

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

Criminal Case No. 79 of 2010

PUBLIC PROSECUTOR
V.
ANDERSON MOFET

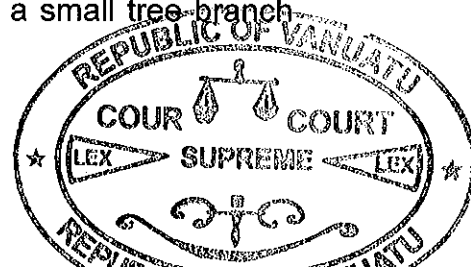
Coram: *Justice D. V. Fatiaki*

Counsel: *Mr. P. Wirrick for the State*
Mr. V. Henzler for the Defendant

Date of Sentence: *12 November 2010*

SENTENCE

1. On 15 September 2010 the Defendant was convicted on his guilty plea to 2 offences: Indecent Act in a Public Place contrary to section 94 of the Penal Code, and, Threats to Kill contrary to section 115 of the Penal Code.
2. The Defendant also admitted the facts outlined by the prosecutor which told of how the Defendant crept up behind 2 female students from a nearby school who were resting at a plot of vacant land over looking Fatumaru Bay. The Defendant had his head and face covered with a shirt and was holding a belt knife. As he neared the girls the Defendant pulled his trousers down to his knees exposing his penis and threatened to cut the girls if they did not perform oral sex on him.
3. The 2 girls were naturally terrified of the Defendant and ran away towards the edge of a nearby cliff. The Defendant continued towards the girls and in a desperate attempt to escape from the Defendant both girls jumped off the edge of the cliff, a height of between 15 to 20 metres, to the ground below. Both girls were seriously injured on landing on the rocky ground. On seeing this the Defendant fled from the scene.
4. The more seriously injured girl suffered a fracture to her right thigh bone, a fracture to her left ankle bone and multiple soft tissue wounds and scratches to her body. She underwent surgery and her leg was placed in a plaster cast. The other girl whose fall was broken by a small tree branch



suffered pain and swelling to her right hip and a deep 5cm lacerated wound to her forehead.

5. The Defendant was located the next day and was arrested by the police. He freely admitted his actions towards the 2 girls to the police when questioned about the incident.
6. I have received a pre-sentence report on the Defendant and highlight the following personal characteristics:
 - The Defendant is 33 years of age, living in a steady defacto relationship with 3 young children of his own aged 9 years, 6 years and 18 months;
 - He left school at secondary level and is the sole bread winner of his family which he supports from his income as a caretaker/gardener. He has, since the incident, lost his job and he now helps his wife selling kava;
 - He is a first offender and he fully cooperated with police investigations;
 - He was remanded in custody for 1 month and a day and has stayed out of trouble since his release on bail;
 - He is remorseful for what he has done and asks the Court to forgive him;
 - He has offered to perform a kastom reconciliation ceremony of *Klinim Fes* to the 2 girls and their families but it was not accepted;
7. To the Probation Officer the Defendant said that the incident occurred because he was unable to control his sexual desires when he saw the girls. He now feels ashamed at his immoral and "stupid" actions.
8. Prosecuting counsel highlights the aggravating factors in the case such as the use of a belt knife to threaten the girls; the fact that there were 2 girls involved; and the serious injuries that the girls suffered whilst trying to escape from the Defendant and counsel urges an immediate custodial sentence of between 1 and 2 years imprisonment.
9. Defence counsel lays emphasis on the mitigating factors in the case including the Defendant's guilty pleas and the fact that he is a first offender with a young family to support and counsel urges a suspended prison sentence.



10. Anderson Mofet I have carefully considered counsel's written submissions as well as your pre-sentence report. Your actions and behaviour on that day were truly cowardly, indecent and disgraceful. You are a mature man in a steady relationship with young children of your own. There is no excuse whatsoever for you not being able to control your sexual urges and you must know that you are very fortunate that you are not facing a more serious charge which you would have, had one of the girls died. You saw what happened to the girls and you fled without any attempt to help them or any enquiry as to their condition.
11. Having said that I accept that the Penal Code recognises that Indecent Conduct which carries a maximum penalty of 2 years imprisonment is less serious than Threatening to Kill a person which carries a maximum sentence of 15 years imprisonment.
12. I am satisfied that the circumstances of this case warrants a custodial sentence not only to mark the gravity of the Defendant's behaviour but also to deter other men from similar behaviour. The use of a belt knife to threaten the 2 young girls is also a serious aggravating factor.
13. You may not have expected the girls to react in the life-threatening manner that they did but you, Anderson Mofet, are entirely responsible for what occurred. No doubt your actions will haunt you for sometime to come and will serve as a salutary reminder of your disgraceful behaviour which could have cost a life.
14. Anderson Mofet, the sentence of the Court is as follows:
15. On **Count 1**: Indecent Act in a Public Place I impose a sentence of 6 months imprisonment and on **Count 2**: Threats to Kill I impose a concurrent sentence of 12 months imprisonment making a total effective sentence of 12 months imprisonment.
16. I turn next to consider whether or not this is a suitable case for the exercise of the Court's powers under **Sections 57 and 58** of the **Penal Code** and after considering the circumstances of the case, the nature of the crimes committed and the character of the Defendant I am satisfied that this is an appropriate case for the suspension of the whole of the sentence of imprisonment for a period of 24 months.
17. Anderson Mofet, what this sentence means is that you will not have to go to prison today but if you commit and are convicted then you will have to serve this sentence of 12 months imprisonment in addition to any other sentence you may receive for your re-offending.
18. In addition Anderson Mofet you are sentenced to 100 hours community work and to undergo a 12 months sentence of supervision.



19. You are warned that failure to perform your community work sentence or to abide by the conditions of your supervision sentence as directed by the Probation Officer is an offence punishable by imprisonment for 3 months.
20. Anderson Mofet, you are a mature man and you must consider yourself extremely fortunate that the Court is not sending you to prison today. I am giving you this last chance to reform yourself and become a law abiding member of the community. If you do that for the next 24 months I am confident that you will not return to Court again. If however you abuse this opportunity and the Court's leniency then you can expect little sympathy for the Court in future.
21. You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Port Vila, this 12th day of November, 2010.

BY THE COURT



**D. V. FATIAKI
Judge.**

