

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

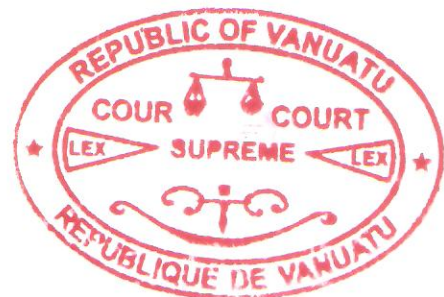
**TROY VINIA
YANO NICOLAS
JOSEPH WORECK**

**Mr Justice Oliver A. Saksak
Mrs Mandeng MI John – Clerk**

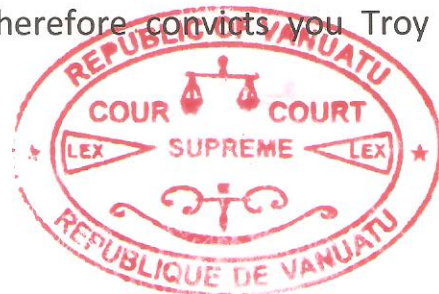
**Mr P. Wirrick for Public Prosecutor
Mrs M.P. Vire for the Defendants**

SENTENCE

1. Troy Vinia and Joseph Woreck you initially pleaded not-guilty to one charge of Unlawful Sexual Intercourse Contrary to Section 97 (2) of the Penal Code Act Cap 135. (the Act) Troy Vinia you pleaded not-guilty to one charge of publishing child pornography contrary to Section 147 B (1) and (2) of the Act. Yano Nicholas you initially pleaded not-guilty to one charge of Act of Indecency with a young person Contrary to Section 98 A of the Act.



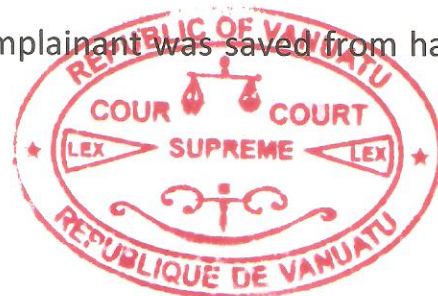
2. When the matter proceeded to trial and the Complainant was about to give her evidence, you all decided to be given a chance to replead. On rearraignment you all admitted the charges as laid against all three of you.
3. You have all accepted the facts as stated by the prosecutor and therefore there is no need to restate them.
4. You all must understand that the offences you committed are serious because Parliament has specified their maximum penalties as follows -
 - (a) For Unlawful Sexual Intercourse, Section 97 (2) – 5 years imprisonment.
 - (b) For Act of Indecency With a Young Person, Section 98 A – 10 years imprisonment.
 - (c) For Publishing Child Pornography, Section 147 B – 5 years imprisonment.
5. Your one victim was a 13 year old girl at the time of the offendings in September 2010. There are suggestions in submission made on your behalf that the complainant had encouraged or initiated sexual intimacy at the time and that she acted foolishly by giving VT5.000 to Yano Nicholas and asking for a ride.
6. But Sections 97 and 98 A are designed to protect young girls in those types of situations. It was totally wrong for all three of you who are older than the Complainant by far to take advantage of her immaturity. See PP v. Keven Gideon [2002] VUCA 7.
7. Taking into consideration all the circumstances of the case, and in light of previous cases decided by this Court and the Court of Appeal, this is a case that warrants custodial sentences. The Court therefore convicts you Troy Vinia,



Yano Nicholas and Joseph Woreck as charged and sentences each of you as follows:-

(a) Troy Vinia - You played a very big part in these offendings. You were the one who gave instructions to the complainant to follow Joseph Woreck first into the bushes where Joseph Woreck had sexual intercourse with her using a condom. After Joseph had finished you told the complainant to go back into the bushes and wait. When she was asking questions, you then told her to follow you and she did, then you had sex with her again. When you had finished with her you told her not to put her clothes back on but that she should lie down and spread her legs so you could take a photograph of her private parts. Although she did not want to do so, you assured her the picture would be for your private viewing only. She then agreed and you took two photographs of her. After all this you both returned to the waiting taxi. Then you told the complainant that Yano Nicholas should have his turn. After a little hesitation the complainant followed Yano into the bushes where oral sex took place. You then circulated the photographs you had taken to Robson Marack, Robinson Mantaktak and Richard Marsel. These feature places your offendings on the upper end of the scale.

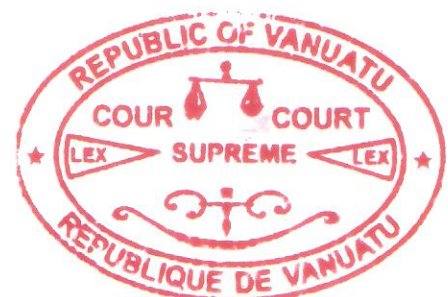
Therefore, I sentence you to imprisonment for a term of 4 years as a starting point for the Unlawful Sexual Intercourse charge under Section 97 (2). Your sentence will not be suspended. However I have considered that credit should be given for three mitigating factors such as no previous convictions, custom ceremony indicating remorse on your part, and a change of plea despite it was done after trial had started. Nevertheless much time and expense was saved and also that the complainant was saved from having to



retell the story of all that happened to her in front of the public in Court at the time. I consider reducing your sentence of 4 years imprisonment by 1/3. 16 months are therefore deducted from 48 months leaving the balance of 22 months or 1 year and 10 months to serve at the Correctional Centre.

For the Charge of publishing child pornography, I sentence you to imprisonment for a term of 2 years as a starting point. The purpose of this high penalty is to deter you and others from doing this sort of thing at this time and age when just about every youth and child has a mobile cell phone. It also marks the gravity of your offending and the public disapproval of such offending. Again I consider that 1/3 should be deducted due to your mitigating circumstances. Therefore from 24 months, 8 months are deducted leaving the balance of 16 months imprisonment to be served. This was a separate offending and therefore you will serve these 16 months consecutively with the 22 months for the charge of Unlawful Sexual Intercourse. In total you are sentenced to 38 months imprisonment. That is a total of 3 years and 2 months imprisonment. Your sentence starts today, 19th August 2011.

(b) Yano Nicholas - You also played a major role in these offendings. You were the one who planned it all. You took VT5.000 off the complainant when she asked for a taxi ride. You could have taken her straight home being a mature person. Instead in your mind you thought about bringing company, so you went to pick up Troy Vinia and Joseph Woreck. Then having them in the taxi with the complainant you drove out to Palekula because you knew what was going to happen there with Troy around.



Under those circumstances I sentence you to imprisonment for a term of 3 years as a starting point for the charge of indecency with a young person. However there will be a reduction of 1/3 allowed for the fact that you are a first time offender, your participation in the custom ceremony which shows remorse, and that you changed your plea earlier at trial to save time and expenses and the complainant from retelling the story of her ordeal. 12 months are therefore deducted from 3 years leaving the balance of 2 years imprisonment to be served at the Correctional Centre. There will be no suspension of sentence to mark the gravity of the sentence and to act as a deterrence both to you and to others. Your 2 years sentence starts today 19th August 2011.

(c) Finally for your Joseph Woreck , you broke the law by having sex with the complainant who was under the age of 15 years at the time. You were to first person to have sex with the girl on the instruction of Troy Vinia. But your participation places your capability on the lower end of the scale. For your part, I sentence you to imprisonment for a term of 2 years. However, for your mitigating circumstances, I consider that I should suspend your sentence for a period of 2 years on the condition that you do not commit this same offence or commit any other offence for which you would be charged. If you do, you will automatically go to jail for 2 years. This suspension is made under Section 57 of the Act.

However to mark the gravity of your offending and to act as a deterrence to you and to others, I consider that you should also do some Community Service for 40 hours. This is imposed under Section 58 N of the Act. You



must report to the Probation Service within 72 hours from now for further instructions. If you fail to do so your sentence may be reactivated if a complaint is made to the Court.

8. Those are the sentences of the Court for each of you. Each of you has a right of appeal within 14 days if you so choose.
9. I further order that all photographs available in all Files relating to this matter be destroyed by the Sheriff.

DATED at Luganville this 19th day of August 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge.

