

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

KEITH MALA MATAIA

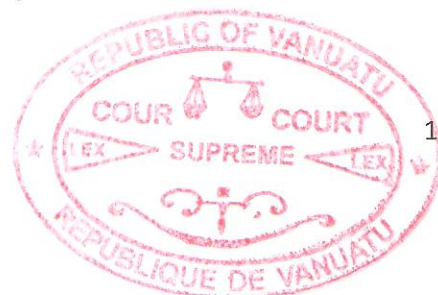
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr P. Wirrick for Public Prosecutor
Miss J. Tari for Defendant

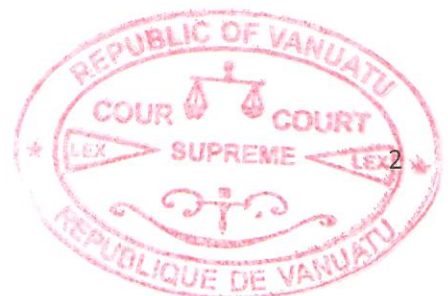
Date of Plea: 15th April 2011
Date of Submissions Hearing: 16th May 2011
Date of Sentence: 26th May 2011

SENTENCE

1. The defendant Keith Mala Mataia was initially charged with 8 counts of sexual offences: 5 charges of indecent acts (Sect.98) and 3 charges of unlawful sexual intercourse (Sect. 97(2) and Section. 97(1).
2. On 15th April 2011 the prosecution withdrew 5 counts of acts of indecency and the 2 counts of unlawful sexual intercourse under section 97(2). The basis of the withdrawal was presumably that these were time barred by Section 15(b) of the Penal Code Act.
3. That left only one count of unlawful sexual intercourse under Section 97(1) of the Act which carries a maximum of 14 years imprisonment. The defendant pleaded guilty to the charge on 15th April 2011.
4. He accepts that sometimes in 2003 he had sexual intercourse with the complainant Anita Rotang. He accepts he was 24 years old at the time and the victim was only 12 years old.



5. The Court accepts that according to the principles in PP v. Gideon [2002] VUCA 7 and PP v. Karl Andy [2011] VUCA 14 the starting point for a section 97 (1) offence is 6 years imprisonment. This is increased to 7 years imprisonment due to the aggravating features of the case which are that –
- (a) The loss of dignity, the pain felt and the bleeding experienced by the victim;
 - (b) The repetitive actions of the defendant going back to the time when the victim was 7 years old (which is not disputed, but for time limitation period);
 - (c) The great disparity of age of the offender and victim by some 12 years; and
 - (d) Breach of trust between them as family members.
6. The Court then considers that some reduction be made for the mitigating factors such as early guilty plea, good cooperation with the police and being a first time offender. A 1/3 reduction (2 years and 4 months) be allowed for these.
7. A further reduction of 1/3 should be allowed for the considerable delay in the prosecution of this matter. The cases cited by defence counsel all support that delay must result only in a substantial reduction of sentence and that it must not be used to annul or eliminate penalties. These cases are Kyio v. Reginam [2004] SBHC 90, Sahim v. The State (MISC Action No. 17 of 2007, 25th March 2008 unreported) and Martin v. Tauranga District Court [1995] 2 NZLR 419.
8. The Court notes that the defendant had performed a custom ceremony. However, the Court also notes that the father of the complainant has a note of complaint on File that despite the ceremony, the defendant continued to have affairs with the complainant. In light of that complaint that ceremony therefore was meaningless and it reveals there was and has been no remorse on the part of the defendant. No allowance or credit can be given for the custom ceremony.



9. However, a further reduction from the sentence of 4 years and 8 months by 1/3 for delay means that 1 year and 4 months (16 months) are deducted, leaving the balance of 32 months or 2 years and 8 months.
10. Keith Mala Mataia, the Court therefore hereby convicts you and sentences you to imprisonment for a term of 2 years and 8 months. You are to serve this term of imprisonment at the Correctional Centre in Luganville. This sentence commences today.
11. The purpose of Section 97 of the Act is to protect young girls. That purpose cannot be ensured if offenders are not punished otherwise than by imposing custodial terms. Such punishment should act as a deterrence both to the defendant and to others from future offendings. It is also to mark the gravity of the offendings and the public disapproval of such unlawful behavior.
12. You have a right of appeal within 14 days if you are not happy with this sentence.

DATED at Luganville this 26th day of May 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge

