

**PUBLIC PROSECUTOR**

**VS.**

**JONATHAN BOESALEANA**

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

**Mr P. Wirrick for Public Prosecutor**  
**Ms J. Tari for Defendant**

**Date of Submissions Hearing And Sentence: 28<sup>th</sup> October 2011.**

**SENTENCE**

1. Jonathan Boesaleana you were initially charged with 10 Charges as follows -
  - (a) Attempted Sexual Intercourse Without Consent - Counts 1 and 2,
  - (b) Sexual Intercourse Without Consent - Counts 3, 6 and 9,
  - (c) Incest - Counts 4, 7 and 10 and
  - (d) Act of Indecency - Count 5.
2. On 18<sup>th</sup> October 2011 when your case was called on for plea, the Prosecutor informed the Court that all charges of Incest (count 4, 7 and 10), Act of Indecency (count 5) and a charge of Attempted Sexual Intercourse Without Consent (count 2) had been withdrawn against you. That is a total of 6 Charges withdrawn against you.
3. Of the remaining 4 Charges of Attempted Sexual Intercourse Without Consent, Sections 28 and 91. (Count 1) and Sexual Intercourse Without Consent, Section 91, (count 3, 6 and 9) you pleaded guilty.



4. From the facts which you have accepted, you started having sexual affairs with your adopted daughter. It started way back in 2007 when your adopted daughter was only 13 years old. You were lucky not to have been charged with Unlawful Sexual Intercourse as well Contrary to section 97 (2) of the Act. You should consider yourself lucky also because the Prosecutor has withdrawn the Charges of attempt, incest and act of indecency against you because he has considered that you should be charged only with the lead offences which are the more serious charges.
5. Also from the facts it is apparent these offendings were being committed simultaneously with the offendings in Criminal Case No. 28 of 2011 for which this Court has sentenced you to 21 years imprisonment (after appropriate deductions).
6. Sexual Intercourse Without Consent carries a maximum of life imprisonment. The charge of attempt is treated in like manner. You have admitted to three counts of sexual intercourse without consent and to one count of attempt.
7. In Sentencing you today I apply the principles set out in the cases of PP v. Scott [2002] VUCA 29, PP v. Gideon [2002] VUCA 7, Kalfau v. PP [1990] VUCA 9, and PP v. Shem [2010] VUSC 142. From these, it is clear that your offendings warrant that custodial sentences be imposed. From these also it is clear that the starting point for a lead offence of sexual intercourse without consent must be 8 years imprisonment for all 4 counts.



8. I accept the aggravating features stated by the Prosecutor as follows

–

- (a) Your victim was 13 years old in 2007 when the offendings started and repeated over a period of some 4 years to 2011 when your victim turned 16 years old.
- (b) There was a grave breach of trust between a father towards her daughter.
- (c) The great disparity between the age of the victim and yourself being 38 years old.
- (d) There were threats of violence used.
- (e) The offendings occurred within the confines of your family home where the victim was supposed to feel safe.
- (f) The activities were planned to occur when no-one else was at home.
- (g) In addition, the victim has lost her self-esteem and dignity. She will relive the memories of these sexual activities for a long time, probably her lifetime.

9. For these aggravating features the Court will uplift the sentence from the starting point by 5 years. The Court accordingly sentences you therefore as follows :-

- (a) For attempt sexual intercourse without consent - Count 1 - 8 years imprisonment.
- (b) For sexual intercourse without consent - Count 3 - 8 years imprisonment, concurrent.





- (c) For sexual intercourse without consent – Count 6 – 8 years imprisonment, concurrent.
- (d) For sexual intercourse without consent – Count 9 – 8 years imprisonment, concurrent. The effect of this concurrent sentence is that you will serve only 8 years imprisonment for all 4 counts. However 5 years are added due to your aggravating features to 8 years making a total of 13 years imprisonment.
10. In mitigation I take into account the late plea in respect of the 2007 charges (Counts 1, 3 and 6. These offendings could have been reported earlier either by the victim or her mother in order to prevent later offendings. For this failure and/or omission the Court will allow a reduction of 5 years. These represent the period from January 2007 to July 2011 when the matter was brought to light by the mother. Therefore that brings your sentence back down to 8 years imprisonment (concurrent) for all 4 counts.
11. I allow a further reduction of 1/3 for early guilty plea in respect of all the charges generally and specifically for the 2011 charge. That means a total of 3 years are deducted from the 8 years concurrent sentences, leaving the balance of 5 years imprisonment.
12. I am aware that you are currently serving a 21 years sentence for your previous case. However these were separate offendings done to your adopted daughter. For that reason I consider it as appropriate that the concurrent sentences of 5 years be made cumulative to your current term of 21 years imprisonment to reflect



the totality principle. That means that altogether you will serve 26 years imprisonment.

13. That is the sentence of the Court. You have a right to appeal within 14 days if you so choose.

**DATED at Luganville this 28<sup>th</sup> day of October 2011.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge.**

