

**PUBLIC PROSECUTOR**

**V**

**OBED HOSEA**

**Hearing:** *18 December 2012*

**Before:** *Justice Robert Spear*

**Appearances:** *Ken Massing for the Prosecution  
Andrew Bal for the Defence*

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**SENTENCE**

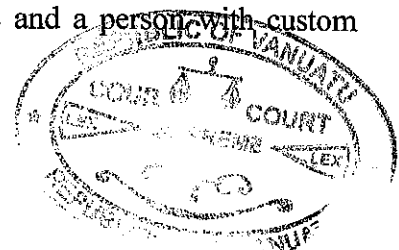
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**Six Years and Nine months' Imprisonment from 1 September 2012**

1. Obed Hosea you are for sentence on 2 counts of having sexual intercourse obtained through a false representation; essentially sexual intercourse without consent. There are 2 separate complainants involved in these complaints. Both are age 20 years of age. Both offences took place independently of the other.

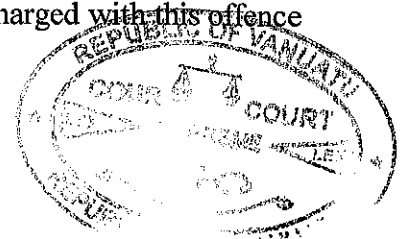
***The First Complainant***

2. On 13 June 2012 the first complainant's father went to Erakor Bridge and brought you over to his home to treat his daughter with custom medicine. You had proclaimed yourself as being something of a mystic and a person with custom



healing knowledge and ability. You explained to the father that you had had a vision that the first complainant's boyfriend had placed a spell on her and that she only had 3 days to live before she died. Unquestionably, this filled the first complainant and her family with horror as they were troubled that your prophesy (diagnosis or vision - call it what you will) would eventuate. They asked you to administer custom medicine. You said that you were prepared to do so and that you had leaves and a bottle of custom medicine with you.

3. You told the complainant to go inside the house. You also told her parents that they were to stay outside and that they were to ensure that no-one came inside as that might affect your treatment of her. You informed the family that you had experience with the custom treatment of women for that sort of problems that this complainant presented with.
4. Once inside the complainant's home, you told the complainant to take her clothes off and to lay naked on a mat. You then explained that you would remove the spell by rubbing leaves on her. You squeezed the leaves onto your hands and rubbed them inside her vagina. You also held her nipples and squeezed them. At one stage, you curiously suggested to her that a particular local boy should come and have sex with her but the complainant rejected that proposal out of hand. You then rubbed the leaves or medicine on your penis and pushed it inside the complainant's vagina.
5. The complainant is a simple village girl who was duped by your presentation (as being a custom healer) into believing that this was a method of treating the illness that was life threatening. After you have finished having sex with her (I note that you had the presence of mind to ejaculate outside the complainant) you left her but not before giving her further instructions. You told her that was now healed and that her problems with her boyfriend were over.
6. The complainant spoke with the police the next day and told them about your actions.
7. The Police interviewed you on 15 June 2012. You admitted having sexual intercourse with that complainant. You were eventually charged with this offence

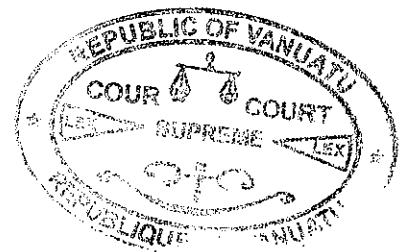


in early July 2012. However, around the same time of this offending, you committed an almost identical offence with another 20 year old woman.

### *The Second Complainant*

8. This complainant had been informed that you were someone who could perform local medicine to assist women who were trying unsuccessfully to have a child. This complainant was with a man but their attempts to have children were unsuccessful. Again, this was a 20 year old, unsophisticated, village girl. She believed that you were someone who could assist her with the problems that she and her partner were experiencing. She approached you for assistance.
9. On the first occasion that you dealt with her, you instructed her to go inside your house so that you could treat her. You told her to remove her pants and her underwear and to lie down on a mat facing upwards. You then took some leaves, squeezed them on your hands, and started rubbing the leaves around her vagina. You pushed leaves inside her vagina on 3 separate occasions.
10. The defendant came back to you for on-going treatment. You took her into your bedroom and you locked the door. You asked her to remove her pants and her underwear. She complied with your instructions and lay down on a mat. You rubbed some leaves onto her vagina as well as pushing them in and out of her vagina. You then took off all your clothes and had full sexual intercourse with her. You then had the gall to inform her after that she was now cured, that she would now be able to have a baby and that this was because of your treatment of her.
11. This matter did not come to the notice of the police immediately like the first charge. No doubt, the complaint was made after the second complainant heard that you had been prosecuted for what you had done to the first complainant. Additionally, and unsurprisingly, your medicine did not work and she is still without child.

### *Guilty Pleas*



12. You were initially charged with having sexual intercourse without consent in respect of the first complainant and to that charge you pleaded not guilty. However, closer to the trial date, the charge in relation to the first complainant was amended to sexual intercourse with that person's consent having been obtained by means of a false representation as to the nature of the act. You then pleaded guilty to that amended charge.
13. By that time, you had been committed for trial in respect of the second complainant and the charge levelled against you was also one of having sexual intercourse with consent having been obtained by means of a false representation as to the nature of the act. You pleaded guilty to that charge at the first reasonable opportunity.
14. I am prepared to accept, for sentencing purposes today, that you should be treated as having entered a guilty plea to each of the charges at the first reasonable opportunity. That was certainly the case in respect of the second complainant. You pleaded guilty in respect of the first complainant when that was amended to an appropriate description of the offence you committed and after you obviously received legal advice that you were unlikely to succeed in defending the initial charge. I note also that you had admitted that sexual intercourse took place with the first complainant when you were first interviewed by the Police. I can easily accept that you believed that you had a defence to the charge first laid as you understood that the first complainant had consented to your actions. However, and as reflected in the eventual charge, that consent was not a true consent as it was obtained by your false representations. In respect of the first charge that because the complainant in your view allowed you to have sexual intercourse with her then that provided you with a defence to the charge. Of course that would not be so.

### *Personal Circumstances*

15. You are 50 years of age. The probation officer says in the report that you are a married man with 5 children and that you reside at Erakor Bridge. You appear in

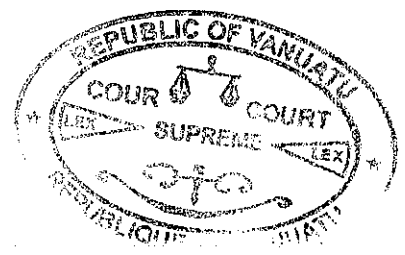
many respects to have been a hard working member of your community. You have some health difficulties with high cholesterol, diabetes and a heart complaint for which you are under medication. You have experienced a degree of blindness (as noted by the probation officer) while you have been in custody. That may well be attributable to your diabetes.

### *Sentencing Consideration*

16. However, what I need to tell you right now is that your offending must be addressed by a sentence of imprisonment. This is serious offending indeed and indeed this offending carries a maximum of life imprisonment. That, of course, is not the sentence that you will receive today but this is still serious offending of its type.
17. This was offending where you set out to take advantage of the innocence and the naivety of 2 relatively unsophisticated village girls who believed that you were someone who could help them. I consider that this put you in a position of trust over them and it is certainly the case that both of them trusted you when they were alone with you in the bedroom. That aggravates this offending significantly.
18. This is serious offending of its type.
19. I have heard and received submissions from both the prosecution and the defence. Indeed I have 2 sets of sentencing submissions from the prosecution with the first was prepared by another prosecutor just in respect of the first complainant and before the second charge emerged. Surprisingly, while that first submission appropriately refers to the leading authority of the *Public Prosecutor v. Scott*<sup>1</sup>, the concluding submission is that the eventual sentence should be based on a starting point of 5 years and then allowing a 1/3<sup>rd</sup> discount for an early guilty plea. I do not understand how that submission could have been formulated. Mr Massing's submissions are to quite the opposite degree. He refers to all the relevant authorities and submits that the starting point should be 15 years and

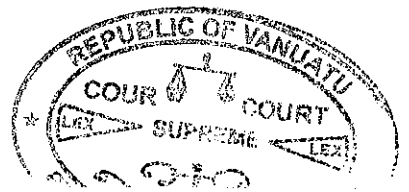
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<sup>1</sup> [2002] VUSA 29 CAO2/02 24 October 2002



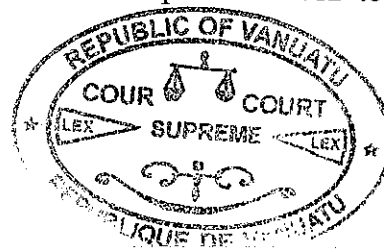
then lifted by 5 years because of the aggravating features before consideration is given to personal circumstances and the guilty pleas.

20. There is a world of difference between those two approaches although of course the earlier prosecutor's submissions were directed to offending involving only 1 complainant.
21. For the defence, Mr Bal accepts that while the Court must denounce the offending, it must also take account of such matters as your plea of guilty, that you have no previous convictions, that you co-operated with the police and you are remorseful for your actions. Mr Bal also sought to emphasise the matters that are mentioned by the probation officer - that you are the sole bread winner of your family involving 5 children and they are going to suffer because they are going to be separated from you.
22. It is said that you are remorseful. I consider that your state of mind could be more correctly or accurately be categorised as an acceptance that what you did was wrong and that you are sorry for the predicament that you now find yourself in. I have yet to pick up either from defence counsel's submissions or from the pre-sentence report any concern that you might have for the effect that your offending had or might have had on either of these two young women. Instead, Mr Bal pleads that I should take particular account of the fact that your family is going to suffer terribly because you will be separated from them. Well, you will be separated from them because of your actions and not because of any other factor. If your family suffers because you are away from them then they need to blame you and no one else.
23. I note that you indicated that you are prepared to undertake a custom reconciliation ceremony. You had plenty of time to organise this.
24. You were in custody initially from 15 June 2012 to 11 July 2012 when you were released on bail until your return to custody on 27 September 2012. In note that this amounts to a total of 108 days already spent in custody. This will mean that your sentence of imprisonment will start effectively from 1<sup>st</sup> September 2012 to recognise that time in custody. However, there was a period of over 2 months



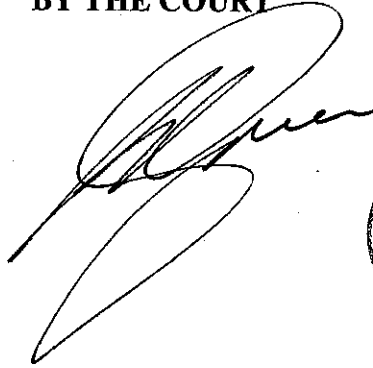
when you could have undertaken custom reconciliation and expressed your remorse at what had happened particularly as you admitted having sexual intercourse with them. So, I am not prepared to give any credit to you for your indication you are prepared to undertake custom reconciliation.

25. That you have no previous convictions is a neutral factor. It would aggravate your situation if you had previous convictions particularly of a similar nature. The absence of previous convictions is not to be considered as a matter of mitigation in the same way that good works and standing in the community can do. It does not appear that you have done anything remarkable in the community such that you could say - this entitles me to some extra benefit because of my reputation as a strong contributing member of the community. You have just been a normal person it would appear in all other respects. So, that is a neutral factor.
26. If I was dealing just with the offending involving the first complainant, I would have adopted a starting point of 8 years imprisonment. However, I have 2 complainants / 2 victims.
27. I have a victim impact statement for one of the complainants that speaks of the difficulties that she is experiencing. Both of the complainants will experience difficulties, particularly emotional difficulties, and that has come about because of your deceitful ways.
28. I am required however to have regard to the totality of the offending and so, with all the aggravating features with 2 complainants / 2 victims, the age difference between you and the complainants, and the deception that resulted in an abuse of trust, I consider that a offending end point of 12 years' imprisonment is appropriate. I am prepared to allow 12 months for your remorse although I have some concerns about it (as I have stated) and from that I give you full credit of 1/3<sup>rd</sup> against the sentence that would otherwise have been imposed upon you but for the pleas of guilty. That brings me to an end sentence of 6 years and 9 months imprisonment. That sentence appears appropriate for this offending and is the sentence of the Court. It is deemed to commence on 1<sup>st</sup> September 2012 to recognise the time that you have spent in custody.



29. You have 14 days to appeal this sentence if you do not accept it.

**BY THE COURT**

A handwritten signature in black ink, appearing to be a stylized name, possibly 'R. Green'.