

PUBLIC PROSECUTOR

- v -

SAMSON NAPUATI

Coram: *Vincent Lunabek, Chief Justice*

Counsel: *Mr Leon Malatugun for the Public Prosecutor
Mr Andrew Bal for the Defendant*

SENTENCE

Samson Napuati, you appear today for sentence. You are charged with two (2) Counts of Sexual Intercourse without consent, contrary to section 91 of the Penal Code Act (the "Act"), one (1) Count of Sexual Intercourse with child under care or protection, contrary to section 96 of the Act and one (1) Count of Unlawful Sexual Intercourse, contrary to section 97 (1) of the Act.

Defendant Samson Napuati, on 5 November 2013, you entered guilty pleas on each and all 4 counts laid against you in the information dated 28 October 2013.

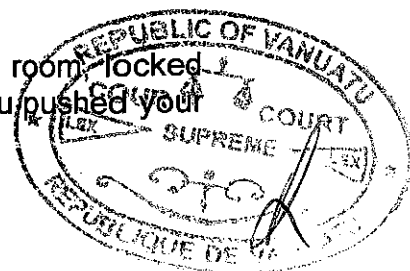
The brief facts of the offending are set out below:-

On the 13 of September 2013, a complaint was lodged at the Police Station against you for sexual offences.

The victim is a 12 year old girl and a year five student. She is your adopted daughter. She was adopted by you ever since she was a very young girl. The victim's mother is your sister.

It all began sometime in 2012, on a Saturday, you asked the complainant to accompany you to get pawpaw from the garden. As you and the girl reached the pawpaw tree, you told the complainant to climb up the tree and when the complainant was up in the tree you pulled down her skirt and her panty. This caused the complainant to come down the tree and while she wanted to run away you held on to her tightly made her lay on the ground and pushed your penis onto the complainant's vagina. You did not penetrate the complainant's vagina but continued to rub your penis around the complainant's vagina.

On another occasion in 2012, you called the complainant into the room, locked the door, took off your clothes and the complainant's clothes and you pushed your finger into the complainant's vagina.



The complainant felt so much pain in and around her vagina and started to cry. You told her not to cry and that after sexual intercourse you would give her money. You continued to have sex with the complainant until she could feel something like "pispis" coming out from your penis into her vagina and then you stopped.

This act continued several times and during the two weeks holiday in August 2013, you continued to have sex with the complainant every day until the end of the two weeks holiday.

All these times the complainant was also being threatened by you that you would kill her and her auntie should she tell her auntie about what you were doing to the complainant.

It was in September 2013, at school, when the complainant's teacher found out about all that you have been doing to the complainant. The complainant complained to her teacher of having a stomach ache and not being able to go to the toilet. Her teacher after asking her few questions suspected that the complainant must have gone through some problems.

The complainant then admitted to her teacher that you had had sexual intercourse with her several times in 2012 and 2013 until the 12th of September 2013.

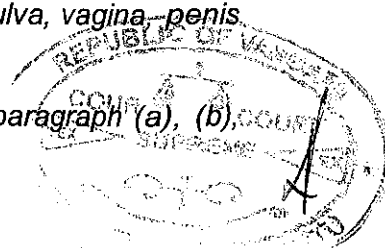
In sentencing you, I consider the pre-sentence report filed by the Probation Office. I also consider the nature and seriousness of the offences and the submissions of the Public Prosecutor and those of the Defence Counsel.

Sexual Intercourse is defined in section 89A of Penal Code Act.
Section 90 defined Sexual Intercourse without Consent.
Section 91 of the Act is the prohibiting provision.
They respectively read:

"SEXUAL INTERCOURSE DEFINED

89A. For the purposes of this part **sexual intercourse** means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:

- (a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- (b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- (c) the introduction of any part of the penis of a person into the mouth of another person; or
- (d) the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or
- (e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d); or



- (f) *the causing, or permitting, of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of another person.*

SEXUAL INTERCOURSE WITHOUT CONSENT

90. *Any person who has sexual intercourse with another person:*

- (a) *without that person's consent; or*
- (b) *with that person's consent if the consent is obtained:*
 - (i) *by force; or*
 - (ii) *by means of threats of intimidation of any kind; or*
 - (iii) *by fear of bodily harm; or*
 - (iv) *by means of false representations as to the nature of the act; or*
 - (v) *in the case of a married person, by impersonating that person's husband or wife; or*
 - (vi) *by the effects of alcohol or drugs; or*
 - (vii) *because of the physical or mental incapacity of that person.*

commits the offence of sexual intercourse without consent.

PUNISHMENT OF SEXUAL INTERCOURSE WITHOUT CONSENT

91. *No person shall commit sexual intercourse without consent.
Penalty: Imprisonment for life."*

Sections 96 and 97(1) of the Act provide:

"SEXUAL INTERCOURSE WITH CHILD UNDER CARE OR PROTECTION

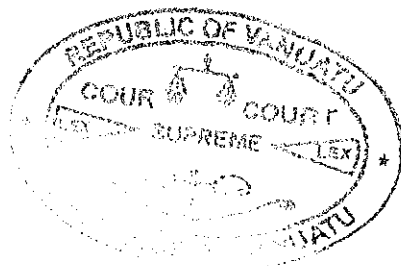
96. (1) *A person must not have or attempt to have sexual intercourse with any child, not being the person's spouse, who is under the age of 18 years and who:*

- (a) *being the person's stepchild or foster child, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family; or*
- (b) *not being the person's stepchild or foster child, and not being a person living with him as the person's spouse, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family and is under the person's care or protection.*

Penalty: Imprisonment for 10 years.

(2) *It is no defence to a charge under this section that the child consented.*

UNLAWFUL SEXUAL INTERCOURSE



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97. (1) No person shall have sexual intercourse with any child under the age of 13 years.
Penalty: Imprisonment for 14 years.

(2) No person shall have sexual intercourse with any child under the age of 15 years but of or over the age of 13 years.
Penalty: Imprisonment for 5 years.

(3) It is no defence to a charge under this section that the child consented or that the person charged believed that the child was of or over the age in question.

(4) The child shall not be charged as a party to an offence under this section.”

The Defendant pleads guilty to very serious sexual offences. The most serious ones of which are Sexual Intercourse without Consent, contrary to section 91 which attract a maximum penalty of life imprisonment.

When I consider your sentencing, I apply the principles and guidelines judgments set by the Court of Appeal in PP v. Scott [2002] VUCA 29; PP v. Gideon [2002] VUCA 7; Kalfau v. PP [1990] VUCA 9. These principles are applied by the Supreme Court in various decisions.

It is material for the sentencing approach to consider counts 1 and 2 of sexual intercourse without consent as the most serious offences in the information against you.

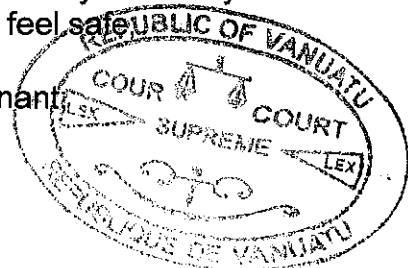
Count 2 is the representative counts as it involves a course of conduct and on the particular facts of this case, Count 2 is treated as the lead offence.

I treat and consider counts 3 and 4 as alternatives to counts 1 and 2.

Counts 3 and 4 are also treated and considered as aggravated factors to counts 1 and 2.

The Prosecution submits and I accept the aggravating features stated by the prosecution as follows:-

- (a) There is a degree of planning and premeditation leading to you sexually abusing your adopted daughter;
- (b) The victim is a girl of 12 years of age;
- (c) There was a grave breach of trust between a father and his daughter;
- (d) You are 33 years of age and your daughter is 12 years. There is a great disparity between her age and your age (a difference of 21 years);
- (e) Part of the offending occurred within the confines of your family home where the victim was supposed to be protected and feel safe;
- (f) You have applied threats or intimidated the complainant.



(g) The victim has lost herself esteem and dignity. She will relive the memories of these sexual activities for a long time, probably her lifetime.

(h) The other effect or impact of the sexual abuses on the victim child. The report shows that the offending has affected the girl. She is scared to go out of her house and she is seared to talk to men. She complains of stomach pains now and again after the offending. The girl has stopped going to class/school.

You are sentenced to 10 years imprisonment as a starting point.

In mitigation, you are a first time offender. You originate from Weisisi village, East Tanna but you grow up in Port Vila. You are under the community care of your custom chief. You participate in your community social events, meetings including work.

You attended primary school. You did not attend high education due to school fees problems. You are a building constructor and you assist your family in their daily life. You have other skills like diving and gardening. You have a future plan to own a chicken farm and start a small poultry business.

You are remanded in custody since 7 November 2013 and you are still in custody during your sentencing today.

I will take these matters of mitigation into account when I consider your sentencing and consider the appropriate sentence I am going to pass on you.

On the balance between aggravating and mitigating factors, and after cross-referencing between them and each others, I reduce your sentence to 7 years imprisonment as an end sentence. This sentence of 7 years imprisonment shall be run concurrently to the other offences in Counts 1, 3 and 4 as contained in the information.

Your sentence of 7 years imprisonment is deemed to start on 7 November 2013.

You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port-Vila this 9th day of December 2013

BY THE COURT

Vincent LUNABEK
Chief Justice

