

PUBLIC PROSECUTOR – V – SIMEON BANGA

Coram: *Mr. Justice Oliver A. Saksak*

Counsels: *Sgt Rexton Langon, State Prosecutor as Agent for Mr. P. Wirrick for Public
Prosecutor.
Miss Jane Tari for the Defendant*

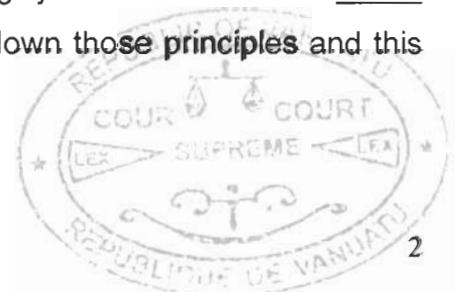
Date of Sentence: *11th March 2013*

SENTENCE

1. Simeon Banga you pleaded guilty on 5th February 2013 to one Count of Act of Indecency with a young person contrary to section 98 A of the Penal Code Act Cap. 135.
2. The penalty for this offence is 10 years imprisonment.
3. The facts of your offending are as presented by the Prosecutions in their submissions to which you have conceded. They are as follows:-
 - (a) The Defendant is at all material times 53 years of age and a resident of Vilagalagala, West Ambae. The Complainant was at material times 5 years of age being born on 6 October 2007. The Complainant is also a resident of Vilagalagala, West Ambae. Both are well known to each other and refer to each other as "bubu".
 - (b) Sometime during the day on 25th October 2012, the Complainant and another male child finished their kindergarten class and were walking along a public road towards their homes. As they were walking they were met by the Defendant who held onto the Complainant's hand. The male child who was with the Complainant continued on towards his home.



- (c) The Defendant led the Complainant into a nearby kitchen where he then pushed his hand into the front part of the Complainant's trousers. The Defendant caressed the Complainant's vagina area with his finger. The Defendant then removed his trousers and exposed his penis to the Complainant and said words to the effect that the Complainant should perform oral sex on him. The Complainant refused. The Defendant then proceeded to kiss the Complainant in her mouth and cheek.
- (d) The Complainant was then allowed to leave. The Complainant felt pain around her vaginal area during and immediately after the offending. The Complainant reported what had happened to her family and a formal complaint was made to the police on Ambae on 27th October 2012. The Defendant was subsequently arrested and formally interviewed under caution. The Defendant admitted the allegations against him.
4. Those facts show the following aggravating features that add seriousness to your offending –
- (a) Your victim was only a 5 years old female child.
- (b) You are a mature father of 53 years old.
- (c) The offending involved further proposition of oral sex, the uninvited kissing of the victim on her cheek and mouth and exposure of your penis to her.
- (d) The trust that exists between you and her as “bubu” and breach of that trust.
5. The feature in (c) indicate signs of a very desperate person who is prepared to go to extremes to receive sexual gratification by taking advantage of a little child, even within a family relationship.
6. As such, you must understand that (a) the Court has a duty to protect your victim and other little children from such abuses from persons like you, and (b) the community would be best without having you. The Case of Public Prosecutor v. Gideon [2002] VUCA 7 has laid down **those principles** and this Court is bound by them.



7. The Prosecutions have submitted the Case of Public Prosecutor v. Alick Keleb VUSC Criminal Case No. 117 of 2009 which has similar features to your case. Based on this case and Gideon's, I consider that the appropriate punishment for you is to be a custodial sentence. This is to ensure that –

- (a) You and other men are deterred.
- (b) Your actions are condemned in the strongest term by the public.
- (c) Young persons are adequately protected; and
- (d) You are punished appropriately.

8. Simeon Banga the Court therefore convicts you and sentences you to imprisonment for a period of 2 years as the starting point with no uplift.

9. The Court has taken note of your Pre-Sentence Report and the mitigating factors which are listed by defence Counsel in her written submissions. These are:-

- (a) Being a first time offender.
- (b) Good cooperation with the Police.
- (c) Performance of reconciliation ceremony showing remorse.
- (d) Guilty plea at first opportunity.
- (e) The physical impairment of being deaf.
- (f) Your employment as co-ordinator for the disabled in Penama Province.
- (g) The subsequent assault by the victim's father.

10. For those factors, the Court will suspend your sentence of imprisonment for 2 years on the following conditions:-

- (a) You must stay away from the victim and must not speak to or contact her in any way whatsoever.
- (b) You must stay away from other young girls in your community or anywhere else.




(c) You must not commit this offence again or commit any other offences for which you would be charged and convicted.

11. These conditions will apply and be in force for a period of 2 years from today's date. You must understand that if you break any of these conditions, your sentence will be activated automatically and you will go to prison to serve your 2 year term of imprisonment.

12. That is the Sentence of the Court. You have a right of appeal against sentence within 14 days from today's date if you so choose.

DATED at Luganville this 11th day of March 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

