



**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

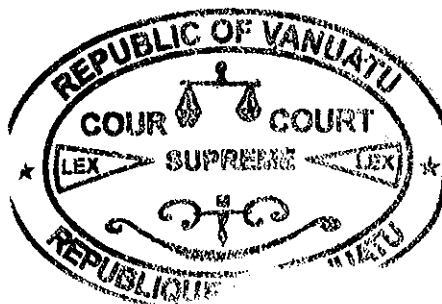
Criminal Case No. 46 of 2010

PUBLIC PROSECUTOR
V.
JACK PIERRE MARIKITILANG

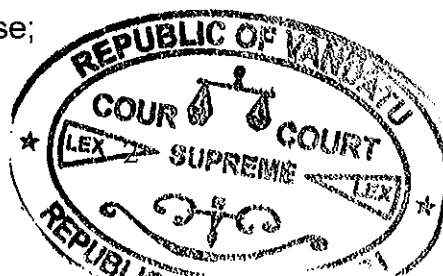
Coram: Justice D. Fatiaki
Counsel: Mr. L. Malantugun for the State
Mr. W. Daniel for the Defendant
Date of Sentence: 1st July 2010

SENTENCE

1. Jack Marikitilang, you appear today to receive your sentence for the offence of Sexual Intercourse with a child under care or protection. This offence which you pleaded guilty to and were convicted by the Court, carries a maximum sentence of 10 years imprisonment.
2. The unfortunate circumstances of the case are that the Defendant is the adopted brother of the victim's mother. During 2008 and 2009 the victim who was born in February 1992 and was 16 years of age, was living in the Defendant's home at Kokoriko area in Port Vila. During the time that the victim lived in the Defendant's household under his care and protection, she had sexual intercourse with the Defendant on several occasions and fell pregnant to his child. She has since moved out and now lives with her adopted mother at Tagabe/Airport area.

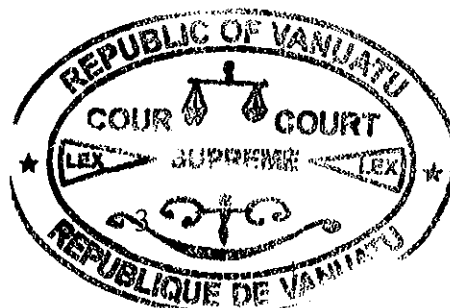


3. When asked about the offence the victim freely admitted that she asked the Defendant to have sex with her to satisfy her need and desire to have his child because of a "vision" she claims she received. The Defendant in turn, admitted that he was merely fulfilling the victim's need and answering his church's call for "love mo partnership". He did not realize the seriousness of his offending because he had the victim's consent.
4. Jack Marikitilang, let me make it very clear to you that the law which establishes the offence which you committed says that "*it is no defencethat the child consented*". This law which you have broken exists to protect young girls not only from elder men who may take advantage of their immaturity and naivety, but also to protect young girls from making rash decisions about their own sexuality.
5. In this offence you, Jack Marikitilang, were the adult and you should have protected and counselled the victim. For your part, you should have resisted the temptation. Instead you gave in to your carnal urges and you rationalized and justified your actions by telling yourself that you were merely fulfilling the victim's needs, that you were somehow doing her a favour. Nothing could be further from the truth.
6. There are several aggravating factors in the case that this Court cannot ignore. These include:
 - The fact that the victim is related to you and considered you her real uncle;
 - The fact that the victim was living with you at the time of the offending, as a member of your family under your care and protection;
 - The fact that sexual intercourse was frequent and lasted for 2 years. This was not an isolated fall from grace, it was a deliberate course of illicit sexual intercourse;



- The fact that the victim who is a young girl with no independent means, became pregnant;
 - The fact that you are a mature man of 55 years of age, married with 6 children of your own living with you at the time of the offending;
7. In your favour I have taken into account the 2 custom ceremonies that were performed to the victim and her family and the admission of the victim that she was the initiator in this sordid affair. I note also that you are a first offender. Your early and frank admissions to the police and your guilty plea in Court are also strong mitigating factors.
8. In sentencing you however the Court has a duty to ensure that you understand and accept responsibility for your criminal behaviour.
9. This Court also has a duty to protect young girls and to deter serious offending of this kind. There is also a need to dispel the mistaken notion that this offence can be committed with the consent of the victim or be justified or excused by good intentions or altruistic motivations.
10. Unfortunately this is not the first case involving a pastor of a Christian church. In *PP v. Louis Boe (1994) VUSC 19* the offender pleaded guilty to several offences including an offence of Unlawful Sexual Intercourse with his daughter and was sentenced to 3 years imprisonment for that offence. The trial judge in sentencing the offender said:-

"The accused is 43 years old and is a pastor of the Church of Christ. That a man of that position could behave in this way is almost beyond belief. It does neither hear nor his church any credit."

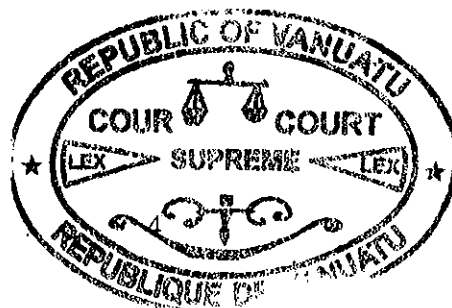


11. Those remarks apply with equal force to you, Jack Marikitilang, as a long-serving pastor of the New Covenant Church and a chief within your community.
12. In *Peter Talivo v. PP [1996] VUCA 2* the Court of Appeal in refusing to interfere with a cumulative sentence of 5 years imprisonment imposed for two offences of Unlawful Sexual Intercourse with a Girl Under Protection or under Care committed by a first offender who pleaded guilty and who performed a custom reconciliation ceremony to the victim:-

"All children are entitled to be protected by adults. Children must be safe in their own homes. When men who have the care of children abuse that trust we agreed with the Chief Justice that they forfeit the right to remain within the community. In this case the custom dealing with the matter could not in and of itself be sufficient to deal with it. We cannot see how on any basis it could be said that the sentence imposed was manifestly excessive. What this man did was deplorable conduct. The Court had an obligation to mark the community's disapproval of it in a serious way."

13. More recently in *PP v. Atis Willie [2004] VUCS 4* which was an appeal by the Public Prosecutor against the manifest leniency of a cumulative sentence of 12 months imprisonment for 2 offences of Unlawful Sexual Intercourse with a Girl Under Care and Protection, the Court of Appeal in upholding the appeal and in increasing the sentence to 2 years imprisonment said:-

"Had this man been sentenced to 3 or 4 years imprisonment for this offending this Court would not have interfered on an appeal by him".

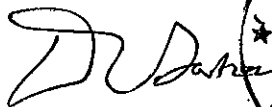


14. Bearing all the above in mind the most lenient sentence which this Court can impose on you Jack Marikitlang, is a sentence of 2 years imprisonment which is reduced by the time you have already spent in remand, namely, 1 month 2 weeks making an effective sentence of 1 year 10 months and 2 weeks imprisonment.

15. If you do not agree with this sentence you may appeal against it by filing a notice of appeal with the Court within 14 days.

DATED at Port Vila, this 1st day of July 2010.

BY THE COURT



D. V. FATIAKI
Judge.

