

**PUBLIC PROSECUTOR -v- JACK SAM**

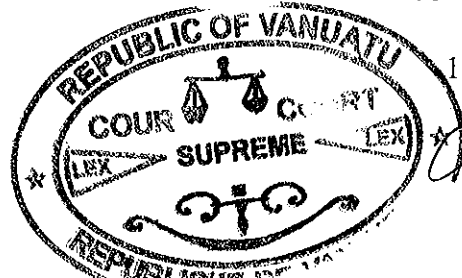
**Coram:** *Chief Justice Vincent Lunabek*

**Counsel:** *Mr Tristan Karae for the Public Prosecutor  
Ms Bertha Pakoasongi for the Defendant*

**SENTENCE**

Mr Jack Sam, this is your sentence. On 3<sup>rd</sup> June 2010, you were found guilty and convicted of one count of sexual intercourse with a young woman of 21 years of age without consent, contrary to section 91 of the Penal Code Act [CAP.135]. Section 91 of the Penal Code provides that *"No person shall commit sexual intercourse without consent. Penalty: Imprisonment for life"*. This is a serious offence as reflected by its maximum penalty of life imprisonment Imposed by law.

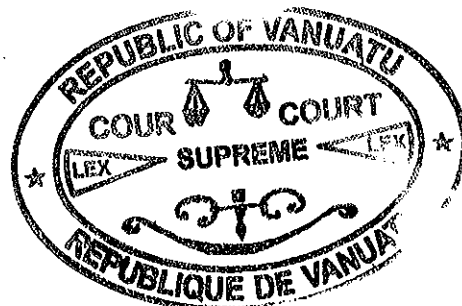
There is no need for me to go through the detailed facts of your offending leading up to your conviction on 3<sup>rd</sup> June. The brief facts which is accepted by your lawyer on your behalf are this. The incident occurred on 24 December 2009 at Fresh Wota 4 in the night. Before the incident, the complainant was at Ohlen having pineapple juice mixed with alcohol with Larisha Kapalu, Roy Sam, Philip Tupas and yourself. This was about 6:00pm. At about 7:30pm to 8:00pm, the complainant and Larisa decided to go to the complainant's older sister's house at Fresh Wota and so they left Ohlen for Fresh Wota. You followed them with the thinking that they would end up at the Trader Vic's Night Club. On the way, you and the two young women met Tom Kalo. Tom Kalo got you another drink. The complainant drank that bottle of alcohol with you and Tom Kalo. She got drunk. She remembered Larisha, Tom, you and herself crossing the soccer field at Fresh Wota 4 area. Going further Fresh Wota area, she could not remember anything else. Tom Kalo went to his uncles' house at Fresh



Wota. You followed the complainant and Larisha to the complainant's sister for a short time. You and the two young women came out from the house. Larisha followed you and the complainant. You had sexual intercourse with the complainant without her consent underneath a road market table at Fresh Wota 4 area. Larisha saw you were having sexual intercourse with the complainant underneath a road market table at Fresh Wota 4 area. The complainant was too drunk and she did not know that you had sexual intercourse with her. Larisha saw the complainant naked. The complainant was lying on her back while you were having sex with her. She was too drunk she did not know you had sex with her and she did not know that you had removed her clothes. She did not know that she was fully naked and lying underneath the road market table. You were arrested and cautioned at Port-Vila Police Station. You willingly made a statement to the police. You willingly made admissions before the police officers Davis Saravanu and Gloria Charlie that you had sexual intercourse with the complainant girl without her consent. You told officer Saravanu that you committed the act of sexual intercourse without consent on the complainant because you were too drunk.

When I consider the sentence I am going to impose on you, I must inform you that the Court on behalf of the community condemns your offending behaviour and that it is intolerable and unacceptable to have sexual intercourse with a woman without her consent. It is a very serious crime that is why the law prohibits it and set a maximum penalty of life imprisonment in section 91 of the Penal Code Act.

The offence of sexual intercourse without consent calls for an immediate custodial sentence. It will only be in very rare exceptional circumstances that non-custodial sentence will be considered. An imprisonment sentence is necessary in this type of serious sexual offending for a variety of reasons. First, to mark the gravity of the offence. Second, to emphasize public disapproval. Third, to serve a warning to others. Fourth, to punish the offender like you and the last but not the least is to protect women in the community (**PP v. Scott and Tula** [2002] VUCA 29; **PP v. Kalsale** [2007] VUCA 11; **Simeon v. PP** [2008 VUCA 9; **PP v. Hinge** [2008] VUCA 30; **PP v. Koata** [2009] VUCA 36).



I have seen, read and considered the submissions made by the prosecution and submissions made by your counsel on your behalf. There is no pre-sentence report provided by the probation office for consideration in your sentencing. I have then adjourned the submissions for a short period to allow your lawyer to obtain information about your character and personal history.

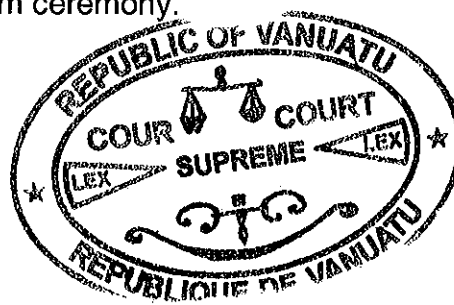
The appropriate sentence of this type of offending is between 5 and 8 years imprisonment. In the present case, the gravity and circumstance of your offending include the following aggravating features:

1. The offending occurred in the night (and after the lights on the public streets were off).
2. The offending occurred by the effects of alcohol on the complainant;
3. which caused the complainant's physical or mental incapacity to consent for sexual intercourse.

I sentence you to 7 years imprisonment after I take into account of the aggravating factors I refer to above.

In mitigation, I am informed by your lawyer that you are now 22 years of age. You are single and you have a child who is under the care of your parents on Tanna Island. Your village is Wainlapen on Tanna. You attended school till class 6. You moved from Tanna and you came to Port-Vila and you work as a security officer in a shop. You plan to earn enough money before you return to your village and build a house. You are a first time offender and you have no previous convictions on your records. I reduce your sentence to 6 years imprisonment to reflect the mitigating factors I mention above.

I am further informed by your counsel that a custom ceremony had been performed by your chief on your behalf as you were in custody sometimes in early January 2010. The custom ceremony was made to the victim, her family and chief. The following items were given to the complainant and accepted by her and her chief: 2 chickens, 2 mats, 4 yards of calico, 8kgs of kava, 10kgs of rice. I give you an allowance of 3 months in relation to the custom ceremony.



Although no assistance is provided from the prosecuting counsel or your counsel, the Court file records reveal that you were remanded in custody on 25 December 2009 and you are kept in custody until you are sentenced today 21 July 2010. This represents a period of 6 months and 26 days pre-custodial time spent. It is a significant period.

As you are a first time offender and you have no previous conviction in your records and there is no complaints made against you while you served your pre-trial custodial sentence, I consider some allowance in terms of the Withford principle should be given to you. (See **Withford v. Public Prosecutor** [2007] VUCA 20; Criminal Appeal Case No.07 of 2007 (30 November 2007); see also the recent Court of Appeal Judgment in **Koilo v. Public Prosecutor** [2010]; Criminal Appeal Case No.20 of 2008 (16 July 2010)). I consider that rather than I deduct the 6 months and 26 days pre-trial custody, a 12 months allowance would be appropriate and fair.

You are therefore sentenced to 5 years and 9 months imprisonment. You shall serve this term of imprisonment with immediate effect.

You have a right to appeal this sentence within 14 days from today's date if you are unsatisfied with this sentence.

**DATED at Port-Vila this 21<sup>st</sup> day of July 2010**

**BY THE COURT**

**Vincent LUNABEK**  
Chief Justice

