 set out that Mr Tenkon had not given him instructions to defend the case but had elected to have the Prosecution prove its case. At the commencement of the trial, I explained to Mr Tenkon that his choice not to give Mr Moli any instructions meant that Mr Moli would not be able to cross-examine the Prosecution witnesses. Mr Tenkon told me that he understood. Even so, I adjourned for Mr Moli to again explain this to Mr Tenkon. When Court resumed after the lunch break, Mr Moli stated that Mr Tenkon understood what I had explained to him that morning, that Mr Tenkon maintained his position and maintained his instructions to Mr Moli. Trial proceeded.
3. After the Prosecution case closed, I considered that there was a *prima facie* case made out against Mr Tenkon and read out the statement in s. 88 of the *Criminal Procedure Code* to him. When the trial resumed the next day, Mr Tenkon stated that he no longer wished for



Mr Moli to represent him. I adjourned so that they could talk after which Mr Moli confirmed that he would cease to act and Mrs Nari would now represent Mr Tenkon.

4. On 9 February 2023, Mrs Nari appeared for Mr Tenkon. Counsel requested the opportunity to file written closing submissions.
  5. Having considered the submissions, I now set out the verdicts.
- B. Law
6. The charge of act of indecency without consent has 3 legal ingredients which must be proved for a conviction to be entered, namely that on the occasion alleged:
    - Mr Tenkon committed an act of indecency upon, or in the presence of TT; **and**
    - The act was without TT's consent; **and**
    - That Mr Tenkon knew there was no consent or did **not** believe on reasonable grounds that TT consented.
  7. The charge of threat to kill a person has 3 legal ingredients which must be proved for a conviction to be entered, namely that on the occasion alleged:
    - a) Mr Tenkon directly caused TT to receive an oral threat to kill her;
    - b) Mr Tenkon intended TT to receive the threat; and
    - c) Mr Tenkon intended that the threat would be taken seriously by TT.
  8. The following legal ingredients must be proved in respect of a charge alleging domestic violence:
    - a) An intentional act against a member of a person's family. A member of a person's family is set out in s. 3 of the *Family Protection Act 2008*, and includes "a child of the person" and "the spouse of the person";
    - b) The intentional act may be any number of prescribed acts. In this instance, what is charged is "assaults the family member" and/or "behaves in an indecent or offensive manner to the family member".
  9. The Prosecution had the onus of proving the charges. It had to do establish the allegations beyond a reasonable doubt to obtain any conviction.
  10. Mr Tenkon was not required to establish anything.
  11. Each charge was to be considered as a distinct exercise.
  12. As this was a case of alleged sexual offending, I warned myself of the danger of convicting the defendant on the uncorroborated evidence of the complainant.
  13. The complainant was the only witness in this matter. I assessed the credibility and accuracy of her evidence not only by how she appeared in Court but also by the way she gave



evidence, consistency when comparing her account with relevant exhibits, as well as having regard to the inherent likelihood of the situation then prevailing.

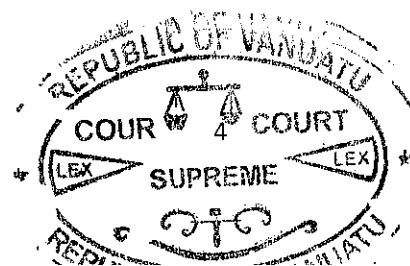
14. I reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts. Further, if more than one inference was available, the inference most favourable to the defence must be drawn.
15. These factors impacted on my findings of facts.

### C. The Evidence

16. Police Officer Nina Biagk's statement which included photographs of the inside of Mr Tenkon and TT's house [**Exhibit P1**] and Mr Tenkon's caution statement [**Exhibit P2**] were tendered by consent.
17. I **heard** evidence from **TT**, the 16-year-old daughter of Mr Tenkon and his wife. She is in secondary school (Year 10 last year). She lives with her parents and 2 younger sisters at Blacksands area, Efate.
18. At the beginning of examination-in-chief, TT said that she did not want to talk about what she told the Police because she had been so angry with her father that she added parts to her story that were not true. After a short adjournment, TT was asked what in her Police statement was true and what was not true. TT replied that what her dad did to her at night was true but she lied that he stoned her.
19. As to what her dad did to her at night, she said that he touched her indecently ("*Hemi stap tajem nogud mi.*") Without opposition and with the Court's leave, TT then gave her evidence with the aid of her Police statement to refresh her memory.
20. TT stated that in November 2021, in the early morning, she and her 2 sisters and parents were all asleep. She was sleeping when her dad came and sucked her breast and touched her private part through her clothes. She woke up and frightened, ran outside. He came outside after her to hit her but he did not.
21. TT's mum was asleep and did not know. Two days later, she told her mum. She did not tell her mum earlier as she was afraid her dad would beat them all. After she told her mum, they all left and went to Ifira as they feared her dad and fled. They came back to Blacksands 2 weeks later.
22. In February 2022, TT was asleep with her 2 sisters in the room [pointing to the inside bedroom at the back of the third photograph in **Exhibit P1**] when her dad came and touched her breasts. Her parents slept in the larger room outside that inner bedroom. The house consists of just those 2 rooms.
23. She struggled to get away from his hands ("*Mi stap kik aot lo han blo hem. Muv aot.*"). When she did that, her dad hit her hard in the backside. Then he sent her outside. One of her sisters woke up and held her hand tight and told her not to go outside. She went outside.



24. She began walking toward her mum's elder sister's house. Her dad followed her and asked her where she was going. She said she wanted to go and sleep at that mum's house and he told her to go back and pointed to their kitchen. She did not want to stay at their house because she was frightened her dad would kill her. He told her to sit down on the mat in their kitchen.
25. She sat down on the mat. Her mum was fast asleep and did not hear anything. Her dad sat on a bucket in front of her and told her to suck his penis ("*... I se bae mi titi lo samting blo hem*"). He was wearing a lavalava. He opened his legs and started to open the lavalava. He was not wearing anything under the lavalava. She saw his penis and ran.
26. She ran back into the house and called her mum. Her mum woke up and asked her what was wrong. She was scared and shaking and answered only, "Daddy". Her dad came back inside and tried to beat her and her mum. He threw a glass at her mum but she blocked it with a pillow. Then he said that TT was not his child.
27. That night, her dad said sorry to her. Then he told her that she would sleep with him and her mum. She was so frightened that she said yes. She lay down in between him and her mum but he made her sleep on the side and he slept in the middle. In the early morning, he touched her breasts again, she woke up and struggled and pushed his hand away so that he could not touch her breasts. Then he went outside and broke a bucket with a chair. The sound woke them all up and they all went outside.
28. Later that morning she and her small sister went to get yam to make laplap and her dad hit her on the back of her head and on the ear. She fled. Her dad looked for her but she ran up to her uncle's house. Then she, her mum and sisters went to Ifira and stayed there for some time.
29. At night on 11 June 2022, she was sleeping when her dad touched her breasts and private part. She woke up and ran. She was frightened as he had done that many times already. She tried to call her mum but her mum did not hear her. In the morning, they went outside and her dad told her off and beat her. Her mum asked him why he was hitting TT and he said it was because TT was texting a boy. He beat both her and her mum with a phone charger. She, her mum and sisters again went to Ifira.
30. On 22 July 2022, her dad hit the back of TT's leg with a rake. He did it slowly. But her mum saw that, became scared and took TT with her away to Ifira.
31. On 31 July 2022 morning, her dad called her and her mum to go sit down and he said he would tell them the truth. He told them that each of the 3 of them had a sacrifice to make. He said TT's mum's sacrifice was to go live with another man, her dad's sacrifice was to die and TT's sacrifice was for her dad to take her virginity ("*... affa mi, blo bae hemi mas tekem aot virginity blo mi*").
32. TT felt cross. She was very surprised to hear him say these things. She and her mum were very frightened by this. That was when her mum went to see Charleon and then they called the Police to come. Her mum wanted to report to the Police.
33. There was no cross-examination.



34. I accepted TT as a truthful and accurate witness. She was upfront that she had lied about one aspect of her Police statement and the reason why. She said that the rest of her statement was true about what her father did to her at night. She was asked what happened at night and she said, he touched her ("*I tajem mi*"). After this, TT gave detailed evidence of what was true and happened to her from November 2021 to July 2022 albeit with the aid of her Police statement to refresh her memory (which was not opposed). She gave evidence about embarrassing and difficult matters in a forthright manner. She did so whilst in close proximity to her father in the courtroom (Hearing Room 2) but was not deterred. TT's evidence had the ring of truth to it.
35. I consider that TT's admission that she had lied about one aspect of her Police statement was borne out by her not giving any evidence in relation to Charge 6 (domestic violence) and Charge 5 (threat to kill). Accordingly, I considered that she had told the truth about that inconsistency and accepted all of her evidence.
36. The Prosecution elected not to call TT's mother (Mr Tenkon's wife). Mrs Tamau stated that this was because TT's mother had indicated that she would not give evidence against her husband and the Prosecution considered that it had elicited sufficient evidence from TT to prove the charges.
37. **Mr Tenkon** elected to remain silent. That of itself cannot lead to an inference of guilt.

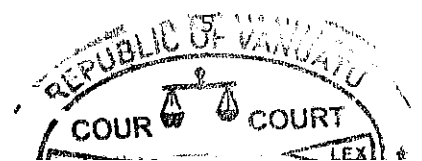
D. Discussion

38. Mrs Nari submitted that there were inconsistencies in TT's evidence compared to what she had put in her Police statement. However, none of those alleged inconsistencies were put to TT by way of cross-examination. Further, the Police statement is not in evidence before the Court. I cannot now after TT has given her evidence delve into allegations of inconsistencies with her Police statement.
39. As the Court of Appeal stated in *Chilia v Public Prosecutor* [2016] VUCA 55 at [18]:

18. *It is noteworthy that nowhere in the records of the proceeding is there reference to Mr Stephens cross-examining the complainant on prior inconsistent statements. We asked counsel whether he had put those inconsistencies to the complainant during cross-examination. His response was that he had not done so but he had raised it in his submissions. This is regrettable. Counsel cannot ask for the rejection of evidence of a witness where her version of events (she did not consent) was not challenged in cross-examination by the allegedly inconsistent statements she is said to have made.*

*(my emphasis)*

40. Mrs Nari also pointed to inconsistencies between TT's evidence and her mother's Police statement. That Police statement is not in evidence before the Court nor was TT's mother called to give evidence. Similarly, I cannot delve into these allegations of inconsistencies with TT's mother's Police statement. There is no merit in these submissions.
41. Mrs Nari also submitted that there was no independent evidence from other family members or Charleon or anyone from Ifira to confirm TT's evidence. However, there is no requirement for corroboration – only that the judge warn himself or herself about the dangers of convicting



the defendant on the uncorroborated evidence of a complainant: *Walker v Public Prosecutor* [2007] VUCA 12 at [10]-[16] and *Tabeva v Public Prosecutor* [2018] VUCA 55 at [34]. These submissions are rejected.

*Charge 1 – Act of indecency without consent*

42. On TT's evidence, I found it proved beyond reasonable doubt that in November 2021, TT was asleep at her house when Mr Tenkon sucked her breast and touched her private part through her clothes. She woke up and frightened, ran outside. He came outside after her to hit her but he did not. A father touching his daughter in such manner is indecent. Mr Tenkon obviously touched TT without her consent and from the way she reacted, simply could not have believed that TT consented to his actions. Charge 1 is accordingly proved, and I return a guilty verdict in respect of that charge.

*Charge 2 – Act of indecency without consent*

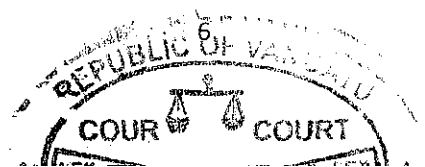
43. I found it proved beyond reasonable doubt that in February 2022, Mr Tenkon told TT to sit down on the mat in their kitchen, he sat on a bucket in front of her and told her to suck his penis. He was wearing a lavalava with nothing on underneath and showed his penis to her. A father showing his penis to his daughter and telling her to suck his penis is clearly indecent. Mr Tenkon did so without TT's consent. From the way TT immediately ran away, Mr Tenkon simply could not have believed that she consented to his actions. I return a guilty verdict in respect of Charge 2 also.

*Charge 3 – Act of indecency without consent*

44. On TT's evidence, I found it proved beyond reasonable doubt that in February 2022, she was asleep with her 2 sisters in the inside bedroom of their house when Mr Tenkon came and touched her breasts. She struggled to get away from his hands and Mr Tenkon hit her hard in the backside. Also in February 2022, Mr Tenkon told TT to sleep in the same bed as him and her mum. She was so frightened that she said yes. In the early morning, Mr Tenkon touched her breasts again, she woke up and struggled and pushed his hand away so that he could not touch her breasts. Then he went outside and broke a bucket with a chair. A father touching a young daughter's breasts is indecent. He did so on more than one occasion. TT showed by her actions of struggling and pushing his hands away that she did not agree with Mr Tenkon touching her breasts. Mr Tenkon knew that TT did not agree with his touching her breasts. I also enter a guilty verdict in respect of Charge 3.

*Charge 4 – Act of indecency without consent*

45. On TT's evidence, I found it proved beyond reasonable doubt that at night on 11 June 2022, she was sleeping when Mr Tenkon touched her breasts and vagina. She woke up and ran. She was frightened as he had done that many times already. A father touching a young daughter's breasts is clearly indecent. TT had already made clear that she did not agree with Mr Tenkon touching her indecently. She showed that again by running away as soon as she



woke up and realised what Mr Tenkon was doing to her. Mr Tenkon knew that TT did not agree with his touching her breasts. I enter a guilty verdict in respect of Charge 4 also.

*Charge 5 – Threat to kill*

46. The Prosecution accepted that there was no evidence in relation to this charge.

*Charge 6 – Domestic violence*

47. The Prosecution accepted that there was no evidence in relation to this charge.

*Charge 7 – Domestic violence*

48. I found it proved beyond reasonable doubt on TT's evidence that in June 2022, Mr Tenkon beat both her and her mum with a phone charger. TT is Mr Tenkon's daughter. Mr Tenkon intentionally committed the act of assault when he beat TT with the phone charger. I return a guilty verdict in respect of Charge 7.

*Charge 8 – Domestic violence*

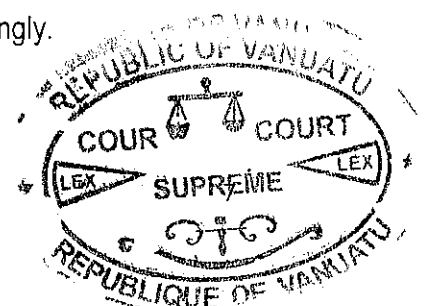
49. On TT's evidence, I also found it proved beyond reasonable doubt that in February 2022, she and her small sister went to get yam to make laplap and Mr Tenkon hit her on the back of her head and on the ear. She fled. Mr Tenkon looked for her but she ran up to her uncle's house. TT is Mr Tenkon's daughter. Mr Tenkon intentionally committed the act of assault when he hit TT as he did. I return a guilty verdict in respect of Charge 8.

*Charge 9 – Domestic violence*

50. I found it proved beyond reasonable doubt that in the morning of 31 July 2022, Mr Tenkon told TT and her mum that TT's mum was to go live with another man and he would take TT's virginity. TT and her mum were very frightened by this. TT was also surprised and cross. After this, TT's mum called the Police. Mr Tenkon's offensive words were against TT, his daughter as well as against his wife. Mr Tenkon intentionally behaved in an indecent and offensive manner to TT, his daughter, by telling her he would have sex with her to take her virginity. He also intentionally behaved in an indecent and offensive manner to his wife by telling her she had to find another man to live with and have sex with. I enter a guilty verdict in respect of Charge 9.

E. Result

51. Mr Tenkon is found guilty of Charges 1-4 and 7-9 and convicted accordingly.



52. There was no evidence in relation to Charges 5 and 6. Mr Tenkon is found not guilty of those charges and acquitted accordingly.

DATED at Port Vila this 28<sup>th</sup> day of March 2023  
BY THE COURT

  
Justice Viran Molisa Trief

