

**PUBLIC PROSECUTOR**

- v -

**BOB KALOWAT**

*Coram: Vincent Lunabek, Chief Justice  
Mr Gregory Takau for the Public Prosecutor  
Mr Andrew Bal for the Defendant*

**SENTENCE**

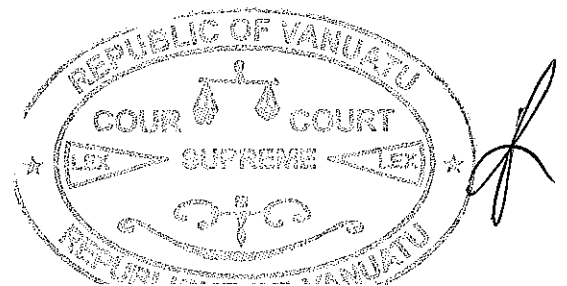
Bob Kalowat, you appear today for sentence. Initially, you were charged with one count of sexual intercourse without consent, contrary to s. 91 of the Penal Code Act; one count of unlawful sexual intercourse, contrary to s. 97(1) of Penal code Act [Cap135] and one count of sexual intercourse with a child under care and protection, contrary to s.96 of Penal Code Act [Cap135].

You initially entered not guilty pleas on the offences charged against you in the information dated 25<sup>th</sup> June 2013. A 3 days trial were scheduled commencing 5 to 7 August 2013.

On 5 August 2013, the Public Prosecutor informed the court that the prosecutrix was outside the court room. She is a girl of 8 years of age. She was afraid of talking to court because of the Defendant. The court adjourned for Public Prosecutor to talk to the girl prosecutrix and explained to her that the Court is specifically arranged to ensure that she will be sitting in the witness box with her mother or an adult relative woman; the Defendant would hear her giving her evidence but the defendant would not see her when she will give her evidence; the Judge and the lawyers will remove their robes and the Judge his wig; the Judge will come and sit down at a table of same level as the witness and the lawyer's.

After 15 minutes adjournment, the Public Prosecutor informed the court the girl prosecutrix understood everything she was explained by the Public Prosecutor; the Prosecutrix said she was no longer afraid. She was ready to give her evidence. The trial was adjourned to the afternoon at 2.00PM o'clock.

At 2.00PM o'clock, the Public Prosecution did not attend the court. A new prosecuting counsel, Mr Gregory Takau, appears in court on behalf of the Public Prosecutor. There was no explanation given as to the change of Counsel. The Prosecuting Counsel appears without being robed. The Court required the prosecuting counsel to be properly robed.



The Court adjourned for 5-10 minutes for the prosecuting Counsel to robe properly.

Your lawyer informed the court that you wished to be re-arraigned. The Prosecuting Counsel provided a new information dated 5 August 2013. This new information contained the same charges as the previous ones but with more particulars provided. You entered not guilty pleas in respect to:

- Count 1 of sexual intercourse without consent, contrary to s. 91 of Penal Code Act; and
- Count 2 of unlawful sexual intercourse contrary to s. 97 (1) of the Penal Code Act; and
- You entered a guilty plea in respect to Count 3 of Sexual intercourse with child under care and protection, contrary to s. 96 of Penal Code.

The Prosecution applies for nolle prosequi in respect to counts 1 and 2 of the information dated 5 August 2013. You were discharged of the offences in Counts 1 and 2 of the information accordingly.

Today you are only sentenced on Count 3 of the information for sexual intercourse with child under care and protection.

The brief facts of the case are provided by the Prosecution. Your lawyer accepted these facts on your behalf. They are as follows:

On the 16<sup>th</sup> of May 2013 the victim complainant was taken to the Family Health Unit as she had told a relative of what happened to her.

On same date the complainant girl made a statement to the Police in the presence of a relative.

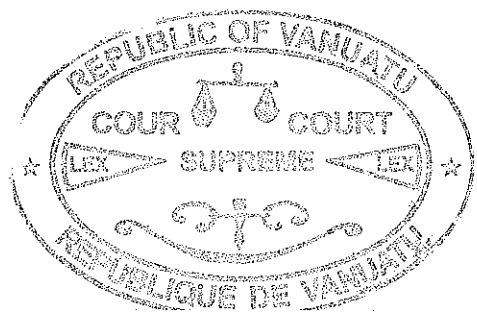
The complainant girl stated in her complaint that you, Bob Kalowat, at different occasions in 2013 would take out her pants and push your finger into her vagina.

On several occasions, you pushed your penis into her vagina.

But when you were ready to ejaculate you would pull out your penis and ejaculate in front of her.

On one occasion you asked the complainant to lay on the bed while you performed oral sex on her.

On the 5<sup>th</sup> of May after the complaint had tea, you called the complainant into your bedroom and told her to remove her pants, when she refused you then told her you would assault her.



You then pushed your finger into the complainant's vagina and then your penis.

Soon after you withdrew your penis and the victim saw a white liquid coming out of your penis.

You then wiped your penis with a calico that hung on the wall of the house.

You then warned the victim not to tell anyone or you would assault her.

On the same day you committed the same act again at lunch time and then took the complainant to see her mother at her place of work.

While the victim/complainant was at her mother's work place, her mother noticed her frequent visits to the bathroom and so was not normal. She asked her daughter if something was wrong. The complainant then told her mother about all that had been happening to her when her mother was not at home, leaving the complainant at home with her step father.

The matter was reported to the police and upon interview you admitted that you had performed these acts on the complainant because her mother had left the house.

A medical examination was also carried out on the victim. The medical report shows that at the time of examination, the hymen was found to be not intact which is consistent with penetration to the vagina.

When I consider your sentencing, I take into account of what the prosecution lawyer told the court in their submissions. I also take into consideration what your lawyer told the court in his submissions on your behalf.

I also consider the pre-sentence report filed by the probation office to assist the court in your sentencing.

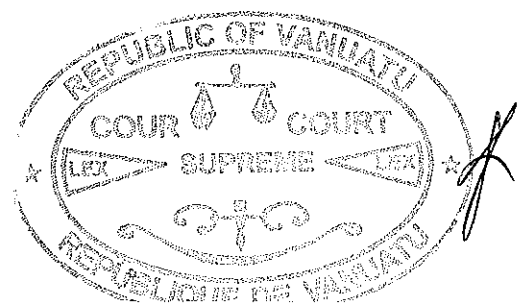
Sexual intercourse with child under care and protection is a serious offence. It attracts a maximum penalty of 10 years imprisonment. Upon your conviction, you are liable to be sentenced to 10 years imprisonment.

The Courts of the Republic condemn in the strongest terms sexual offences in general and specifically sexual abuses involving children.

Those who sexually abuse children, must go to prison. I set out below some case authorities:

In the case of Public Prosecutor –v- Kevin Gideon the court stated that:

"It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit their right to remain in the community."



In Peter Talivo –v- Public Prosecutor [1996] VUCA2; Criminal Case No. 02 of 1996, the court stated.

“All children are entitled to be protected by adults. Children must be safe in their own homes. When men who have the care of children abuse that trust....they forfeit the right to remain within the community. In this case the custom dealing with the matter could not in and of itself be sufficient to deal with it. We cannot see how on any basis it could be said that the sentence imposed was manifested excessive. What this man did was deplorable conduct. The Court had an obligation to mark the community’s disapproval of it in a serious way”.

There will be no difference in the way you will be sentenced. I bear in mind of these guideline judgements when I sentence you today.

In the present case, the seriousness of your offending is aggravated by the following factors:

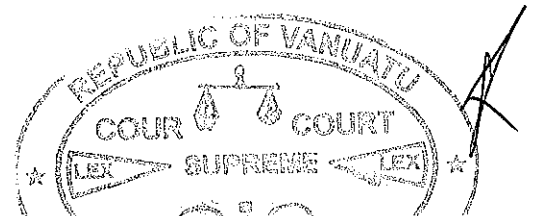
- Breach of trust – you are the step father of the girl. She looks upon you as a fatherly figure to her who may think you would be there at home to protect her, particularly seeing that her mother was absent due to work commitments yet you breached that trust by sexually molesting the child girl.
- Age difference – there is an age difference between the girl of 8 years of age and your age of 43 years old. A significant difference of 35 years which shows you are an adult and mature person while the girl is a child, thus, vulnerable.
- There were some degree of planning or premeditation – you wait until the mother goes to work and no one else in the house apart from you and the girl complainant.
- Threatened to assault – you warned the victim not to tell anyone about the incident or else you would assault her.

You are sentenced to 5 years imprisonment based on the aggravating features.

In mitigation, your lawyer submits that I consider these matters when the court sentence you for your offending:

- You pleaded guilty at the first opportunity
- You are a first time offender
- You have no previous criminal records
- You cooperated well with the Police and made full admissions
- You performed a custom ceremony
- You are 43 years old
- You promised not to commit the same offence or any other offence in future
- The court to deduct the period you have already spent in custody

On balance between aggravating and mitigating factors and after cross referencing each to others, I reduce your imprisonment term of 5 years to 3 years imprisonment.



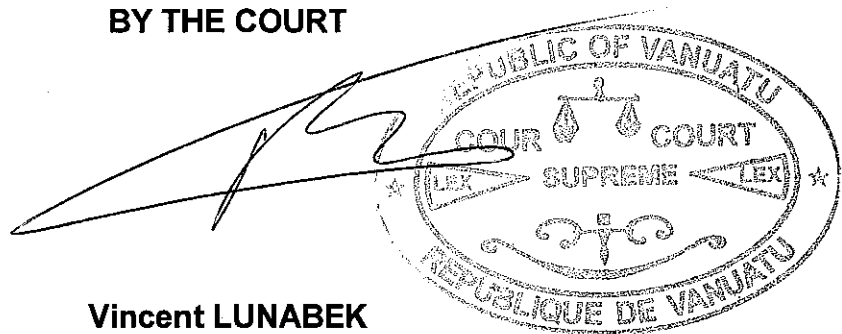
I note that you are currently under the custody of the correctional officers. This means that the time you have already spent in the pre-custody period before your sentence shall be deducted in your favour. To simplify the process, your sentence of imprisonment is deemed to start on 17 May 2013, the first day of your remand in custody.

You are ordered to served 3 years imprisonment with effect from 17 May 2013.

You have 14 day as from the date of your sentence to appeal this sentence if you are unsatisfied with it.

**DATED at Port-Vila this 27<sup>th</sup> day of August 2013**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**