

IN THE SUPREME COURT
REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 189 of 2014

PUBLIC PROSECUTOR
-v-
BAE MALACHAI

Mr Massing for Prosecution
Ms Pauline Kalwatman for the Defendant

Hearing 29th April 2015

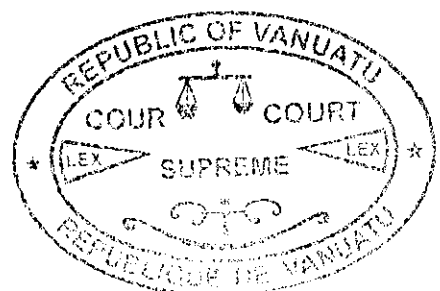
Sentence

Bae Malachai you have pleaded guilty to one count of an act of indecency with a young person, the victim being your 10 year old grand-daughter. I will not relate the detailed facts but I acknowledge there is no evidence or suggestion of any other incidents involving you and young children. The offence will be treated as a one off occurrence where you ordered the young girl to take off her clothes and then you rubbed your penis against her until you ejaculated.

In my view the starting point for any offence involving an act of indecency with a young person is 3 years. This offence was aggravated by the age difference; you are 72 and the young girl only 10, by the breach of trust between grandparent and a grandchild and by the nature of the offence. It involved removal of the child's clothes and a simulated sexual act. It must have been a very traumatic experience for the unfortunate young girl. The sentence should be one of 4 years.

You did have the decency to admit the offence and plead guilty at the earliest opportunity. You should be given full credit for that and the sentence will be reduced by 1/3 rd or 16 months, to 32 months. You were of good character, of course you have lost that now and you will never be able to retrieve it, and you have shown remorse and been reconciled through the Church. You should also be given credit for that as well. Your sentence will be reduced by a further 10 months to 22 months.

You have been on remand for over 5 months which would be the equivalent of a 10 month sentence. I propose to reduce your sentence by a further 10 months to 12 months.



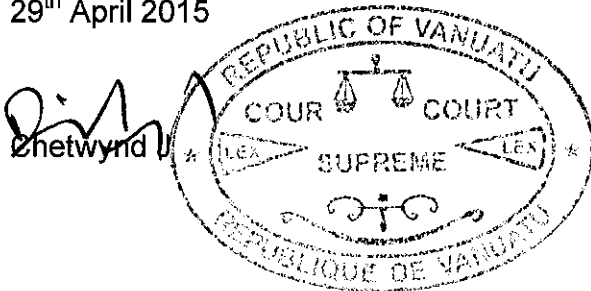
In the previous case I dealt with this morning (PP v. Molisingi CRC 192 of 2014), I pointed out the strictures imposed by the Court of Appeal in the case of Gideon ¹. That case involved Unlawful Sexual Intercourse but the court did not talk about a specific offence, instead the Court referred to cases of "sexual abuse",

"It will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse"

There is no doubt in my mind that an act of indecency with a child would be an example of sexual abuse. Therefore I should not consider suspending any part of the sentence unless and except I find this case comes under the extreme category. The Court of Appeal did not offer and specific guidance as to what would bring a case into that category. It does not say whether it is the circumstances of the offence or the circumstances of the offender, it is plainly a matter of common sense. In this case we have a defendant who is 72 years of age. Although I have no medical report there does not appear to be any dispute that he is asthmatic and arthritic. He has served 5 months on remand and so will be well aware of what awaits him if he re-offends. I believe his personal circumstances bring him into the extreme category and I will order his sentence be suspended for 2 years.

Bae Malachai you are sentenced to 12 months imprisonment suspended for two years. If you are unhappy with this sentence you have the right to appeal. It is a matter for you but if you are considering an appeal I suggest you speak to your lawyer first. You have 14 days to appeal and so you should not delay.

29th April 2015



¹ Public Prosecutor v Gideon [2002] VUCA 7; Criminal Appeal Case 03 of 2001 (26th April 2002)