

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

Criminal  
Case No. 21/2800 SC/CRML

PUBLIC PROSECUTOR

V

KIPREL MARAE

Defendant

**Date of Trial:** 22<sup>nd</sup> -23<sup>rd</sup> February 2023

**Date of Verdict:** 24<sup>th</sup> February 2023

**Date Issued:** 21<sup>st</sup> March 2023

**Before:** Justice Oliver Saksak

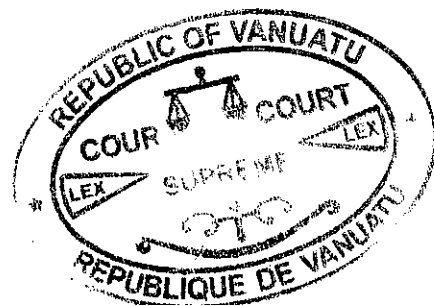
**In Attendance:** Ms Georgina Kanegai for Public Prosecutor  
Mr Willie Kapalu for the Defendant

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VERDICT

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1. The defendant Kiprel Marae was charged with one count of incest contrary to section 95 (1)(a) of the Penal Code Act Cap 135.
2. The particulars of the offence stated that sometimes in June and July 2021 on Tanna Island the defendant committed incest by having sexual intercourse with his biological daughter, Anna Marae, knowing fully that she was his daughter.
3. He denied the charge on 12<sup>th</sup> November 2021. Trial did not take place in 2022. The defendant was granted bail following his application and was on bail on conditions until his trial on 22<sup>nd</sup> and 23<sup>rd</sup> February 2023.



4. Before trial the Court read and explained the provision of section 81 of the Criminal Procedure Code Act CAP.136.
5. The burden of proof rested with the Prosecution to prove the defendant' guilt beyond reasonable doubt.
6. Section 95 (1)(a) of the Penal Code Act states-

**95. Incest**

(1) *Incest is sexual intercourse between –*

(a) *parent and child (including an adopted child);*

(a) *brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or*

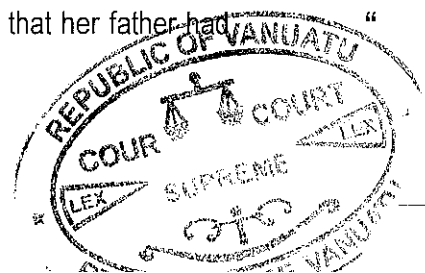
(b) *grandparent and grandchild,*

*where the person charged knows of the relationship between the parties.*

*(6) a person must not commit incest without consent with a person over the age of 16 years.*

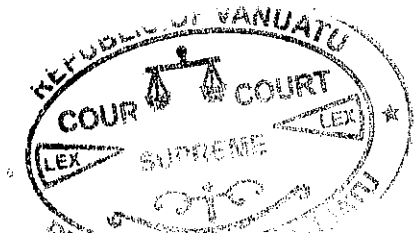
*(7) A person who contravenes subsection (6) commits an offence punishable on conviction to a term of imprisonment not exceeding 20 years.*

7. The elements of incest for the Prosecution to prove beyond reasonable doubt were-
  - a) Whether the defendant had sexual intercourse with his daughter without consent?
  - b) Whether he knew Anna was his own daughter?
  - c) Whether Anna was over the age of 16 years old?
8. Age and relationship were not in issue. The defendant denied in general having any sexual intercourse at all with his biological daughter. The only issue was therefore: whether or not Kiprel Maraë had sexual intercourse with his daughter Anna without her consent?
9. Anna Kiprel, the first Prosecution witness gave evidence confirming that Kiprel Maraë is her father. The reason for her being in Court was that her father had



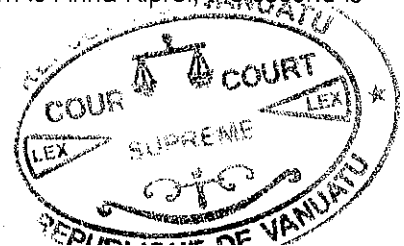
**spoilem mi**". She told the Court that she was sleeping with her son in their room when his daddy returned from the nakamal. He entered her room and touched her on the private part. He then proceeded to sleep on top of her placing his penis into her private part. After he had finished, the defendant left the room. She told him he should not be doing this to her as he was her daddy and should instead go and sleep with her mother, his wife. She said the defendant had told her not to tell anyone or he would kill her. She saw an opportunity when the family had a family meeting on Saturday to discuss family matters. It was then she told her relatives about what the defendant had done. Jimmy Muliaken was present at that meeting.

10. In cross- examination it was suggested to her that she could not have slept at 6:00pm and that sex would not have taken place at the time as it was too early and that the defendant was drinking kava at the time at the nakamal. The complainant confirmed the defendant returned from nakamal later and had sex with her.
11. Also in cross, it was put to her it was not a specific meeting about sex between her father and herself, the witness accepted but said it was at that meeting that she told her relatives about what her father had done to her.
12. In re-examination the witness confirmed that she did report the matter to the relatives at the meeting and that it was Jimmy Muliaken who assisted her to have the case reported to the Police. She confirmed making a statement to the e Police and that she was not forced to do so. It was her wish that the Police should deal with her case. She was asked to clarify whether her statement to the Police was untrue and she said it was all true.
13. Jimmy Muliaken was the second witness. He is a chief ordained in 2009 in charge of 3 custom nakamals. The defendant is his assistant chief. He confirmed he assisted Anna Kiprel to lodge the report with the police so they could arrest the defendant because he had a history of this behavior. He told the Court about a first nakamal meeting he held with the defendant about his previous sexual abuses of Anna where he was found guilty and was ordered to pay a fine of a pig and kava. He told the Court that the defendant's wife and Anna withdrew the case after the reconciliation. Then this third issue came up. He wrote to the Women's Affairs Office to take up the case. He dealt with the issue twice and with this being the third time, he felt it was enough that his case should be dealt with by the Police. He told the Court Anna



became pregnant as a result of her father's affairs but after 3 months the pregnancy had disappeared again.

14. In cross, it was put to him that the victim's child is not the defendant's child? The witness said that in the custom meeting it was found out the child was the defendant's child. That was the reason why a custom fine was imposed on the defendant to pay a pig and kava.
15. In re-examination he was asked to confirm if the child was the defendant? He confirmed it was the result of the defendant's sexual affairs with the complainant. He also confirmed writing a letter to the Women's Affairs Office to take up the case as it was their role to do so.
16. Simon Nompuat, the medical officer was the third witness, as a registered nurse of 14 years. He confirmed his report dated 29 July 2021 which showed physical examination was okay, vaginal examination showed no obvious signs of intercourse, no trauma and pregnancy tested positive. The result was that the victim had missed a month of menstruation, being the month of July.
17. In cross, it was put to him that it was a mistake, the witness said the result shows what it says.
18. In re-examination whether he had seen a mistake in a pregnancy test over 24 years, the witness said the result proved correct all the time.
19. By consent the statement of Sgt Makenzie Lamata, Arnold Eto, Simon Varagali and the defendant were admitted and read into evidence for the Prosecution.
20. Sgt Lamata took the defendant's statement under caution. He stated he would only speak in Court. Arnold Eto was the arresting officer with Simon Varagali. Their statements are merely to that effect.
21. The Court concluded from the evidence that a prima facie case had been made out requiring the defendant to put up a defence. Section 88 of the Criminal Procedure Code Act was read and explained.
22. The defendant gave evidence on oath. His defence was a general one. He indicated he would call 2 other defence witnesses but did not do so. He said he is a chief and has 6 children, 2 are girls and 4 are boys. The first born is Anna Kiprel, the second is

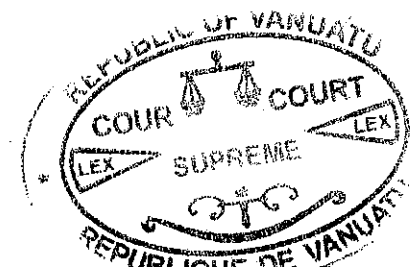


a boy on scholarship in Samoa, the third is Kipson attending Year 12 at Tafea College, the fourth is Kalsi attending Year 13 at Malapoa College, Alvin is fifth attending Isangel College in Year 9 and the last one is Year 8 at Iatan Junior Secondary School. He said his house has a total of 6 rooms. His room with his wife is next to Anna's room. They are divided by Masonite walls. There is no Masonite ceiling and doors do not lock. It was put to him that he had sex with Anna in June and July 2021 and he said *"I do not know anything about it."*

23. He said he could not have sex with Anna at 6:00pm as he was at the nakamal at this time. He told the Court the rooms are small and if sex took place, others in other rooms would hear what was going on. He denied having a meeting at the nakamal but acknowledged there was a family meeting but not specifically for his issue, but for school fees. He denied knowing anything about this case until he was arrested and told by the Police. His view is that Jimmy reported the case because of the dispute over land and chiefly title with him as his common enemy.
24. Further in cross examination he confirmed Anna is his straight daughter. Whether he agreed Anna was 22 years old when offence occurred, he said she was 25 years old when she conceived the child.

### Discussion

25. The only issue for the Court was whether or not the defendant had sexual intercourse with his daughter Anna Kiprel in June and July 2021.
26. It was the evidence of Anna against the denial of her father. No witnesses who gave evidence for the Prosecution saw them having sex. Despite the defendant denying that sex took place at all, first the evidence of Jimmy Muliaken shows there was a recent complaint when Anna revealed the actions of her father to them at the family meeting on Saturday. In the evidence in cross-examination of the defendant, the incident occurred on Monday night which was 12<sup>th</sup> July 2021.
27. Further in cross-examination the defendant told the Court that Anna was 25 years old when she first conceived. That evidence shows he was well aware of the incident.
28. There was no evidence of birth certificate. However if indeed Anna was 25 years old when she first conceived and continued living with her father by this time when she




should be making up her life with another man, then there is an inference that she was kept in the father's house for his sexual abuses and gratification.

29. Further as a grown up daughter with ongoing sexual abuse, with her revealing the incidents to relatives at the family meeting on Saturday, some 6 days after the last incident occurred on Monday night, the 12<sup>th</sup> July 2021, her evidence is capable of being believed as the truth.
30. Further the evidence of Chief Jimmy Muliaken shows there were two custom meetings held in the nakamal where the defendant was found guilty of earlier affairs and fined with a pig and kava. That evidence is corroboration of the complainant of sexual activities between the defendant and Anna, his daughter.
31. I therefore have no doubt in my mind that the defendant had incestuous affairs with his daughter Anna in June and July 2021, resulting in her being tested positive by a medical practitioner on 29<sup>th</sup> July 2021.
32. I am therefore satisfied Prosecution has discharged its onus of proof beyond reasonable doubt that the defendant had sexual intercourse with his daughter Anna, thus he committed incest with her contrary to section 95 (1)(a) and 95 (6) and (7) of the Penal Code Act.
33. I therefore return the verdict of guilty on the defendant and convict him accordingly.

**DATED at Isangel this 24<sup>th</sup> day of February 2023**

**BY THE COURT**

  
**OLIVER A SAKSAK**  
 Judge

