

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

TILEYA TAMATA

Mr Justice Oliver A. Saksak

**Mr P. Wirrick for Public Prosecutor
Miss J. Tari for Defendant**

**Date of Hearing: 8 November 2012
Date of Sentence: 10 December 2012**

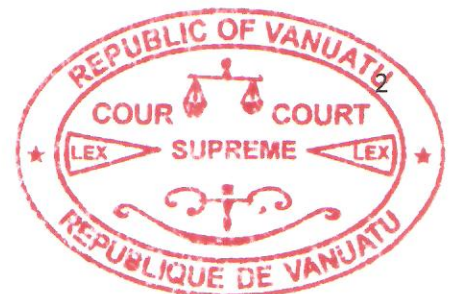
SENTENCE

1. Tileya Tamata you were charged with one count of Incest contrary to section 95 of the Penal Code Act Cap 135 (the Act). You pleaded guilty to the charge on 4 October 2012.
2. This is a serious offence and the maximum penalty is 10 years imprisonment.
3. The complainant is your daughter. She was 16 years old at the time of the offence occurring in about February 2011. You have separated with your defacto wife since her birth. Since then the complainant was living with her mother. In February 2011 the complainant visited you at Kamewa Primary School. She was three months pregnant at the time. One night after she had gone to sleep and after you had drunk kava you then approached her, woke her up and demanded to have sex with her. She hesitated at first and reminded you of being her father. You persisted in your request. The girl then turned to lie on her back. You then lifted her skirt up and removed her underwear. You then spread her legs apart and proceeded to have sex with her. You ejaculated into her and slept with her



on the same bed until morning. The complainant then returned to live with a relative at Tasiriki for around 1 month. Her step father then took her back and a report was made to the Police on 4 May 2011.

4. You have accepted those facts.
5. The Court now considers appropriate sentence. In light of the case of Public Prosecutor v. Bae [2003] VUCA 14; Criminal Appeal Case 3 of 2003 it is clear that the only appropriate sentence the Court will impose is to be a custodial sentence.
6. You are a teacher teaching class 6 at Kamewa Primary School. You are 39 years old. You separated with the complainant's mother and are now married to another woman with whom you have 4 sons. The Head Mistress of the School has spoken well of you. However from the facts which you have accepted, it was you who initiated the actions which led to you having sexual intercourse with your daughter. It has been said in your Report that what you did was a mistake, however that cannot be true. It was a deliberate action with clear intention. You knew she was your daughter. Perhaps you did not know she was pregnant but that does not matter. As her father, you had a duty to protect her and not abuse her. She came to you as her father expecting care and fatherly love. She did not deserve to be abused by you.
7. For those aggravating features there will be an uplift of one year from the starting point of three (3) years imprisonment. You are therefore sentenced to 4 years imprisonment.
8. I consider mitigating this sentence due to the following mitigating factors –
 - (a) Being a first-time offender with no previous criminal record.
 - (b) Guilty plea at earliest opportunity.
 - (c) Delay of 15 months from Complaint to Arrest and Interview.



(d) Good cooperation with Police, admissions and willingness to perform custom reconciliation, showing remorse.

9. The first reduction will be in respect of your guilty plea which according to Gideon's case [2002] VUCA 7 attracts a 1/3 reduction which is calculated to be 1 year and 4 months. The second reduction will be made in respect to the considerable delays and the other three mitigating factors which attract a further reduction of 1 year and 3 months. The balance you have to serve at the Correctional Centre shall be 1 year and 5 months. The 2 weeks you spent in custody pending plea will be deducted accordingly from your balance of 1 year and 5 months term.

10. Your Sentence begins today 10th December 2012.

11. You have a right of appeal against sentence within 14 days if you so choose.

DATED at Luganville this 10th day of December 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

