

BETWEEN: Public Prosecutor
Prosecutor

AND: Jacob Toame
Defendant

Coram: V. Lunabek CJ

Counsels: Mr Simcha Blessing for the Public Prosecutor

Mrs Mary Grace Nari for Defendant

SENTENCE

1. Jacob Toame you come before the Court today for sentence.
2. On 2 September 2016 you were convicted after a two days trial on two Counts of Sexual Intercourse with a child under care or protection, contrary to s.96 (1) (b) of Penal Code Act [Cap 135] ("the Act").
3. The facts as accepted by the Court are that the victim girl lived with you and your wife at small Tautu village in Malekula on the relevant times. You adopted the victim girl when she was 9 years of age. At the trial she was 18 years of age. The victim lived with you and you wife in 2010, 2011 and 2012 which are the relevant times for the purposes of your offending. Sometimes in 2011, during the night at about 12 o'clock midnight, you entered her room and touched her private part. You inserted your finger into her vagina. You masturbated your penis until you ejaculated on the body of the victim girl. You repeated this on her on many occasions. You also performed oral sex on her and you have asked her to do the same thing on you. This occurred "full up times". She estimated 3 times a week. Between October 2012 and December 2012 you had penile intercourse with her. You removed her clothes, made her lay down and you inserted your penis into her vagina. You did this on her many times. The last time you had penile intercourse with her was 15 December 2012.
4. On 19 December 2012, her daddy Graham Rovea took her to the police station at Lakatoro and her daddy Graham made a complaint to the police at Lakatoro of what you



had done to her. She made a police statement to police officer Grenly Kenda on the same date at Lakatoro.

5. Section 96 of the Penal Code is the prohibiting and penalizing provision. It provides:

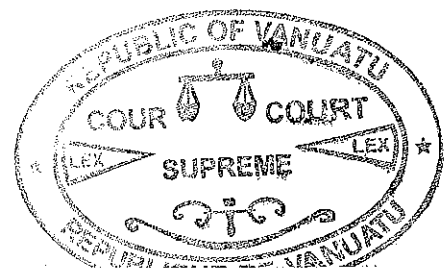
“96. Sexual Intercourse with child under care or protection.

- (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 the person as a member of the person’s family and is under the person’s care or protection.

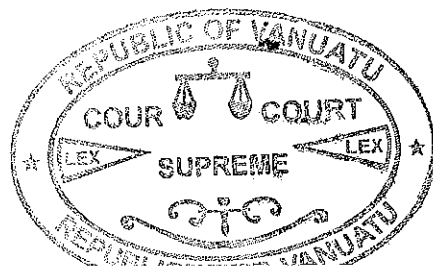
Penalty: Imprisonment for 10 years.

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

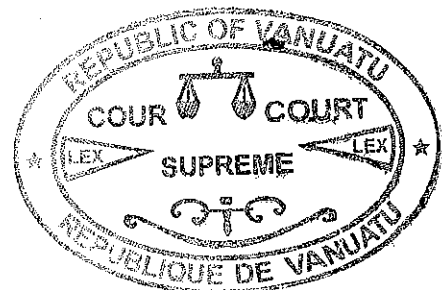
6. Sexual Intercourse with child under care or protection is a serious offence as reflected by the maximum penalty of 10 years imprisonment imposed by law.
7. In considering your sentencing, I take into account of the submissions made by the prosecution and the submissions made by your lawyer on your behalf.
8. I also take into consideration what was said in the pre-sentence report filed on your behalf by the Probation Officer dated 13 October 2016.
9. In the present case, the seriousness of the offending is aggravated by the following features:
- There was a serious breach of trust. The defendant was at all material times, the adoptive father of the victim girl. She was entitled to look up to him for guidance, care or protection. The Defendant abused and seriously breached that trust.



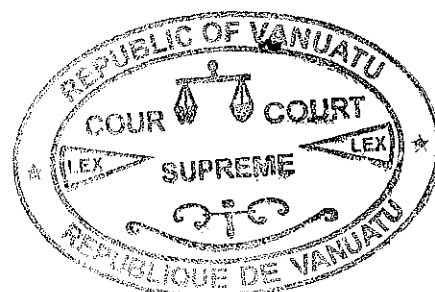
- Repetition of offending. The evidence showed the offending was repeated from 2011 to 2012 and on escalation from digital to penile penetration of the vagina of the girl on many times.
- The offending involved some degree of planning and premeditation. The evidence showed that the offence occurred at mid-night. The Defendant's wife was sleeping. She did not know what happened to the victim girl. The evidence showed that the offences happened when she was not at home. She was away.
- There was a degree of confinement or detention of the complainant for periods of time against the girl's will. The girl was told not to tell her adoptive mother of what the Defendant did to her. She was cautious that she was unable to escape during the numerous sexual encounters and that reasonably maximized the trauma she must have endured.
- The complainant was humiliated and subjected to further sexual indignities as opposed to mere penile intercourse. On the facts, the Defendant went further and beyond having sexual intercourse with the victim girl by digital and penile penetration, he made the girl masturbate his penis, watched her during the performance and ejaculated on her. He performed oral sex on her. He asked her to do the same thing on him. The potential psychological harm endured by the girl as a result of the form of control by the defendant is a serious aggravating factors.
- There was an age disparity between the Defendant who was a mature and experienced man of 43 years when he commenced sexual intercourse with the girl. The girl was a child of 13 years when the Defendant started abusing her and continued to abuse her until she was 14 years of age.
- The Defendant exposed the inexperienced and unsophisticated girl to unchaste behaviour and exposed her to the risk of contracting sexual transmitted diseases at an early age and the risk of pregnancy.
- The girl was a virgin prior to the defendant's abuses. She lost her virginity as a result of the offending. The loss and/or physical harm caused to the girl is irreparable.



10. The prosecution referring to the following guideline judgments of the Court of Appeal in Talivo –v- Public Prosecutor [2002] VUCA 7 and Public Prosecutor –v- Gideon [2002] VUCA 7 and others, submitted that the appropriate head sentence in this case is 6 years imprisonment inclusive of the aggravating factors.
11. In this case, I think the sentence of 7 years imprisonment is an appropriate starting point sentence inclusive of aggravating features.
12. In mitigation, your lawyer referred the Court to the sentencing approach in the case of Public Prosecutor v Andy [2011] VUCA14. Your lawyer acknowledges the seriousness of your offending and recognizes that a starting point should be a custodial sentence.
13. You are a first time offender. You showed remorse for this offending by doing reconciliation at the Church of Latter Day Saints. There were references or letters sent from Rayman Vanu, LDS Church. I read and consider these. They are to your credits in the sentencing.
14. There are also references or letters sent to confirm that you had performed a custom reconciliation ceremony to the uncle, the mother and brother of the girl. The pre-sentence report confirmed all of that. The references and the report confirmed and commented each other that at the reconciliation ceremony, you had given the following items:
 - 1 pig of 15,000 vatu, 2 mats and 1 yam;
 - Paid an amount of 15,000vatu to one August Prevaly, the uncle of the girl;
 - Paid 3,000 vatu to the mother of the girl;
 - Paid the costs of travel of the victim’s mother and brother and victim herself from Ambrym to Malekula and return back to Ambrym of vatu 36,000;
 - Paid the costs of travel return trip Vila, Malekula, Vila of vatu 25,000;
 - Paid 1,500 vatu to the brother of the girl;
 - Paid school fees Sessivi Secondary School year 10 in 2012 (victim’s brother) vatu 41,000;
 - Paid school fees Lakatoro secondary school yeat10 in 2012 (victin’s brother) vatu 12,000.
 - The girl paid 2,000 vatu to the Defendant’s wife.



15. There were references to the medical conditions of the father of the Defendant (Robert Toame).
16. All these will have an effect on the length of the sentence but they do not have any effect on the nature of the sentence. (See, PP v Gideon [2002] VUCA 7).
17. I take all the above into account when I consider your sentencing. And, thus, I reduce your sentence of 7 years imprisonment to 5 years imprisonment. I give you an allowance of 3 months for the delays taken before your case was dealt with. I give you a discount of 8 months and 10 days for the time you have already spent in custody (pre custodial period) from 17 October 2014 to 17 June 2015 (according to the Report). Your end sentence is 4 years and 20 days imprisonment.
18. I have read and considered what your lawyer termed as “disturbing letter” from one Esai Bong to be of no relevance for the purposes of your sentencing after you were convicted of these offences by the Court on 2 September 2016 at Lakatoro, Malekula
19. I consider whether or not it is appropriate to suspend your sentence of 4 years and 20 days imprisonment. I decline to so order in the present case. The report revealed that you have tried to shift blame on others and particularly other members of the family who you have differences or personal issues with them. You have to accept that you are responsible and you have to be accountable for what you have done to the child girl who is the victim of your sexual abuses repeatedly over a lengthy period of time from 2011 to December 2012.
20. You stated in the report you believed that you were compelled to commit the offence through some form of customary practices or super natural power (Black Magic). You stated also that you were outside your mind and did not know what you were doing. I do not believe what you said for one moment. You are not telling the truth and I cannot accept what you said as it is ridiculous and beyond good sense and reason. On the evidence, every time you had sexually abused the child girl you told her not to tell her adopted mother, i.e. your wife, of what you had done to her. Surely, that is not the state of a man who did not know what he was doing! You knew very well what you were doing.
21. The seriousness and gravity of the offending in this case justifies an immediate custodial sentence. A custodial sentence is necessary for the following reasons:



- (i) First, to mark the gravity and seriousness of the offending;
- (ii) Second, to emphasize that public in the society disapproves this type of offending;
- (iii) Third, to serve as a warning to others and to deter them from committing such a type of offending again in future;
- (iv) Fourth, to punish you Jacob Toame from the offending; and
- (v) The last but not the least, is to protect children from adults like you Jacob Toame who take advantage of their immaturity and particularly girls. Children must be protected.

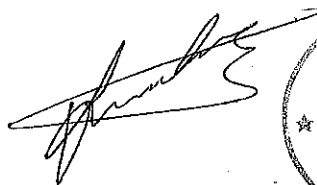
22. I dismiss the submissions of the defence lawyer for a sentence in accordance with section 55 (4) of the Act (Penal Code (Amendment) Act No.25 of 2005). I also reject and dismiss the submissions of the defence lawyer for the suspension of the sentence and a community work type sentence as not appropriate in this case.

23. You are ordered to serve an end sentence of 4 years and 20 days imprisonment on each of the two counts concurrently. This means you are going to serve a total term of 4 years and 20 days at once. You start serve your sentence today with immediate effect.

24. You have the right to appeal this sentence if you are unsatisfied with it and you have 14 days to file your appeal which starts from the date of this sentence.

Dated at Lakatoro, Malekula, this 20th day of October 2016.

BY THE COURT



Vincent Lunabek
Chief Justice

