

**PUBLIC PROSECUTOR**

-v-

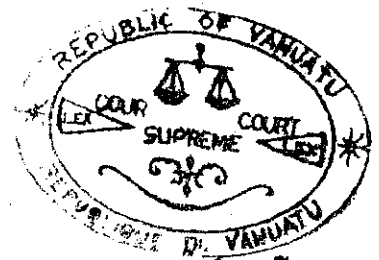
**YASSU UTUT**

**Coram:** Justice Tuohy  
Mr. Alain F. Obed for Public Prosecutor  
Mr. Yawha for Accused

**Date of Sentence:** 22 November 2006

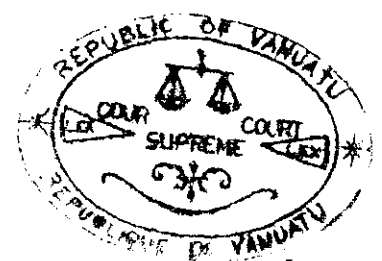
## **JUDGMENT**

1. Yassu Utut you appear for sentence on 8 counts of incest committed over the period of 11 January 2005 to 13 May 2005. The victim is your adopted daughter, she was 23 years old. She is the natural daughter of your wife and became a member of your family together since she was 4 years old. The acts of incest and sexual intercourse took place in the gardens and in the sleeping room when your wife was away. You told her that you would kill her, if she told anyone about what was happening but eventually after she became pregnant to you, she did tell her mother and the police were informed. Unfortunately I was not provided with the victim impact report as should have been done but I am sure that the young woman involved will be very badly affected by the whole experience of this happening to her. Experience shown that the effects of incest on the victim and on the family last for a very long time.
2. You admitted the offending when you were faced with it by the Police. You have pleaded guilty immediately. You have attempted to initiate a custom



- reconciliation ceremony but not surprisingly, the gifts of compensation have
- been refused by your wife and your adopted daughter. You have two other children and I am told that you are a leader in your village community. You
  - have expressed remorse for what you have done.
3. Your counsel says that this started when there was a period of separation from your wife but the summary of facts and police statements indicated that on some occasions this happened when she had gone out to the market to sell produce. So it seems that she was living with the family at least of some of the time. You admit that you did this for sexual gratification that was the reason why you offended.
  4. Unfortunately there have been many cases before the Courts in Vanuatu where persons have been sentenced for incest and some of these cases have been cited to me by counsel on both sides. The maximum penalty for incest is 10 years imprisonment.
  5. The Court of Appeal in a case called Public Prosecutor v Gratien Bae Criminal Appeal Case No. 3 of 2003 has set out the principles which the Courts should follow in sentencing persons for the crime of incest. The Court of Appeal said this:

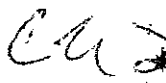
***“The principles are simple. Parents who use their children for their sexual gratification will go to prison. It is almost impossible to imagine circumstances in which that will not be the necessary response. This Court would anticipate that it will only be in the most truly exceptional circumstances, which are clearly and unequivocally demonstrated to exist, that this will not apply”.***



6. The Court went on to say that 3 to 5 years imprisonment in that case which involved 1 charge of incest would not have been out of line. \
7. I have read the other cases which were referred to by counsel, the very similar case of Public Prosecutor v Enock Loli Criminal Case. No. 8 of 2006, Public Prosecutor v Marcus Gabriel Criminal Case No. 9 of 2006, Public Prosecutor v Solomon Rarip Criminal Case No. 73 of 2005 and I have noted the sentences which were imposed on the defenders in those various cases.
8. The aggravating features are the numbers of offences this went on for months. The breach of trust involved in a father doing this to a child and also the threat to her to keep quiet or else.
9. On the credit side, I will take into account and give you credit for your immediate plea of guilty. The lack of any previous convictions and the remorse that you have shown.
10. I consider that the starting point for sentencing should be 6 years imprisonment but you receive a full reduction of 1/3 of that so that the final sentence will be 4 years imprisonment. This is the sentence which both lawyers have submitted that is the right one. I have listened to their submission but of course I have reached my own judgment on the matter and my judgment is the same as what they have submitted.

DATED at Port Vila on 24 November 2006

BY THE COURT

  
C. N. TUOHY  
Judge

