

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

Criminal  
Case No. 20/2607 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** John Kahau  
Defendant

*Date:* 10<sup>th</sup> May 2021  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr P. Toaliu for Public Prosecutor  
Mr G. Takau for the Defendant

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**Sentence**

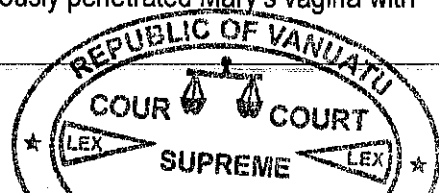
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A. Introduction

1. Mr Kahau pleaded guilty to 3 charges of domestic violence and 2 charges of sexual intercourse without consent.

B. Facts

2. The domestic violence charges relate to compelling Mr Kahau's wife Mary to submit to having sexual intercourse with his dog.
3. She believed that she and her husband were about to have sex, when he asked her to bend over in a small area of bush near to their home in June 2019. She was surprised when Mr Kahau grabbed their dog and assisted it to penetrate her vagina from behind. Mr Kahau helped the dog thrust in and out of her vagina until the dog ejaculated inside her. Mary cried and questioned why Mr Kahau had done that. He responded that it was his expression of love for her. [Charge 1]
4. Later that same month, Mr Kahau told Mary to accompany him to the beach so they could have sex. He asked her to bend over again and then assisted the dog to again have sexual intercourse with Mary. While that was taking place, Mr Kahau simultaneously penetrated Mary's vagina with

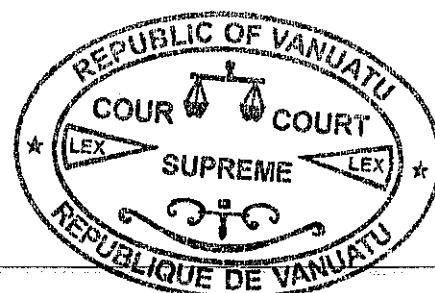


his penis. Mary did not like this and cried while objecting. Mr Kahau then withdrew but continued to assist the dog to the point of ejaculation. [Charges 2 and 4]

5. In December 2019, Mary went to the beach to do some laundry. Mr Kahau went with her and they went down into a hole in the rocks. He then grabbed Mary and told her he was again going to give her to their dog. Mary started to cry and questioned why. Mr Kahau told her not to cry or be resistant as this is what shows their love. He insisted she allow the dog to lick her vagina. Mr Kahau then forced Mary to kneel down and he directed the dog to lick Mary's vagina. After that both the dog and Mr Kahau had sexual intercourse with Mary. Both ejaculated inside her vagina. Mary was crying throughout. [Charges 3 and 5]
6. When interviewed by the police Mr Kahau stated that he had not forced Mary to give herself to the dog; she had willingly participated.

C. Sentence Start Point

7. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
8. The maximum sentence for sexual intercourse without consent is life imprisonment. The maximum sentence for domestic violence is 5 years imprisonment.
9. There are aggravating factors to this offending, which include:
  - The repeated nature of the offending, over a 6-month period;
  - The gross breach of trust;
  - The planning and pre-meditation involved;
  - The indignities perpetrated;
  - The unprotected nature of the sexual intercourse exposing Mary to sexually transmitted disease; and
  - The controlling and entitled attitude exhibited at the times of the offending, and subsequently, as evidenced by his pleading only when faced with the inevitability of his wife giving evidence against him.
10. There are no mitigating aspects of the offending.
11. I adopt a sentence start point of 10 years 6 months imprisonment, taking all the 5 charges into account concurrently on a global basis.



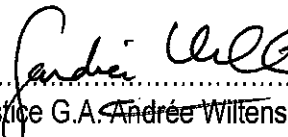
D. Personal Factors

12. Mr Kahau pleaded guilty to all the charges on the morning of trial. Although this was not at the earliest available stage of the proceedings, the pleas indicate that he has accepted his wrongdoing. It has saved Court time and expense. More significantly, it eventually spared Mary the ordeal and public embarrassment of having to testify against her husband. Had the pleas been entered at an earlier stage, the mitigation available for that factor would have been greater. However, Mr Kahau did not plead until the witness had been brought to Court and placed under the pressure of likely having to testify. For Mr Kahau's pleas I reduce the sentence start point by 15%.
13. Mr Kahau is now 54 years old. He was married, but Mary has left him. He has 7 children, aged between 20 and 9 years old, to care for. He is a subsistence farmer. He is a Chief in his community, and is in good standing with the community. He has no previous convictions and claims to be remorseful.
14. I do not accept the claimed remorse. Mr Kahau indicated to the PSR writer that he was concerned that Mary was having an extra-marital affair, even though she denied that at a family meeting. That seems to be his explanation for his callous and cruel offending.
15. He has no previous convictions. In cases of sexual offending, the Courts have repeatedly stated that a lack of previous convictions is of limited value as mitigation.
16. Mr Kahau has arranged for an elaborate custom reconciliation ceremony by family members on his behalf – he was unable to participate due to his incarceration. The gifts included a cow, a pig, kava and mats. Mary acknowledges the ceremony occurred.
17. For Mr Kahau's personal factors, I reduce the sentence start point by 6 months.

E. End Sentence

18. Mr Kahau is sentenced to 8 years 4 months imprisonment. I impose that sentence on the lead charges of sexual intercourse without consent, namely charges 4 and 5. In respect of the domestic violence charges, namely charges 1, 2 and 3, I impose end sentences of 4 years imprisonment.
19. All the sentences are to run concurrently as from 12 April 2021.
20. The end sentences will not be suspended. This offending is far too serious and due to the nature of the offending, suspending any or all of the sentence would be simply inappropriate. The relevant authority in this regard is *PP v Gideon* [2002] VUCA 7.
21. Mr Kahau has 14 days to appeal the sentence.

Dated at Port Vila this 10<sup>th</sup> day of May 2021  
BY THE COURT

  
Justice G.A. Andrée Willens

