

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

Criminal
Case No. 25/2102 SC/CRML

PUBLIC PROSECUTOR

v

JOHN SANSON also known as JOHN PAMU

Date of Trial: 10 and 11 March 2026
Date of Verdict: 1 April 2026
Before: Justice M A MacKenzie
Counsel: Public Prosecutor – Mr M Kalwatong
Defendant – Mr R Melsul

VERDICT

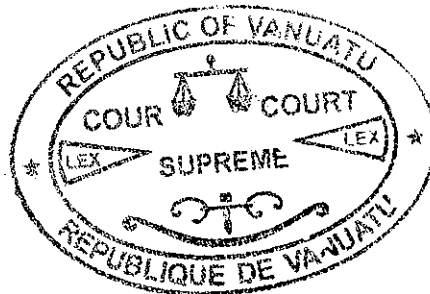
Introduction

1. Mr Sanson faces a charge of sexual intercourse without consent.¹

Brief background

2. The complainant, KJ and the defendant, Mr Sanson are related and live in laupaur village, Tanna. KJ call Mr Sanson her grandson.
3. The prosecution case is that on 5 March 2025, Mr Sanson came to KJ's home while she was sleeping in the kitchen and grabbed her and forced her into the house where

¹ contrary to ss 89A, 90(a) and 91 of the Penal Code [CAP 135]



she slept. She closed her legs and was fighting back. He then pushed his penis into KJ's vagina.

4. The defence case is that during the day, KJ told Mr Sanson to come and see her in the evening. That she would wait for him in the kitchen, and they would have sex together. When he returned that evening, they had consensual sexual intercourse, after he had licked KJ's clitoris.

Elements of sexual intercourse without consent

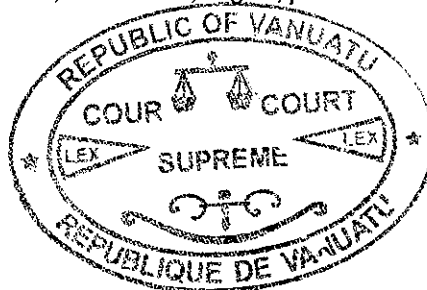
5. There are three essential elements of rape: *McEwen v Public Prosecutor* [2011] VUCA 32. They are:

- a. That there was sexual intercourse.
- b. That MJ did not consent to the sexual intercourse.
- c. That Mr Kai did not believe on reasonable grounds that MJ was consenting at the time the intercourse occurred.

6. Sexual intercourse is defined in s89A of the Penal Code:

"For the purposes of this Act, sexual intercourse means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:

- (a) *the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or*
- (b) *the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or*
- (c) *the introduction of any part of the penis of a person into the mouth of another person; or*
- (d) *the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or*



(e) *the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (f) (d); or*

(f) *the causing or permitting of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of the person who caused or permitted the activity.*

7. Consent means true consent, freely given by a person who is in a position to make a rational decision. Consent may be conveyed by words, by conduct, or by a combination of both. The material time to consider consent is when the sexual act takes place. The behaviour and attitude of MJ before or after the act may assist in deciding that, but it is not decisive. A person does not consent to sexual activity just because she or he does not protest or offer physical resistance to the activity. As was said in *Ishmael v Public Prosecutor* [2005] VUCA 1:

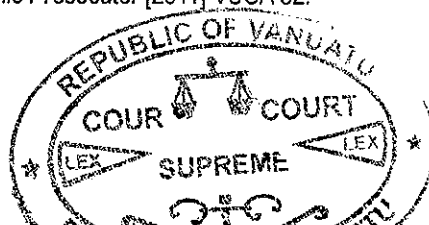
*"a woman does not have to kick or scream or push someone away. She is entitled to be treated with courtesy and respect."*²

8. A person does not consent to sexual activity if there is force used or a threat or fear of force, or intimidation. Submission to sexual activity because of fear of what might happen if a person does not give in, is not true consent.³ Consent cannot be inferred only from the fact that the person does not protest or offer physical resistance. There must be something more in the words used, conduct or circumstances (or both) for it to be legitimate to infer consent.
9. The prosecution must prove beyond reasonable doubt that Mr Kai did not believe on reasonable grounds that MJ was consenting at the time that the intercourse occurred. The critical question is whether at that time and in the particular circumstances I am sure that Mr Kai did not genuinely believe that MJ consented or that a reasonable person standing in his shoes would not have believed that MJ consented? ⁴ When assessing the reasonableness and honesty of Mr Kai's belief, it must be looked at within its total context.

² see also *Public Prosecutor v Jack* [2013] VUSC 81 at [14]

³ *Public Prosecutor v Tor - Judgment* [2003] VUSC 101

⁴ See *Ishmael v Public Prosecutor* [2005] VUCA 1 and *McEwen v Public Prosecutor* [2011] VUCA 32.



Submissions

10. At the conclusion of the evidence, I gave counsel an opportunity to file written submissions, which I have considered and taken into account.

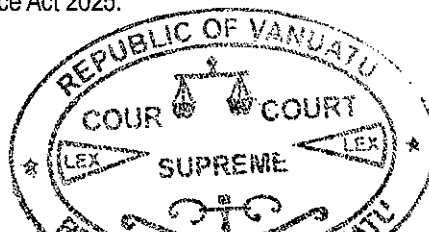
Burden and standard of proof

11. The Prosecution has the onus of proof and is required to establish the elements of each charge beyond reasonable doubt before a finding of guilt can be made in respect of the charges. This excludes consideration of any possibility which is merely fanciful or frivolous.⁵
12. Proof beyond reasonable doubt is a very high standard of proof which the Prosecution will have met only if, at the end of case, I am sure that Mr Sanson is guilty. What then is reasonable doubt? Reasonable doubt is an honest and reasonable uncertainty about Mr Sanson's guilt after giving careful and impartial consideration to all the evidence.
13. Mr Sanson is not required to establish anything. He is presumed innocent. The presumption of innocence means that he does not have to give or call any evidence and does not have to establish his innocence. If at the end of the trial, any reasonable doubt exists as to his guilt, he will be deemed to be innocent of the charge and will be acquitted.
14. This was confirmed to Mr Sanson prior to the prosecution opening its case. I read the statement required by s 81 of the Criminal Procedure Code aloud to Mr Sanson in English. The statement was then translated into Bislama.

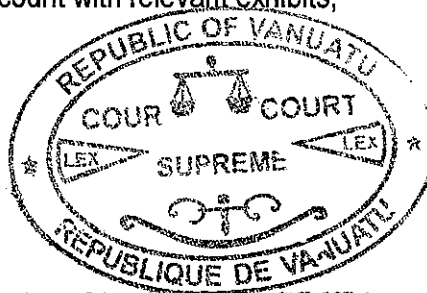
Approach to assessing the evidence

15. This case turns on the credibility and reliability of KJ, and her evidence. The prosecution case stands or falls on her evidence. While Mr Sanson had no obligation to give evidence, he chose to do so. So, his evidence will also need to be assessed, but notably he does not have to prove anything.

⁵ Section 8 of the Penal Code [CAP 135] and s 11 (1) of the Evidence Act 2025.



16. The prosecution case is that KJ told the truth. The defence case is that KJ has lied about these incidents. It is therefore important to distinguish between credibility and reliability. Credibility is about truthfulness. So, credibility is about whether a witness can be believed? Reliability is about the accuracy of evidence which is honestly given. The first involves an intention to mislead or lie. The second involves error or mistake. Even the most honest witnesses capable of being mistaken, particularly when being asked to recall events which occurred many years ago. But a witness who sets out to give false evidence is an entirely different position. All of what is said may be called into question if the witness is setting out to be dishonesty in some or all respects.
17. I may accept everything a witness has said. On the other hand, I may reject everything a witness has said. There is a middle ground, which is that I can accept some parts of what a witness has said and reject other parts.
18. It is important that before relying on evidence, I am able to conclude that it was honestly given, but also that it is reliable.
19. In assessing the evidence given by the witnesses, there are a number of factors which assist with considering whether the witnesses gave truthful and accurate evidence. In considering the evidence of all the witnesses who gave evidence during the trial, I have considered the reasonableness, probability and coherence of the evidence. Sometimes conflicts or differences in the evidence can be caused by mistakes and misinterpretation; sometimes witnesses can see and hear things that were not seen and heard by other witnesses. This does not mean one of the witnesses is necessarily not telling the truth. But sometimes conflicts are not able to be explained away.
20. Demeanour is a small part of my assessment of a witness. I prefer though to look at what the witness actually said, and take into account:
 - a. consistency within the witness' account and over time? If there is an inconsistency, it does not necessarily mean that the evidence in court cannot be relied on. The mere fact that a witness is inconsistent on a particular topic does not mean that person is generally untruthful or inaccurate. Inconsistencies can happen even when someone is telling the truth. I must consider whether that inconsistency is a significant one or a minor one and any explanation given for the inconsistency;
 - b. consistency when comparing the witness' account with relevant exhibits;

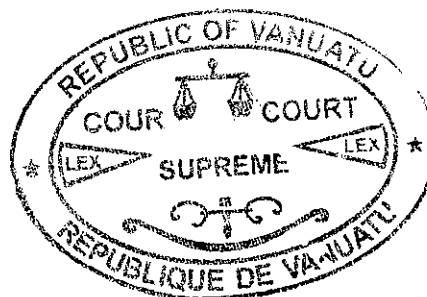


- c. consistency with the evidence of other witnesses whose evidence I have accepted.
 - d. whether there is supporting evidence. There does not have to be, but sometimes other evidence helps. Corroboration in relation to alleged sexual offending is no longer necessary in Vanuatu.⁶
 - e. the inherent plausibility and coherence, or not, of the witness' account. Does it make sense?
 - f. does the evidence have the ring of truth to it?
21. It is important that I consider the evidence of each witness in the context of all the evidence in the case. Also, witnesses can be inaccurate or may not remember secondary, marginal or unimportant facts for various reasons, including that they were not seen as important at the time. However, their evidence may be accurate about essential matters, but not about details. Essential matters are matters which relate to the elements of the charges.
22. I reminded myself that if I am to draw inferences, they cannot be guesses or speculation but had to be logical conclusions drawn from reliably accepted or properly established facts. As was said by the Court of Appeal in *Swanson v Public Prosecutor* [1998] VUCA 9, inferences may be drawn from proved facts if they follow logically from them. If they do not, then the drawing of any conclusion speculation not proof. Speculation in aid of an accused is no more permissible than speculation in aid of the prosecution. Inferences need not be irresistible.

Mode of evidence

23. KJ gave her evidence in a closed Court. The trial took place at the Court in Tanna. The Court is an open air building, so there is no practical means of closing the Court. I had also made a direction for a screen. Because KJ's evidence was given in the Magistrate's office, to ensure there was a closed Court, a screen was impracticable. So, Mr Sanson was seated just outside the door, but close enough to hear the evidence. - check the CPC

⁶ s 17 of the Evidence Act 2025



24. There are various alternative ways for a witness to give evidence, including closing the Court. Others are the use of a screen or an AVL link.⁷ The purpose of these types of measures is to ensure that a vulnerable witness is able to give the best quality evidence they can. Such measures say nothing about a defendant and no adverse inference is to be drawn against Mr Sanson because KJ gave her evidence in this manner.

Counter intuitive principles

25. In a number of overseas jurisdictions, counter-intuitive principles are well understood, and particularly in the context of jury trials. The purpose of such directions are educative in nature. I will address counter intuitive principles because the evidence engaged counter-intuitive principles. Here, MJ and Mr Kai were in a relationship at the time of the alleged events at Erakor, and there was a delay in MJ reporting the rapes.

26. The English Court of Appeal in *Miller v R* [2010] EWCA Crim 1578 said:

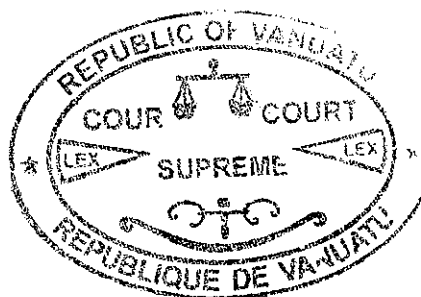
“Judges have, as a result of their experience, in recent years adopted the course of cautioning juries against applying stereotypical images of how an alleged victim or an alleged perpetrator of a sexual offence ought to have behaved at the time, or ought to appear while giving evidence, and to judge the evidence on its intrinsic merits. This is not to invite juries to suspend their own judgement but to approach the evidence without prejudice.”

27. The Supreme Court of Canada acknowledged in *R v Barton* [2019] 2 SCR 579 at [1] that:

“We live in a time where myths, stereotypes, and sexual violence against women — particularly Indigenous women and sex workers — are tragically common. Our society has yet to come to grips with just how deep-rooted these issues truly are and just how devastating their consequences can be. Without a doubt, eliminating myths, stereotypes, and sexual violence against women is one of the more pressing challenges we face as a society.”

28. In New Zealand, the Law Commission said in *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes*,^[24] stated:

⁷ See ss 40 and 51 of the Evidence Act 2025



The field of sexual violence is one that is commonly misunderstood by people without training or education in the area. Research has revealed that widely held assumptions about how frequently sexual violence occurs, and when, where and against whom it occurs, are usually incorrect or do not reflect the reality of sexual violence.

29. The purpose of counter-intuitive directions is to correct erroneous beliefs that a factfinder might otherwise hold. The purpose of such directions is to restore a complainant's credibility from a debit balance because of misconception, back to a zero or neutral balance. It says nothing about the credibility of a complainant; rather is educative in nature. They cannot be used to assess credibility.

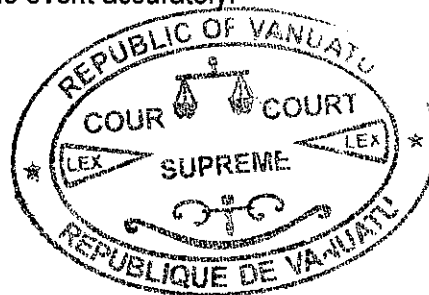
30. In terms of a judge alone trial, the New Zealand Court of Appeal has said that counter-intuitive evidence is not required. In *Keats v R*, the Court of Appeal said:

"[25] It is now generally accepted that juries can be instructed about counter-intuitive principles without calling an expert witness on that topic. It is axiomatic that, if juries can be properly directed on counter-intuitive principles, then there is even less need for evidence on those principles when the trial is being conducted by a judge sitting without a jury."

31. Research shows that widely held assumptions about how frequently sexual offending occurs, and when, where and against whom it occurs, are usually incorrect and do not reflect the reality of sexual offending. It is therefore important to note that there is no such thing as "*typical*" sexual offending.

32. There is also no classic or "*typical*" response to sexual offending. Research shows that victims of sexual offending can react in different ways. It might be expected that a complainant of sexual offending would complain immediately, but it is not uncommon for complainants to delay making a complaint, to make a partial disclosure, or not say anything at all.

33. Research shows that alleged sexual offending can occur in a wide variety of circumstances, including when people know each other, when other people are around, and in the home. Finally, research establishes that stress and trauma can compromise a person's account of events. But others may try to avoid thinking about an event at all, and they may then have difficulty in recalling the event accurately.



Prejudice and sympathy

34. This is a case involving rape of a vulnerable woman who is related to the defendant. The allegation is serious and might give rise to feelings of sympathy for the complainant and prejudice against the defendant. These or any other feelings must be put to one side and must not influence the verdicts. I am required to carefully and objectively and carefully consider all the evidence in reaching verdicts on each charge.

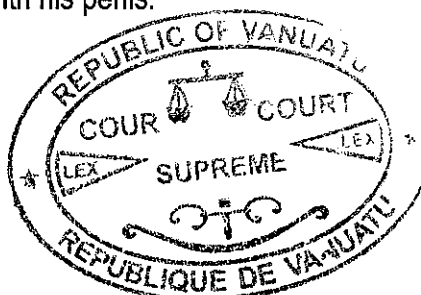
Mr Sanson's position

35. Once the prosecution case concluded, the s 88 statement was read aloud to Mr Sanson in English. It was translated into Bislama. Mr Sanson elected to give evidence.
36. The fact that Mr Sanson gave evidence does not change who must prove the allegations. The prosecution has that task, and Mr Sanson does not have to prove that he is not guilty. The question remains the same - has the prosecution proved his guilt beyond reasonable doubt. That means – am I sure?
37. If I accept what he says, then obviously the proper verdicts are not guilty because he will not have done what the prosecution says he did.
38. If what he says leaves me unsure, then again, the proper verdict is not guilty, because I will have been left with a reasonable doubt. If what Mr Sanson says seems a reasonable possibility, the prosecution will not have discharged its task, and I must find him not guilty. If I disbelieve Mr Sanson's evidence on key issues, then I cannot not leap from that assessment to guilt, because to do that would be to forget who has to prove the case. Instead, I must assess all the evidence that I accept as reliable. This includes any part of the defence evidence I accept. Does that evidence satisfy me of Mr Sanson's guilt to the required standard?

The charge – sexual intercourse without consent

Am I sure that there was sexual intercourse between KJ and Mr Sanson?

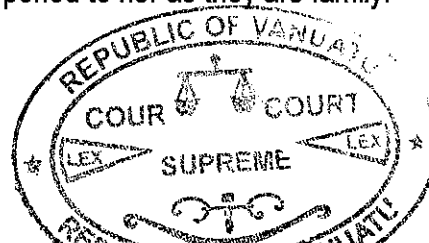
39. That there was sexual intercourse is not in dispute. Both KJ and Mr Sanson gave evidence that Mr Sanson penetrated KJ's vagina with his penis.



40. Therefore, I am sure there was sexual intercourse between KJ and Mr Sanson.

Am I sure that KJ did not consent to the sexual intercourse?

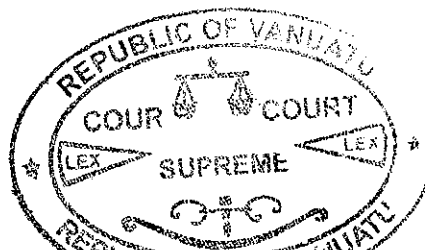
41. This incident happened at KJ's home in laupaur village. KJ is an uneducated woman, who gave a straightforward narrative of events from her perspective. KJ said that on 5 March, she was sleeping in the kitchen with her grandchild, aged approximately 2 years. Then Mr Sanson arrived in the kitchen, and said he was coming to have sex with her. Her response to him was that he was her grandchild, and he is not her age. She also asked him where his wife was?
42. Mr Sanson then grabbed her and forced her into the sleeping house. In her evidence, KJ confirmed that she has two houses – the kitchen house and the sleeping house. After she was forced into the sleeping house, KJ said Mr Sanson pulled his penis into her vagina. She said she was closing her legs, fighting back but Mr Sanson was forcing her to open her legs. She did not say anything to him, other than to ask why he was doing this to her and asking where his wife was.
43. KJ was clear that the sex was not something she wanted. KJ said that it was Mr Sanson who locked the door of her sleeping house, not her. It was also Mr Sanson who turned off the solar light and not KJ. She described struggling. She explained that Mr Sanson grabbed her and was pressing her down. She did not want to, but he was forcing her down and caressing her and holding her breasts. After the sexual intercourse, she could feel the blood coming out of her vagina and wanted to pee. She felt pain in her vagina.
44. KJ did not agree with Mr Sanson's narrative that they had agreed to have sexual intercourse earlier in the day. She said that Mr Sanson did come past but did not talk to her. KJ remained firm in cross examination that the sexual intercourse was forced upon her, so her evidence that she did not consent was internally consistent. KJ rejected the defence proposition that this was a preplanned agreement for them to have sex and that it was a consensual sexual encounter. She said she did not know that Mr Sanson was coming to her kitchen that night.
45. KJ's evidence about why she did not want to have sexual intercourse with him is plausible and has the ring of truth to it. KJ told him he was her grandchild, and not her age. While KJ does not know how old she is, there is clearly a significant age gap between she and Mr Sanson, who is aged 36 years. She said that Mr Sanson is her grandson, and she felt ashamed about what happened to her as they are family.



46. She said she called out, but no one was there to hear her. She was cross examined in some detail about the fact that there is no mention of her calling out or fighting back in her police statement. She said she did tell police. It is important to note that KJ does not speak Bislama, but rather a local dialect. Her evidence was that she had no education. The police statement is in Bislama. I asked KJ about how that statement was taken.⁸ KJ explained that she told police what happened in her dialect and the dialect was translated into Bislama by Asterick Pamu, who works in the community safety team ("CST").
47. In his written submissions, Mr Melsul contended that KJ's credibility was seriously undermined because of inconsistencies in her evidence. Firstly, that she gave inconsistent evidence about who was present at the time of the incident, there was conflicting evidence about the date of the incident, she contradicted herself about who she reported it to and gave inconsistent reasons for the delay in reporting.
48. Much is made in the defence submissions that KJ's daughter, Sarah and grandchild Saisai Sapa were present and there were people living nearby, so her evidence that she called out lacks credibility, as assistance would likely have come. KJ's grandchild is about 2 years old and would not have been able to help. KJ did not say that her daughter Sarah was present sleeping in her house at the time of the incident.⁹ She said in cross examination that Sarah was not there, consistent with her evidence in chief that her grandchild was there, but there was no-one home at the time. Earlier in the cross examination, KJ was asked about Mr Sanson coming later in the night to eat his share of the island cabbage. KJ's response was that the cabbage was given to Sarah, but not to her. That She was then asked who Sarah was, and confirmed Sarah is her daughter. She was then asked to confirm that Sarah was with her that day, which she did. The evidence establishes that the island cabbage was given to the family earlier in the day. The incident took place at night. That Sarah was with her mother that day does not establish that she was there at the time of the incident, and KJ expressly refuted that she was. It is an assumption that people would have heard KJ calling out. While KJ accepted there were people living nearby, she was not asked how close they were living, and it was at night when people are likely to be asleep.
49. KJ initially said the incident happened in February 2025 but accepted in cross examination that it took place on 5 March 2025. The particulars of the charge in relation to the date were amended without objection, at the end of the prosecution case. The

⁸ I gave counsel an opportunity to ask questions if they wished to do so. See section 44 of the Evidence Act 2025.

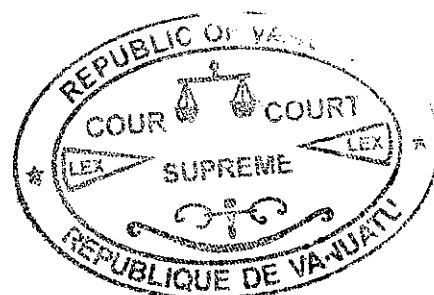
⁹ That was the position of Mr Sanson



date of an offence is not material¹⁰ and in this case does not need to be proved. It is not relevant. It also needs to be remembered that KJ candidly said she did not know how old she was, she did not go to school and cannot read or write. So, how could she know about the concept of time? What she recalled was the detail of what happened, which had personal significance to her.

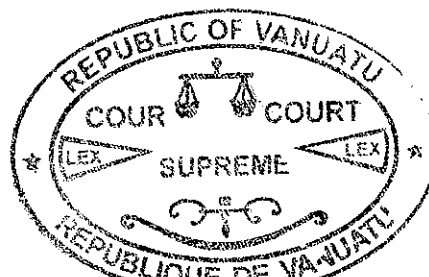
50. KJ told police that she had spoken to Asterick, her daughter Sarah and Jack Namaka about the incident. She accepted that in cross examination that she did not report it to Jack, or Sarah, but did tell Asterick. While it is an inconsistency, nothing turns on it. It is a minor inconsistency. It is not relevant any of the elements of the charge. I do not consider it to be material inconsistency so as to impact on the credibility and reliability of KJ's evidence.
51. There was a delay in KJ telling anyone and reporting the matter to the police. A complainant made sometime after the alleged offending does not of itself mean the complainant is untrue, just as an early complainant does not of itself mean it is true. While the delay in making the complainant is a factor relevant to assessing KJ's credibility, it is explicable. The first person KJ told was Asterick Pamu. Asterick came to her and said she had heard rumours that something had happened to her. KJ told Asterick that her big brother had forced her to have sex with her. Asterick then took KJ to the police station. KJ explained the delay. Her evidence was that after the incident, she did feel well. She also said she did not go to police because she had no money. She said she was ready to go to police but it was Asterick who helped her. I do not think that KJ's evidence about why she delayed going to the police is inconsistent. Feeling unwell and lacking financial resources are not mutually exclusive reasons.
52. I do not accept that KJ was motivated to make a false complaint to police to protect her reputation as rumours were circulating, as contended by Mr Melsul. She was approached by Asterick, who must have heard something in the community. But KJ's evidence was that she did not know there were any rumours and was not given an opportunity to comment on this proposition.
53. As I have said, Mr Sanson is aged 36 years. He is an educated man who is articulate. He is not required to prove anything but chose to give evidence and explain what happened that night. He described a mutually satisfying sexual experience. He said that on the day of the incident, he had been in his garden and took a bundle of island cabbage to KJ. He gave her the island cabbage and told her to cook it and said he

¹⁰ See the discussion in *Public Prosecutor v Enkey* [2024] VUSC 236.



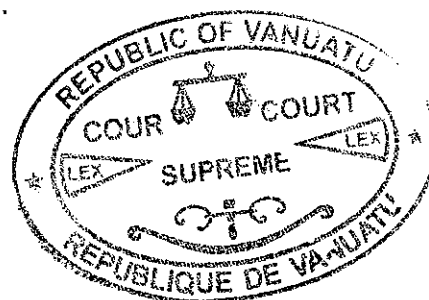
would come and have supper that night. His evidence was that KJ told him to come and see him in the evening. When Mr Sanson spoke to KJ during the day, he said they came to an agreement that KJ would sleep in her kitchen. She told him she would wait for him in the kitchen, so that when he came back, they would have sex together. It was a prearranged agreement for them to have sex, initiated by KJ.

54. Mr Sanson then went to a chief's day celebration. Later that night he went to KJ's kitchen. KJ was sleeping. KJ's grandchild was there. He ate the island cabbage and KJ went to check on her daughter Sarah to see if she was asleep or not. KJ returned and said that Sarah was asleep. KJ told Mr Sanson to go to her sleeping house and wait for her, which he did. She then covered the light bulb with a red calico and removed her clothes. Then they started having sex. Mr Sanson said he pushed her penis though her vagina but before doing that, KJ told him to lick her vagina first. Mr Sanson held the end of her breasts and started licking her clitoris. KJ told him he would make her vagina wet before inserting his penis into her vagina as it was dry. He described KJ holding his head and pushing his head closer to her vagina. He said he then spat on his penis to make it wet and started putting it slowly into her vagina. After the sex, KJ told him to go and take her grandson to the sleeping house.
55. Mr Sanson accepted in cross examination that KJ is his grandmother and older than him. In cross examination, Mr Sanson maintained that it was a consensual encounter and that he did not grab and drag her to the sleeping house. He was evasive and reluctant to make reasonable concessions, such as the obvious physical size disparity between the two of them. In cross examination, he was asked if he agreed he was a young guy who was strong enough? He said he disagreed saying "you do not know how much strength I have". But Mr Sanson must have known the answer to that question, as it was about him. He was in a position to respond to it. He did in the end agree that he had more strength than KJ. Mr Sanson was asked by the Court if he agreed that he was physically taller than KJ. He said he could not give an answer, as he could not give a straight measurement between them. He was also asked if he agreed that KJ was a small lady. He would not accept that, saying he only understood her to be old. While not working at the time of the incident, Mr Sanson had worked overseas under the RSE scheme. On the other hand, I infer that KJ is much older than Mr Sanson, and she appeared to be slight in stature and physically frail, requiring the use of a stick to walk.
56. Mr Sanson's evidence that this was a consensual sexual encounter, all initiated by KJ is implausible and unconvincing. KJ is his grandmother, and I infer he is much younger and physically stronger than her. KJ's evidence that she was ashamed about what



happened because they were family and that he was her grandson, had the ring of truth. She did not want to have sexual intercourse because they are family.

57. Mr Sanson's evidence was that this was a mutually satisfying sexual experience which involved KJ asking him to lick her vagina, which he did, that aspect of the defence case was not put to KJ in cross examination for comment. It should have been. This is a substantial matter because it forms part of the defence case as to why this was consensual sex. Section 59 of the Evidence Act 2025 provides for how a failure to cross examine on substantial matters can be dealt with. It is a matter of discretion. In my view, it becomes a matter of weight, and I place little of any weight on that evidence, given that KJ was not given an opportunity to comment on it.
58. I put Mr Sanson's evidence to one side for the reasons set out above. In particular, his evidence this was a prearranged, and mutually satisfying encounter between grandson and grandmother is improbable and unconvincing, as it seems unbelievable that KJ would willingly have sexual intercourse with her much younger grandson. She was firm about that. Adding to the air of unreality is Mr Sanson's evidence that KJ initiated this encounter- first asking him to come and have sex with her earlier in the day and telling him to go to her sleeping house and then asking Mr Sanson to lick her vagina. That evidence is incongruous with the power imbalance between the two of them, as discussed below.
59. I am sure that KJ did not consent to the sexual intercourse. I accept her evidence as an authentic account about what happened. She was not expecting Mr Sanson. He told her they were going to have sex, grabbed her when she tried to escape, and forced her into the sleeping house and then forced her legs open, and had sexual intercourse with her. KJ's evidence had the ring of truth to it. Mr Sanson is her grandson and not the same age as her. There was a power imbalance between them that I infer must have been obvious to Mr Sanson. KJ cannot read or write, is much older than Mr Sanson, and small, and frail. Mr Sanson, on the other hand, is educated, and is a relatively young man, with more strength than his grandmother.
60. KJ's evidence that this was a forced sexual encounter, and so did not consent, was internally consistent. She remained firm in cross examination that she was forced into the sleeping house. And while there may be some inconsistencies, for the reasons explained, I do not consider them to be material.



61. There was sexual intercourse, but KJ did not freely consent. She had no agency in the situation, as she was forced into the sleeping house by a much younger and bigger man than her.

I am sure that Mr Sanson did not believe on reasonable grounds that KJ was consenting at that time that the sexual intercourse occurred?

62. I will consider whether Mr Sanson could not reasonably have believed KJ was not consenting. If I am sure that a reasonable person standing in Mr Sanson's shoes would not have believed KJ was consenting, that would be enough. This is to be assessed at the time of the sexual intercourse.

63. The evidence in relation to consent is relevant and applicable to this issue. I have accepted KJ's evidence that the sexual intercourse was not consensual. On that basis, no reasonable person in Mr Sanson's shoes would have believed KJ was consenting. According to KJ's evidence, she was told they were going to have sex, she was grabbed and forced into her sleeping house and her legs were forced open. No reasonable person would have thought KJ was consenting given the circumstances when prior to sexual intercourse, she was resisting by closing her legs. KJ lacked agency in the situation, and was overpowered by a man who is physically a lot bigger than her.

64. Therefore, I am sure that a reasonable person standing in Mr Sanson's shoes would not have believed that KJ was consenting at the time of the sexual intercourse.

Result

65. I find Mr Sanson guilty of the charge of sexual intercourse without consent.

DATED at Port Vila this 1st day of April 2026

BY THE COURT

name
.....
Justice M A Mackenzie

