

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

PALMER LEALUL

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Gregory Takau for Public Prosecutor
Mr Chris Tavoia for the Defendant

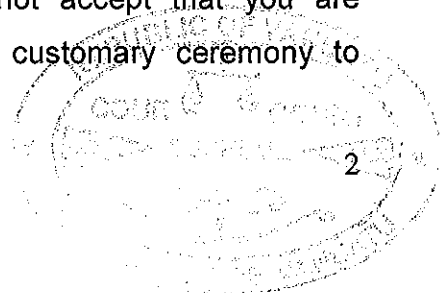
SENTENCE

1. Palmer Lealul you pleaded guilty to one charge of Incest contrary to section 95(1)(a) of the Penal Code Act Cap. 135 on 17th March 2009. The maximum penalty for this offence is 10 years imprisonment.
2. The facts are that on 29th January 2009 you had sexual intercourse with your daughter. She was 18 years old at the time. She was living in her boyfriend's house in another village. You went to ask her to return to your village. On the way there it was getting dark. You had a knife on you. She had torch and you walked in front of her and had a heated conversation with her. Then you pulled her into the bushes just by the roadside, and had sex with her.
3. The Court has been urged to adopt the sentencing principle in PP v. Gratien Bae [2003] VUCA 14. And the starting point should be 3 years imprisonment. This submission was made by both the prosecutor and your counsel.
4. I accept the aggravating features of your case were –



- You stood in a position of trust and responsibility and you abused that trust.
 - The victim was your straight daughter
 - Loss of dignity
 - A mature father
 - Had a knife (weapon).
5. In criminal Case No. 9 of 2009 PP v. Eliah Tabi this Court said that sexual cases are on the increase despite the Court imposing high penalties. The Court also said that in view of this increase, the starting point for sexual offences carrying a maximum imprisonment term of 10 years should be increased to 5 years.
6. The Court will maintain and adopt that same position in your case. There can be no doubt that base on the sentencing guidelines and principles laid down in PP v. Kevin Gideon and Ali August cases, the only appropriate sentence for you will be a sentence of imprisonment.
7. You are therefore convicted and sentenced for incest to a term of 5 years imprisonment.
8. I have however considered the relevant mitigating factors made on your behalf. These are –
- You early guilty plea; and
 - Your previous clean record.

I do not accept your age at 33 years to be a mitigating factor. Rather, it is an aggravating feature. Further, I do not accept that you are remorseful. You have not performed any customary ceremony to



demonstrate such remorse. For the two relevant mitigating features, there will be a deduction of 4 months from your 5 years term. You have already spent 4 months in jail. These are also deducted.

9. The final calculation is as follows –

Total sentence – 5 years or 60 months

Less - 4 months

56 months

Less - 4 months

Balance = 52 months

10. You will therefore serve a total of 52 months or 4 years and 4 months at the Correctional Centre in Luganville. This term commences on 9th June 2009.

11. You may apply for parole after having served half of your term of imprisonment.

12. You have a right to appeal against sentence if your are not happy with it, and you have 14 days to do that.

DATED at Luganville this 9th day of June 2009.

BY THE COURT



OLIVER A. SAKSAK

Judge

