

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

Criminal Case No. 76/ 2012

PUBLIC PROSECUTOR

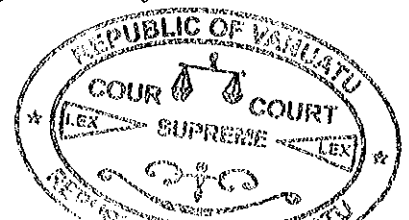
V

NIKAHI JOHN

Hearing: 28 September 2012
Before: Justice Robert Spear
Appearances: Leon Malantugun for the Public Prosecutor
Jacob Kausiama for the defendant

SENTENCE

1. John Nikahi you are for sentence having pleaded guilty to one charge of having sexual intercourse unlawfully with a young girl who was, at that time, only 9 years of age. She is your daughter.
2. The facts outlined by the prosecution are not disputed. Your daughter was on her way to the shop to buy rice for the family. However, you suddenly decided to use her for your own sexual gratification. There was indeed a suggestion that this was not the first time that this had happened. You told her that the two of you hadn't done it for a long time and then you took her in to the bush. You kissed her, laid her on the ground, removed some of her clothing and then inserted two of your fingers into her vagina. After a short period of time, you started licking her vagina. Matters then progressed as it was obviously your intention to have full sexual intercourse with her. You tried to insert your penis into her vagina. However that did not prove to be possible although it is clear that penetration took place to some degree. You only stopped when the complainant complained of pain and started to cry.
3. You then endeavoured to load your young daughter with guilt. In an effort to dissuade her from either telling her mother or the police, you told her that "*if you tell your mother or the police they will take me away and I will not be able to pay your school fees*".



4. However, the complainant told her Mother but it does not appear that the Police were involved at that time.
5. A few days later, you repeated your abuse of your daughter. Again, you kissed her, you inserted fingers into her vagina and you try to insert your penis into her vagina. Again the young girl went and complained to her mother. She was then taken to the hospital and medically examined.
6. The clinical inspection of the complainant both at the hospital and also earlier by her mother and grandmother revealed that she was bleeding from her vagina.
7. An attempt at a custom reconciliation ceremony was made within your community and you were ordered by your chiefs to pay a fine consisting of 2 pigs, 2 kava plants and 4 mats. That is all well and good but, of course ,what you have left with your daughter is a lifetime of pain and suffering. That is not necessarily physical pain but it most certainly is emotional pain. You have split your family. You have destroyed the relationship of trust that would normally exist between a father and a daughter. There is not just one victim here, there are many particularly given that you have 2 daughters and a son and at the time the pre-sentence report was prepared your wife was pregnant.
8. Mr Kausiama recognises that a sentence of imprisonment is inevitable. This of course is a serious offence carrying with it a maximum term of imprisonment of 14 years. This is at the upper end of the level of seriousness for offending of this nature. There was a shocking abuse of trust in that you used your dominant position within the family and your superior strength to force this young girl to subject herself to your advances. This happened on two occasions. The charge is be taken as being representative of the two events outlined in the summary of facts.
9. There is the significant age difference between you at 44 and your daughter at 9 years of age. That aggravates this offending substantially. There is no difference between this particular offending and offending charged as sexual violation without consent. While that latter charge may have a higher maximum sentence, it of course can involve far more aggravating features than exist here. But this is a very serious form of offending of its type as there can be no question that this little girl was able to make a mature and



informed decision as to whether to agree to the act or not. In any event her consent is irrelevant but of course there was no possibility that she would have been able to give true consent to what you were doing.

10. I propose to approach sentencing on the same basis as if this was a charge of sexual intercourse without consent. I will adopt a starting point of 5 years imprisonment and I propose to lift that by 3 years to reach an offending end point of 8 years before giving consideration to mitigating circumstances. The aggravating features are of course the nature of the offence itself involving you as a 44 year old and this little girl as a 9 year old. So the age difference is significant. There was a shocking abuse of the trust as she is your daughter yet you took advantage of her. Additionally, the charge is representative of two separate occasions where you sexually abused this little girl.
11. While a victim impact statement is not available in any significant way, the experience of the Courts is that offending of this nature has a lasting and harmful effect upon young girls. Almost invariably, they find it difficult to form relationships of trust with men as they move through into adolescence and subsequently into adult life. Particularly as you live in a village where community and family are so important and the community lives in such close circumstances, the complainant's ability to enjoy a quality of life that would otherwise have been available to her will be reduced substantially.
12. As to mitigation, I note that in all other respects you appear to have been a good hard working man in the community. You have found work on occasions. Of concern is that you still do not appear to have any insight into the effects of your offending nor does it appear that you are remorseful for what you had done. That sits uneasily besides the fine imposed by your chiefs by way of custom reconciliation.
13. The assessment of the experienced probation officer who interviewed you is that you felt unable to control your sexual thoughts in an appropriate way. That is a weak excuse; indeed it is no excuse at all.
14. The sentence of this Court must be one that sends the consistent and strong message out that the Courts will act firmly with those who sexually abuse against the young and the vulnerable. That is what occurred here. This is necessary to mark society's outrage that



the young and vulnerable members of its community are abused in this way. Also, to send the equally strong message that it is simply not worth committing this type of offence. It must be clearly understood that those who abuse young girls will go to prison for a long period of time. There is no justification and there is no excuse for this type of offending in any civilised society.

15. The absence of remorse is of concern and it means that I struggle to identify how I can reduce this sentence to reflect good character and remorse because that does not appear to be apparent. In the end, I can only give you credit for your early guilty plea which has saved this young girl the ordeal of having to come to Court. It is acknowledged that the guilty plea was entered at the first available opportunity.
16. You are sentenced to 5 years and 4 months imprisonment which is two thirds of the offending end point of 8 years imprisonment. That sentence will be deemed to have commenced on 27 August 2012 being the date that you are first taken into custody.
17. You have 14 days to appeal this sentence if you do not accept it.

BY THE COURT

