

PUBLIC PROSECUTOR VS- TIMOTHY KAVILA

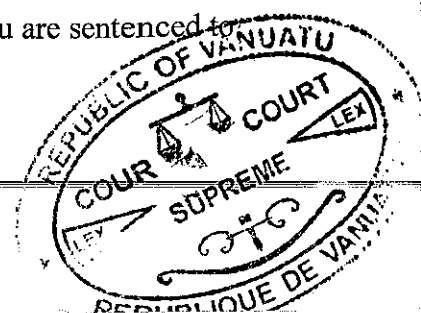
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Michelline Tasso for the Public Prosecutor*
Linda Bakokoto for the Defendant

Date of Plea: *3rd April 2018*
Date of Sentence: *14th June 2018*

SENTENCE

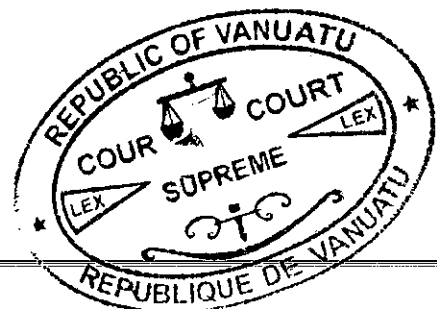
1. Timothy Kavila you are for sentence today. On 3rd April 2018 you pleaded guilty to 2 counts of Intentional Assault (Counts 1 and 5) contrary to section 107 (b), to one count of Abduction (Count 2) contrary to section 92 , two counts of Sexual Intercourse Without Consent (Counts 3 and 7) contrary to sections 90 and 91 , and to one count of Acts of Indecency Without Consent (Count 6) contrary to section 98 (a) of the Penal Code Act [CAP. 135].
2. These are serious offendings. Your lead offence is to be Sexual Intercourse Without Consent which carries a maximum penalty of life imprisonment. The offence of abduction carries a maximum penalty of 12 years imprisonment. The offence of acts of indecency without consent now carries a maximum of 7 years imprisonment. And the offence of intentional carries a maximum penalty of 1 year imprisonment.
3. On your own admissions and guilty pleas the Court convicts you and sentences you to custodial terms as follows:-
 - a) For Sexual Intercourse Without Consent, Counts 3 and 7 you are sentenced to a starting sentence of 10 years imprisonment on each count,



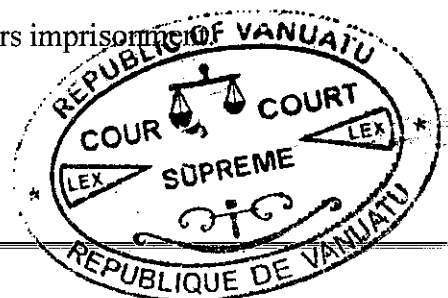
- b) For Abduction, count 2, you are sentenced to 3 years imprisonment concurrent,
- c) For Acts of Indecency Without Consent Count 6, you are sentenced to 2 years imprisonment concurrent, and
- d) For Intentional Assault, counts 1 and 5 you are sentenced to 6 months imprisonment on each count concurrent.

These sentences are made to run concurrently so that the total you have to serve is 10 years imprisonment.

- 4. I will explain why I am imposing this high starting sentence for you for the lead offences, later.
- 5. Your victim was a very young girl of 15 years. You had sexual intercourse with her without her consent on 11 and 12 August 2017 on 2 consecutive days. You had full penile intercourse with her without her consent on 11th August 2017. You lied to her about her grandmother conveying a message to lure her away from the house at night. You followed her and forced her by removing her clothes and opening her legs. When she resisted you punched her on the chest a couple of times. You dragged her down to a river and under a lolly tree you had penile intercourse with her. She resisted and you hit her again causing blood to flow from her nose.
- 6. On 12th August 2017 at Teouma Valley you had sex with her again without her consent. You had overpowered her by assaulting her the previous day making her weak and losing consciousness.



7. Also on 12th August 2017 you committed acts of indecency on your wife while the victim watched against her will.
8. On 13th August 2017 you dragged the victim to the same place you had had sex with her on the 11th August and forced yourself on her against her will.
9. Earlier on the 8th of July 2017 you assaulted the victim causing injuries of temporary nature on her body
10. You subjected this young girl to unlawful sexual intercourse and acts of indecency in her presence without her consent. The acts were repeated. You assaulted her on 11th August 2017 to the point of unconsciousness. You could have killed her. Sexual intercourse were unprotected risking the girl to sexual diseases and teenage pregnancy. You stood in a position of trust as a relative to her but you abused that trust. These are aggravating features that add seriousness to the already serious offences you committed. These call for a starting sentence of the lead offence of sexual intercourse without consent to be at 10 years imprisonment.
11. You are a repeat offender. On 4th October 2017 you were sentenced to 16 years imprisonment for 5 counts of sexual intercourse without consent, 2 years imprisonment for one count of act of indecency without consent, 3 years imprisonment for one count of threats to kill and to 9 months imprisonment for one count of intentional assault. For these aggravating features your concurrent sentence of 10 years imprisonment is increased by 2 years to 12 years imprisonment.



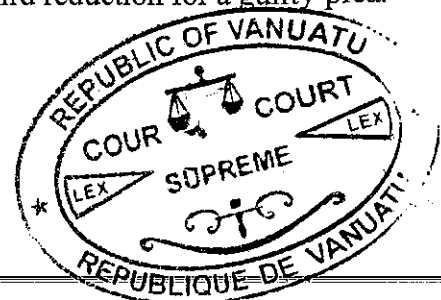
12. I order that these 12 years be served consecutively with your 16 years imprisonment in Criminal Case No. 753 of 2017.

13. The Court has a duty to protect the young, weak and the vulnerable members of the community by imposing sentences which will not only achieve that purpose, but also to mark the seriousness of the offences committed, to mark public disapproval and condemnation for the unlawful acts committed, to set a deterrence to the offender and other like-minded persons, and to punish the offender adequately.

14. These sentencing principles are well established in the classic cases of PP v Ali August [2000] VUSC 14, PP v Scott [2002] VUCA 29 and PP v Gideon [200] VUCA 7. And this Court is bound to apply those principles to your case.

15. I now have to consider whether I should reduce your sentence of 12 years imprisonment. You refused to give any details about yourself to the Probation Service. And there is no assistance by your defence counsel as no written submissions have been filed within the time directed by the Court on 3 April 2018.

16. The only relevant factor that is available to mitigate your sentence is your guilty plea at the earliest opportunity. Having done so you saved time and expenses or costs it would have taken to run a trial. And further a trial was not necessary to subject the girl to have to tell the story all over again in the presence of members of the public. And Gideon's Case is the authority for allowing one third reduction for a guilty plea.



17. Accordingly allowing a 1/3 reduction from your 12 years, the balance is 8 years imprisonment. As stated in paragraph 11, these 8 years are to be served consecutively with the 16 years sentence imposed on you on 4 October 2017. This means 8 years are added to the 16 years making the total of 24 years imprisonment.

18. That is the Sentence of the Court. You have right of appeal within 14 days if you are not happy with your 8 years sentence.

DATE at Port Vila this 14th day of June 2018.

BY THE COURT

OLIVER A. SAKSAK

Judge

