

PUBLIC PROSECUTOR

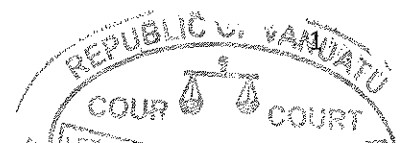
v

SAMMY ISMAEL

Date: 29 January 2024
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr K. Massing
Defendant – Ms J. Tari

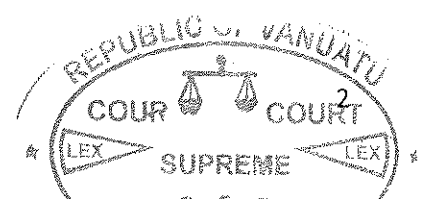
SENTENCE

1. The Defendant Sammy Ismael pleaded guilty to unlawful sexual intercourse with a child under 13 years old (Charges 1 and 2) and to act of indecency with a young person (under 15 years old) (Charge 3).
2. The Prosecution has not complied with the Court's Orders to file sentencing submissions. I proceeded with delivery of sentence.
3. Mr Ismael and the complainant AK are related. She calls him uncle. She was 12 years old at the time of the offending.
4. On 27 October 2022, during a feast at Votio village on Epi island, Mr Ismael sent AK to the shop to get tinned fish that he would pay for later. He followed her to the shop without her knowing and sent her friend away. He was drunk. He pulled her into a coconut plantation, removed both their clothes, then forced her to lie down on her back. He penetrated her anus with his penis. She felt pain and was crying (Charge 1). Then he penetrated her vagina with his penis. She also felt pain in her vagina. During the sexual intercourse, he blocked her mouth while she was crying and threatened to beat her if she reported him to anyone (Charge 2).
5. After he was finished, Mr Ismael told AK to put on her clothes. He also put on his clothes. On their way back to the feast, he took her into a banana patch and made her suck his penis.
6. Then he fled. She could no longer walk and fainted. She fell on the ground and was unconscious for some time. When she came to, she had regained some strength and



walked home with blood on her clothes. She washed herself but kept bleeding resulting in her changing her clothes 5 times that night. The bleeding continued and she told her mother then the matter was reported to the Police (Charge 3).

7. AK was taken to the Medical Centre. The medical examination revealed the following:
 - a. Three degrees of tearing of the perineum; and
 - b. Tear of the inner wall of the cervix.
8. AK was immediately referred to the Vila Central Hospital. She was airlifted to Port Vila the same day. The doctor's medical examination on 3 November 2022 recorded AK's injuries as a perforated hymen, vaginal tears, second degree tear with urinal bleeding, and first degree perineal tear with no active bleeding.
9. Mr Ismael admitted his offending to the Police.
10. The maximum penalty for unlawful sexual intercourse with a child under 13 years of age is life imprisonment (subs. 97(1) of the *Penal Code* [CAP. 135]) and for act of indecency with a young person (under 15 years old) is 10 years imprisonment (s. 98A of the *Penal Code*).
11. The offending was aggravated by the following:
 - Breach of trust;
 - A degree of planning;
 - The offending occurred at night in an isolated place where the complainant could not get immediate help;
 - The defendant told the complainant not to report him to anyone and threatened violence if she did;
 - The sex was unprotected exposing the complainant to the risk of sexually transmitted infection and pregnancy; and
 - The significant injuries suffered by the complainant.
12. There are no mitigating aspects to this offending.
13. Taking the foregoing matters into account, the global sentence start point adopted is 7 years imprisonment.
14. One third is deducted from the sentence start point for Mr Ismael's early guilty pleas which have saved time and the need for the complainant to give evidence.
15. Mr Ismael is 41 years old. He is married and has 4 children. He also cares for his elderly parents. He is a subsistence farmer and operates a piggery which supplied meat



for the community. He has no previous convictions although that is of little mitigatory value in cases of a sexual nature.

16. He has performed two customary reconciliation ceremonies with the complainant involving two pigs and a bullock. He is remorseful for his offending. A further 10% is deducted for Mr Ismael's personal factors.
17. Taking all matters into account, the end sentences imposed concurrently are:
 - a. Unlawful sexual intercourse with a child under 13 years of age (Charges 1 and 2) 4 years imprisonment; and
 - b. Act of indecency with a young person (Charge 3) 2 years imprisonment.
18. The sentences are backdated to run from 18 October 2023 when Mr Ismael was taken into custody.
19. The sentences are imposed to denounce such criminal conduct against young girls and against the values of society, to protect the community, to deter Mr Ismael and others from such offending, and to hold Mr Ismael accountable for his criminal conduct.
20. The end sentences will not be suspended as there are no exceptional circumstances warranting suspension. An immediate custodial sentence must be imposed for this serious sexual offending: *Public Prosecutor v Gideon* [2002] VUCA 7.
21. Mr Ismael has 14 days to appeal the sentence.
22. All details leading to the identification of AK are permanently suppressed.

DATED at Luganville this 29th day of January 2024
BY THE COURT


Justice Viran Molisa Trief

