

PUBLIC PROSECUTOR

-v-

WASHINGTON JOHN

*Coram: Vincent Lunabek, Chief Justice
Counsel: Ms Kayleen Tavoia, Public Prosecutor
Mr Andrew Bal for Defence*

*Hearing Date: 30th September 2013
Date of Decision: 1st October 2013*

SENTENCE

Mr Washington, you appear today for sentence. You are initially charged with one Count of sexually intercourse with child under care or protection, contrary to section 96(1) (a) of Penal Code Act [Cap 135] and one Count of unlawful sexual intercourse, contrary to section 97 (2) of Penal Code Act.

On 30 September 2013, you entered a guilty plea for the offence of sexual intercourse with child under care or protection and you denied the charge in Count 2 of unlawful sexual intercourse, contrary to section 97(2) of Penal Code by entering a not guilty plea.

The Prosecution entered a nolle prosequi in respect to the offence charged against you in Count 2.

You are discharged of the offence of unlawful sexual intercourse in Count 2 accordingly.

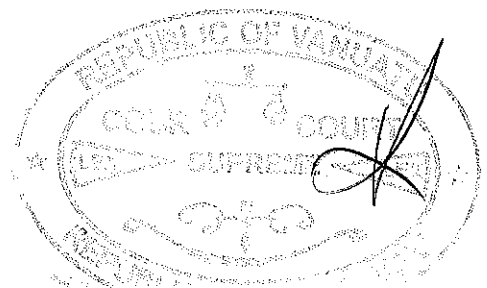
Today you are only sentenced in respect to the offence in Count 1 of Sexual intercourse with child under care or protection, contrary to s. 96(1) (a) of Penal Code Act.

The brief facts of this case are as follow:

1. The complaint in this case is made by one Melkio Atkins who is the uncle of the child victim.



2. The child victim is your daughter. She is 14 years of age. She used to be a student at the Primary School however she does not attend the school any more.
3. The act of sexual nature has occurred between you and her seven times.
4. The incident first took place in 2012 after she had gone to bath in the river.
5. She was putting on her clothes when you approached her and had sex with her and at that time her mother was in the kitchen.
6. On four occasions she had accompanied you to the bush during the harvesting of wild yams and you had sex with her.
7. On one occasion you had gone to the garden with her to harvest manioc and again you had sex with her in the garden.
8. On another occasion while her mother had gone to see her cousin (mami Elisabeth) at the twin water falls and you had sex with the child/daughter.
9. On another occasion you had gone with her to get wild yams and natangura leaves and you again had sex with her.
10. The last incident occurred when her younger sister accompanied you and the victim to dig wild yams then you asked the victim's younger sister to stay on the road while you and your victim daughter went into the bush that was when you had sex with her again.
11. The last incident occurred on the 4th of March 2013. Her mother became suspicious when you got home and there was no wild yams.
12. The mother then spoke to the younger sister to hear her version of events and she then informed the mother of what happened.
13. When the mother asked her about the incident she then informed her that she wanted to tell her the first time about but she could not because she used to assault her that is the reason why she only related to her after she asked her.



When I consider your sentencing, I take into account of the submissions made by the Public Prosecutor on behalf of the State Republic. I also take into account of what your lawyer told the court in his submissions made on your behalf and including the mitigating factors

Mr Washington, you are present today in court when the court sentences the accused Reginald Samson in Public Prosecutor –v- Reginald Samson, Criminal Case No.59 of 2013 on similar type of sexual offending, contrary to s.96(1)(a) of Penal Code. The sentencing remarks, I have made in that earlier sentencing today, I repeat them and apply to your sentencing also.

Section 96(1) (a) of Penal Code Act is the prohibiting section. It sets a maximum penalty for 10 years imprisonment. It is a serious offence as reflected by the maximum penalty imposed by law.

Upon your conviction for sexual intercourse with a child under care or protection in section 96(1) (a), you are liable to 10 years imprisonment.

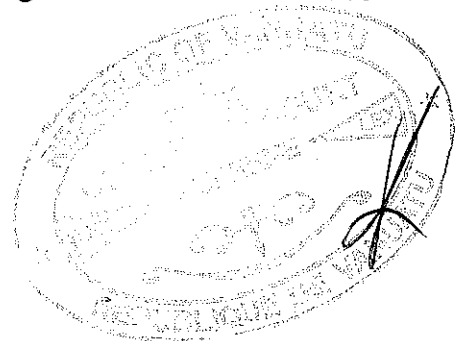
In the present case, when I consider your sentencing, I also consider the guideline judgments of the court of appeal I have referred in the earlier case of Public Prosecutor –v- Reginald Samson, Criminal Cased No. 59 of 2013.

The Courts of the Republic condemn in the strongest terms sexual offences in general and specifically sexual abuses involving children.

Those who sexually abuse children, must go to prison. I set out below some case authorities:

In Peter Talivo –v- Public Prosecutor [1996] VUCCA2; Criminal Case No. 02 of 1996, the court stated:

"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....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 or any basis it could be said that the sentence imposed was manifested 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"



In the case of Public Prosecutor –v- Kevin Gideon the court stated that:

"It will only be in a most extreme cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit their right to remain in the community."

I bear in mind of these guideline judgments when I sentence you today. There will be no difference in the way you will be sentenced.

In the present case, the seriousness of your offending is aggravated by the following factors:

- Breach of trust – you are the father of the child complainant. She looks upon you as a fatherly figure to her who may think you would be there at home to protect her, particularly seeing that her mother was absent yet you breached that trust by sexually molesting your child.
- Age difference – there is an age difference between the child of 14 years of age and your age of 42 years old. A significant difference of 28 years which shows you are an adult and mature person while the girl is a child, thus, vulnerable.
- There were high degree of planning or premeditation – you planned or calculated the moment you sexually abuse the child when you are alone with her in the garden or in the bush harvesting wild yams and no one else in there apart from you and the child complainant.
- The offending is repeated – 7 times.
- You have previous conviction for sexual offending. In 1995, you were charged and convicted and sentenced for the offence of attempted rape, contrary to sections 28 and 91 of Penal Code Act.

In the present case, you are sentenced to 6 years imprisonment as a starting point considering the aggravating factors.

Your lawyer informed the court of your personal history and details. They will be taken into consideration in your sentencing.



You are originated from Lalngetak Village on the island of Vanua Lava. You are born on 15th November 1971. Your father is from Lalngetak Village in Vanua Lava and your mother is from Vatrata Village on the island of Vanua Lava. You have two brothers and two other sisters.

You attend school at Arep Primary School on the island of Vanua Lava. You ended your education at grade six and did not further as you dropped out at grade six. After grade six, you assisted your parents in making gardens and in generating income for your family through sale of marine resources and from kava and copra. You do not have a permanent employment except that you do gardening to make living for your family.

You later found yourself a wife and you got married with her on the 3rd of May 2003. As a result of such marriage, you have two sons and a daughter. All your children are attending school at Ngereturo Primary School on the western side of Vanua Lava. You are the only one who finds income to support your nuclear family. You stated that you do not receive any assistance in terms of finance from other family members.

Further, your wife is currently eight months pregnant. You stated that the victim does no longer live with you since the matter was reported. You are a member of Lalngetak community and you participated a lot in community works especially with church and school. You listen to your chiefs and obey their commands especially when requesting you to assist in any work related to your community. You stated that your plan in future is to ensure that all your children are well educated and have better job to help improve their standard of living. Besides, you have performed a custom ceremony to the victim and her family and the ceremony was accepted by the victim. The custom ceremony involves a sum of VT10,000, a pig worth VT5,000 and a mat.

In mitigation, your lawyer informs the court to take the following in considering in your sentencing:

- You enter an early guilty plea
- You cooperated well with Police and made full admissions
- You are remorseful for your actions
- You do a lot of garden for your family and you are the only one who finds income for his family
- You have a wife and children
- You are paying for your children's school fees
- You promise not to commit the same offence or any other offences



On balance between the aggravating and mitigating factors, and after cross-referencing each to the others, the aggravating factors out weigh the mitigating ones.

Your sentence of 6 years imprisonment is reduced to 1/3 to reflect your early guilty plea – rendering your sentence to 4 years imprisonment. I reduce your sentence further for 3 months for other mitigating factors.

Your end sentence is for 3 years and 9 months imprisonment.

I consider suspending it, however, I decline to do that taking the seriousness of your offending.

You are ordered to serve a term of 3 years and 9 months with immediate effect.

You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Sola, Banks this 1st day of October 2013

BY THE COURT



**Vincent LUNABEK
Chief Justice**

