

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

Criminal
Case No. 24/1981 SC/CRML

PUBLIC PROSECUTOR

v

GEORGE AKIPERE

Date of Plea: 2 December 2024
Date of Sentence: 14 March 2025
Before: Justice M A MacKenzie
In Attendance: Public Prosecutor – Ms J Tete
Defendant – Mr H Vira

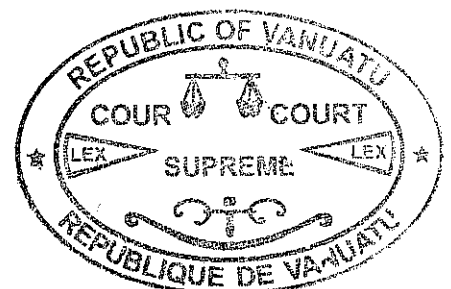
SENTENCE

Introduction

1. Mr George Akipere appears for sentence having pleaded guilty to a charge of unlawful sexual intercourse, contrary to s 97(2) of the Penal Code [CAP 135]. The maximum penalty is 15 years imprisonment.

The Facts

2. Mr Akipere and the victim started a relationship when both were young. In 2021, when the victim was aged 13-14 years, the couple began having sexual intercourse. The sexual intercourse continued throughout 2021. Mr Akipere was aged about 15-16 years. In 2022, they ceased the relationship for a period of time because the victim's family was against the relationship but resumed the relationship a short while later.
3. They now have a child together.



Sentencing purposes/principles

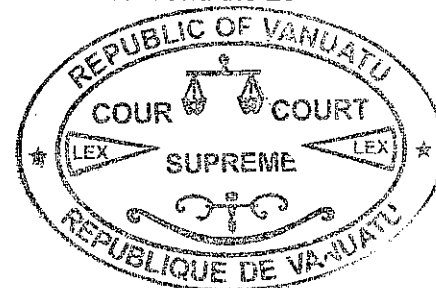
4. The sentence I impose must hold Mr Akipere accountable and must denounce and deter his conduct. The sentence should ensure he takes responsibility for his actions and help him to rehabilitate. It must also be generally consistent.

Approach to sentence

5. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

6. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending and taking into account the maximum penalty for the offence.
7. The aggravating factors of the offending are:
 - (a) The victim was vulnerable because of her age.
 - (b) The sexual offending was repeated.
 - (c) The victim was exposed to the risk of pregnancy and sexually transmitted diseases.
8. The fact that the victim became pregnant in 2023 is not an aggravating factor, because the charge relates to the sexual intercourse which took place throughout 2021 and not 2023.
9. I accept that the victim was a willing participant, because she and Mr Akipere were in a relationship, which mitigates the offending. However, that does not make the sexual intercourse lawful, as the victim was under age to be legally able to consent.
10. The prosecutor submits that the starting point should be 5 years imprisonment. Mr Vira submits that the starting point should be 3 years imprisonment.
11. The leading case for unlawful sexual intercourse is *Public Prosecutor v Gideon* [2002] VUCA 7. Factually, though, it is very different to the present case.
12. *Lawi v Public Prosecutor* [2023] VUCA 41 is helpful because it involved a charge of unlawful sexual intercourse under s 97(2) in circumstances where the victim and the 28



year old defendant were in a relationship. It was a one-off incident. On appeal, it was considered that a 5 year starting point was appropriate, particularly as it was non-violent sexual intercourse. Mr Vira has cited *Public Prosecutor v Rausiama* [2021] VUSC 261 to support a starting point of 3 years imprisonment. In *Rausiama*, the 13 year old victim was a willing participant in a one-off incident of sexual intercourse. The starting point adopted was 3 years 9 months imprisonment.

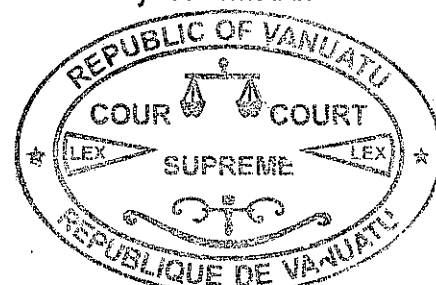
13. In the present case, I consider that a 3 year starting point is too low, given that the sexual intercourse was not one off. It was repeated during 2021. I assess that a 5 year starting point is appropriate, taking the aggravating and mitigating factors, *Lawi and Rausiama* into account. While the sexual intercourse was repeated, this was not predatory behaviour. Rather, it was non-violent sexual intercourse between two young people in a relationship.

Guilty plea and personal factors

14. Mr Akipere is entitled to a one third reduction for the guilty plea. He entered a plea of guilty at a reasonably early opportunity. The sentence is reduced by 20 months for this factor.
15. Mr Akipere is now aged 19 years and was aged approximately 15- 16 years at the time of the offending. He is a first offender and lives with the victim and their child. He is well supported in the community, is a gardener and attends church. Mr Akipere is remorseful, explaining that he and the victim are in love. There has been a custom payment of VT 30,000 to the victim's family, which I must take into account.
16. This is offending which highlights that young people do not think and act like adults. Given Mr Akipere's age and good family support, there are good prospects of rehabilitation. Given that he is a first offender, was relatively young at the time of the offending, is remorseful, has good family support, and made a custom payment, I reduce the sentence by 12 months (20 percent).

End Sentence

17. The end sentence is 2 years 4 months imprisonment
18. Defence counsel submits that the sentence should be suspended pursuant to s 57 of the Penal Code. Under s 57, I must take into account the circumstances, the nature of the offending and Mr Akipere's character. In *Public Prosecutor v Gideon* [2002] VUSC 7, the Court of Appeal said that it will only be in the most extreme or exceptional of cases that suspension could ever be contemplated in a case of sexual abuse. The approach to suspension of sentences for serious sexual offending has been recently reaffirmed in



Public Prosecutor v Tulili [2024] VUCA 54. In *Public Prosecutor v Lop* [2024] VUCA 56, the Court of Appeal dealt with an appeal against full suspension of sentence for a charge under s 97(2) of the Penal Code and said that the circumstances were not exceptional. In that case, the victim was 13 and the defendant 17 years 7 months. It was a one-off incident of sexual intercourse, but the victim was grabbed and forced into the defendant's home.

19. While this is serious offending, it is at the lower end of the scale for this type of offending. It was non-violent sexual intercourse and there are no apparent adverse effects on the victim. Mr Akipere and the victim were in a relationship at the time and continue to be. They now have a child together. He is a first offender and is relatively young. I also take into account that Mr Akipere was 15 or 16 years when the offending took place. There appear to be good prospects of rehabilitation, particularly as Mr Akipere has good family support. On the other hand, it is of concern that he breached bail and was taken into custody. Consistent with *Lawi*, I consider this is a case where there should be a partial suspension of the sentence. This will acknowledge the seriousness of the offending, meet the need for accountability, deterrence and denunciation, but will also recognise that this is offending at the lower end of the scale of its type given the factors I have discussed, and also Mr Akipere's personal circumstances.
20. Mr Akipere is to serve the first part of the sentence in custody with immediate effect. I consider that period should be 10 months, back dated to 4 November 2024, when Mr Akipere was remanded in custody. Then the balance of the sentence is to be suspended for a period of 18 months. If Mr Akipere offends again during the 18 month period of suspension of the sentence, then he will need to serve the balance of the sentence of imprisonment in addition to any other penalty that may be imposed for the further offending.
21. Mr Akipere has 14 days to appeal against the sentence.
22. I make a permanent order suppressing the name and identifying details of the victim.

DATED at Port Vila this 14th day of March 2025

BY THE COURT

