

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

**Criminal**  
**Case No. 24/2714 SC/CRM**

**BETWEEN: Public Prosecutor**

**AND: Clet Tabiwai Molsul**

*Date of Plea: 16th day of September, 2024*

*Date of sentence: 19<sup>th</sup> day of September, 2024*

*Before: Justice E.P Goldsbrough*

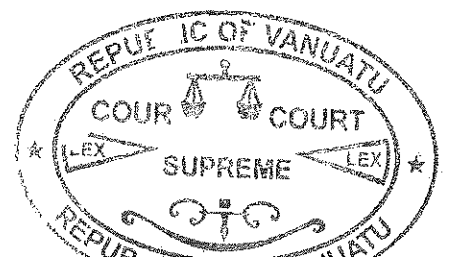
*In Attendance: Tasso, M for Prosecution  
Garae, Jr for Defence*

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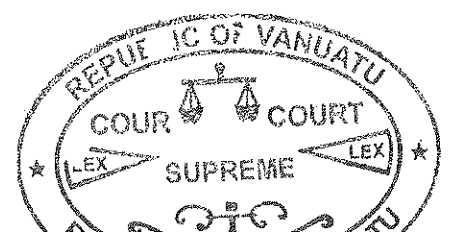
**SENTENCE**

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1. Clet Tabiwai Molsul, you have pleaded guilty to two offences of committing an act of indecency in the presence of a child under 15 years of age and one offence of committing an act of violence against a family member. The first two offences are against section 98A of the Penal Code and the latter against section 10 of the Family Protection Act.
2. The facts were read out to you in both English and Bislama, and counsel on your behalf confirmed that you agreed with everything said about the three offences, except two sentences about the final offence. You seem to make it clear that you did not insist that the victim return if she did not want to and that you had not become strict with her because of continuous abuse.
3. Your first offence was in 2015 when your victim was 7 or 8. You reached into her blouse and touched her breasts. She recalls that this was done more than once and that she reported your behaviour to your wife, who scolded you for it, but no more than that. She describes how she lived in constant fear of you at this time. This is in the statement of facts your counsel said you agree with.

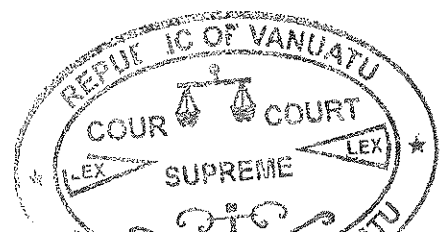


4. Your wife is the victim's deceased mother's younger sister, and so you are her uncle, and she was brought up in your family because her mother died too young.
5. In 2022, you were abusing her again by fondling her breasts. On this occasion, you went further than just touching her breasts from inside her clothing but removing her breasts one by one and fondling and either biting or kissing them. Either way requires not only skin-on-skin contact but physical contact with your mouth. The statement of facts, with which you agree, sets out how the abuse went on between 2015 and 2022.
6. The incident of domestic violence took place in 2024. As she was having her hair braided by your son, you intervened and cut her hair from her head against her will in an attempt to express your anger at the act of braiding. It seems you regarded such an act as against your custom and so acted to stop it. Your victim decided that she had suffered more than enough abuse from you and ran away from home. She found refuge with a relative and the courage to report you to the police.
7. This Court has benefitted from submissions from your counsel, from the prosecution and a pre-sentence report prepared by the Probation Service. The Court is grateful for those reports.
8. The indecency offences carry a maximum penalty of ten years imprisonment, and the domestic violence offence carries five years imprisonment. The maximum penalty and the details of your offences help the Court decide on the correct penalty.
9. That you were in the position of a parent to this child makes your offences more serious, as does the difference in your ages. You committed these offences where your victim should have felt safe and when she was far too young to experience such abuse. You repeated the abuse. After being scolded by your wife, you did not stop this behaviour. Most importantly, you took advantage of her immaturity. Finally, you used a weapon against her when you cut off her hair. Your offending began in 2015 and only stopped in 2024. That is a long time to live in fear, especially for a girl who is only eight.
10. A start sentence for all these offences should be three years imprisonment. Your starting point is higher than other sentences imposed today because your offences are more than



just exposing yourself but involve touching, caressing and kissing or biting the breasts over a sustained period.

11. Your sentence should be reduced to allow credit for your admissions made at the first opportunity. That allowance will be one-third. Your sentence comes down to two years imprisonment.
12. You have no previous convictions, something else that this Court will take into account. You have also spent from 10 July 2024 to 12 August 2024 in pre-sentence custody. You will be given credit for that period of just over one month. For these factors that are personal to you, the start sentence is reduced to twenty months of imprisonment.
13. It is essential for this Court to consider if this sentence of imprisonment can be suspended. Suspension of a sentence is to be considered by considering the circumstances, particularly the nature of the crime and the offender's character. Suppose the Court decides it is inappropriate to make him or her suffer an immediate imprisonment. In that case, it may, at its discretion, order the suspension of the execution of the imprisonment sentence imposed upon him or her on the condition that the person sentenced commits no further offence.
14. These crimes are serious. Their effect on the victim was substantial. It led to her running away from home, having left her in fear over many, many years. It is said in defence submissions that Clet Tabiwai Molsul is remorseful. This must be contrasted with his statement to the probation officer that his offending was either accidental when he was trying to wake her or because of the type of clothing she wore. Both suggest a denial of responsibility inconsistent with genuine remorse.
15. There has been a customary reconciliation. This information comes from the accused and is not confirmed by meeting minutes. Another chief says that the victim's family accepts the reconciliation, but this is not confirmed by any of the family. The accused himself is a member of the body of chiefs that would determine the reconciliation. No information is available to demonstrate that the customary reconciliation was sufficient or genuinely undertaken, given the accused's statements to the probation officer blaming the victim. Did



he make the same or similar statements at the reconciliation meeting, and if he did, what response was there? Does it assist the victim when the defendant's wife, who did nothing to stop the offending and protect her niece, receives the same custom red mat as his victim?

16. Submissions are made to the effect that the defendant's wife, who relies on her husband's support, will be disadvantaged if he receives a custodial sentence. She is said to suffer a medical condition.
17. Considering all of the above, this Court concludes that imposing an immediate custodial sentence is appropriate. The offences are too serious to order otherwise. The immediate punishment of imprisonment ordered is five months, and the balance of the twenty months, i.e. fifteen months, is suspended for two years. The same sentence is imposed for the three offences, all ordered to run together.
18. Clet Tabiwai Molsul, you have the right to appeal against this sentence, but you must do that if you choose to exercise your right within 14 days. This Court also finds that section 50 of the Penal Code does not apply as you have been remanded in custody for these offences awaiting trial.

**DATED at Port Vila this 19<sup>th</sup> day of September, 2024**

**BY THE COURT**

*E.P. Goldsbrough*

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E.P Goldsbrough

Judge of the Supreme Court

