

PUBLIC PROSECUTOR – VS – WILSON LUKAI

Coram: Mr. Justice Oliver A. Saksak

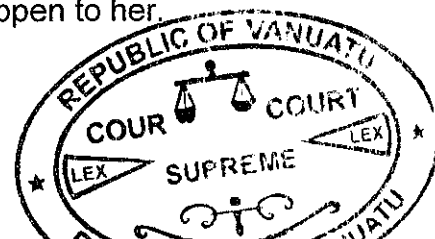
Counsel: Mrs Losana Matariki for Public Prosecutor and State
Mr Henzler Vira for Defendant

Date of Hearing: 11th June 2014

Date of Sentence: 18th June 2014

SENTENCE

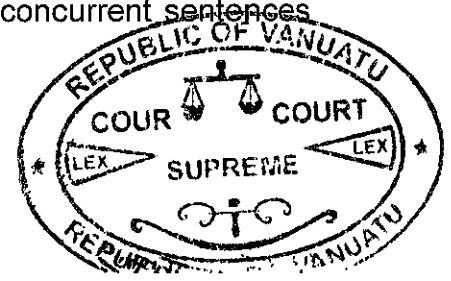
1. Wilson Lukai, you are for sentence today for having pleaded guilty to one count of Act of Indecency without consent (Count 4) contrary to section 98, and for two counts of sexual intercourse without consent (counts 1 and 2) contrary to sections 90 and 91, and to a further count of act of indecency without consent (Count 3) contrary to section 98 of the Penal Code Act [cap 135] (the Act). After a trial hearing the Court found you guilty of the charges in counts 1,2, and 3.
2. The offence of sexual intercourse without consent is very serious as it carries a maximum penalty of life imprisonment. The offence of act of indecency without consent carries a penalty of 7 years imprisonment.
3. Your victim Jerina Adams, a 16 year old girl who lives with her parents Albert Adam and Martha Robson at Abattoir half road, towards Mele village. You were living with them at the time of the offending. You are a very close relative of the victim. You are the younger brother of the victim's father's father. The victim's grandfather was in the house as well at the time when the offending occurred. You are well known as a person who administers local medicine (custom leaf) on sick people. The first incident occurred in May 2013. The victim's parents attended a wedding ceremony and you, the grandfather (your brother) and the victim were left at home. In the evening you told stories with the victim in the kitchen shed. Her grandfather went off to sleep leaving you and the victim alone. The candle went out. The victim got up to take another candle but you stopped her from doing so and you both continued to tell stories in the dark. She then complained of a sore knee. You then told her to bring some oil so you could massage her knee. She got the oil and you started to massage her knee. However in doing so, your hands went further up her thigh and then to her private part and breasts. This led to you removing the victim's panty and then having sexual intercourse with her. All these happened against the victim's free will, because you had warned her that if she told anyone about what you did, something would happen to her.



4. The other occasion you had sexual intercourse with the victim was on 16th November 2013 when her mother and her little brother had gone to church. Again you warned her that if she told anyone about what you did to her, something would happen to her.
5. You also committed acts of indecency without consent on the victim's mother Martha Robson in 2013. You admitted this charge during your arraignment. And you do not dispute the fact as presented by the prosecutions.
6. Applying the cases of **Public Prosecutor v. Ali** [2000] vusc 73, and **Public Prosecutor vs. Gideon** [2002] VUCA7 the only appropriate sentence for you will be a custodial sentence. This is to serve the following purposes:-
 - a) To mark the seriousness or gravity of your offendings.
 - b) To mark public disapproval or condemnation of your selfish actions.
 - c) To deter you and others who are minded to do the same.
 - d) To punish you appropriately and adequately, and
 - e) To protect young girls and women.
7. I consider the following to be the aggravating features that add to the seriousness of your offendings-
 - a) The age disparity between the victim being 16 and you being 54 years old.
 - b) There was a serious breach of trust between you as "grandfather" to the victim and her mother, Martha Robson.
 - c) The offending of sexual intercourse without consent was repeated more than once on the victim.
 - d) There were threats and intimidation used to overcome the victim's free will and
 - e) There were two victim's, Jerina Adams and her mother Martha Robson.

8. The Court therefore sentences you in the following manner-

- a) For sexual intercourse without consent- count 1- 6 years imprisonment as a starting point
- b) For sexual intercourse without consent- count 2-6 years imprisonment as a starting point, but is to be made concurrent with the 6 years sentence for the charge in count 1. These are treated as the lead offences.
- c) For acts of indecency without consent – count 3 a sentence of 12 months (1 year) is imposed. However this is to be made concurrent with the 6 years concurrent sentences for the charges in counts 1 and 2.
- d) For acts of indecency without consent done to the victim's mother, a sentence of 12 months is imposed. This was a separate offending and therefore these 12 months will be served cumulative with the 6 years concurrent sentences for the offences in counts 1, 2 and 3.



That means in effect you are sentenced to 7 years imprisonment.

9. For the aggravating features I consider that there be an uplift of 2 years. This increases your total sentence to 9 years imprisonment.

10. I now consider reducing your sentence in light of your mitigating factors. I allow a general reduction of 2 years and 6 months for the following factors:-

- a) Your clean past record with no previous criminal convictions,
- b) Your apology to the victim's mother and to the victim,
- c) Your willingness to perform customary reconciliation ceremony, showing remorse, and
- d) Your future goal to help your children build their houses and own some land.

Your sentence is now reduced to 6 years and 6 months imprisonment.

11. Wilson Lukai the Court now convicts and sentences you to a total of 6 years and 6 months imprisonment. Your sentence is backdated to 3rd December 2013 when you were first remanded in custody.

12. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you do not agree with it.

DATED at Port Vila this 18th day of June 2014.

BY THE COURT.


OLIVER.A.SAKSAK

Judge

