

REGINA -v- KABOMA, MAESIMAE, MALINGA and HEPEPAINA

High Court of Solomon Islands

(Muria ACJ)

Criminal Case No. 12 of 1992

Hearing: 28 September 1992 at Kira Kira

Sentence: 29 September 1992

J. Faga for the Prosecution

J. Wasiraro for all the Accused

MURIA ACJ: The four accused had each been charged with the offence of defilement. There are three victims in the cases. In the case of Allen Kaboma, he had been charged with three counts, one of defilement of a girl under 13 years of age, secondly of defilement of another girl under the age of 15 years and thirdly, of defilement of a further girl under the age of 15 years. In the case of Leslie Maesimae, he had been charged with one count of defilement of a girl under 15 years of age. In the case of Basil Malinga, he had been charged with one count of defilement of a girl under the age of 13 years. In Alfred Hepepaina's case, he was charged with one count of defilement of a girl under 13 years of age and another count of defilement of a girl under 15 years of age. All the accused pleaded Guilty to the charges brought against them.

The earliest of these offences occurred in 1986 when the accused Basil Malinga had sexual intercourse with the victim Elsie Heusi when she was only 9 years old. She is the accused's niece.

On 15 July 1990, Allen Kaboma also had sexual intercourse with Elsie Huesi who was then 13 years 2 weeks old. Prior to that, Allen Kaboma had sexual intercourse on 4 June 1990 with Myraline Holoupukeni who was then only 12 years 9 months old. Then on 10 July

1990, Allen Kaboma also had sexual intercourse with Cecilia Taranawe, (the third victim in these cases) who was then only 14 years and 2 months old.

Then on 15 August 1990, a month later, Leslie Maesimae also had sexual intercourse with Cecilia Taranawe who was then 14 years and 3 months old.

The fourth accused, Alfred Hepepaina had sexual intercourse with Myraline Holoupukeni in September 1990 at which time the victim was only 13 years 3 weeks old. Again in December 1990, Alfred Hepepaina had sexual intercourse with Myraline Holoupukeni who was then 13 years and 3 months old.

The facts clearly show that all the accused had been taking advantage of the victims' inaction in the matter of not reporting them. All the victims were then very young and perhaps that may be a reason for not taking any action in reporting the accused. But equally, the ages of the victims should clearly ring a bell in the minds of the accused that the law and the community do not allow tampering with girls of very tender ages.

The purpose of the law in this area is to protect young girls from inconsiderate males as well as from themselves until they reach mature ages. Thus to have sexual intercourse with very young girls who are of very tender years is a serious matter in law. To show the seriousness of offence, the law places the maximum punishment for offences of defilement of a girl under 13 years of age to life imprisonment and 5 years imprisonment for offences of defilement of girls under 15 years of age.

In accordance with section 261 of the Criminal Procedure Code, the Court has been fortunate to have received evidence of custom in relation to such offences in the community where the accused and victims in this case come from. I record my gratitude to the 52 year old John Aba who comes from Ulawa and who gave evidence as to how custom regards such offence. The evidence clearly regards the

offence of having sex with immature girls as a serious matter and heavy penalties in custom are called for against those committing such 'troubles' in the community. The degree of seriousness varies between cases where the 'trouble' is committed by a married man upon a young girl and where a single man has sex with a young girl. It is however clearly shown that the community strongly disapproves of men having sex with very young girls.

The Courts must, as a duty, uphold the disapproval of society, over such practices. The Court will show this by the sentences it imposes on the offenders, after taking into account all the relevant circumstances including the character of the victims.

ALLEN KABOMA

You are a mature man.

You had completely disregard custom. You had sexual intercourse with all three victims. You were the first to corrupt two of the victims, Myraline Holoupukeni, when she was only 12 years, 9 months old and Cecilia Taranawe, when she was 14 years, 2 months old. Although you were not the first to corrupt the other victim, Elsie Huesi, you certainly did so when she was only 13 years, 2 weeks old. All the victims you corrupt were very young girls by any standards.

I take into account all that had been said by Mr Wasiraro on your behalf. In particular I accept you had paid compensation as required by custom. I also take into account your plea of guilty and your co-operation with the police and village authorities. I accept that the victims had by their actions encouraged you to have sex with them. You are a man of previous good character. Taking those and every thing else that had been said on your behalf, the Court feels the appropriate sentence is as follows:-

Defilement under section 134 of the Penal Code

Myraline - 12 months

Defilement under section 135 of the Penal Code

Elsie - 6 months consecutive to 12 months

Defilement under section 135 of the Penal Code

Cecilia - 6 months concurrent

Total 18 months imprisonment

LESLIE MAESIMAE

You have pleaded guilty to one count of defilement contrary to section 135(1) of the Penal Code.

You were not the first to have sex with the victim Cecilia but nevertheless each act was a further act of corruption by each of you.

I accept that there was certain amount of willingness on the part of the victim in your case.

I accept you paid compensation in accordance with custom. I accept you are a first offender and that you pleaded guilty to the charge.

Taking all that had been said by Mr Wasiraro on your behalf the appropriate sentence I can pass is -

Defilement contrary to section 135(1) of the Penal Code

Cecilia - 6 months imprisonment.

BASIL MALINGA

You pleaded guilty to the charge of defilement contrary to section 134(1) of the Penal Code.

Your case is slightly more serious because you had sexual intercourse with the victim Elsie Huesi when she was only 9 years of age. Even more serious is the fact that the victim is your niece. She was sent by her parents to stay with you as her uncle to look after your children after your wife passed away. You betrayed that trust and turned that trust to your advantage and corrupt your niece. You caused her initial corruption which is a very serious matter. I am sure you now realise the consequence of your actions. The misuse of trust placed on you no doubt caused distress and concern to the Elsie's parents.

You are the oldest of all the accused and you should have known better.

You were asked by the chiefs to pay compensation but you have not done so except \$50.00. You have promised to pay the rest of the compensation and I hope you do so.

I accept your plea of guilty and your previous good character which reduce the sentence substantially.

Taking into account all that has been said on your behalf, I feel the appropriate sentence is -

Defilement contrary to section 134(1) of the Penal Code

Elsie - 2 years imprisonment.

taken a somewhat low-levelled willingness in these incidents. They had allowed the accused to do what they did and deliberately keeping their activities secret.

[The victims who are in Court, stand].

You must realise that an orderly community requires co-operation by all which means, not hiding those who break the law. You did just that and as a result these four men will have to go to prison for what they did, apparently with your willingness.

The law in this area as I have said is designed to protect young girls like yourselves until you are of mature ages.

By my powers under section 32 of the Criminal Procedure Code I must do justice to the accused also and to the community by binding you over to be of good behaviour:

Myraline Holoupukeni: Boundover in sum of \$500.00 to be of good behaviour for 4 months.

Elsie Huesi: Boundover in sum of \$500.00 to be of good behaviour for 4 months.

Cecilia Taranawe: Boundover in sum of \$500.00 to be of good behaviour for 4 months.

(G.J.B. Muria)

ACTING CHIEF JUSTICE