

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

Criminal Case No. 14/ 2013

PUBLIC PROSECUTOR

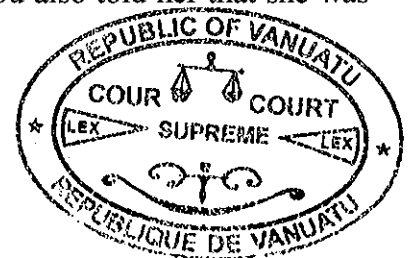
V

KASPA LEO

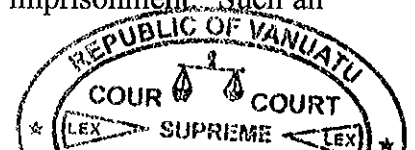
Hearing: *16 May 2013*
Before: *Justice Robert Spear*
Appearances: *Tabisa Harrison for the Public Prosecutor*
Francis Tasso for the Defendant

SENTENCE

1. Kaspas Leo, you are for sentence on 5 charges of having sexual intercourse without consent. You pleaded guilty to each of those charges at the time of your first arraignment on 9 April 2013. You are entitled to distinct credit for those early guilty pleas because it has not only saved the complainant the ordeal of having to undergo a trial, it has also saved the State the cost of a trial.
2. A summary of facts has been prepared by the prosecution and this is contained in the prosecution counsel's submission. No dispute is taken by you with that summary of facts.
3. The complainant was 13 years of age at the time this offending occurred which was December 2012. She was your step daughter and had been for a number of years. You were 43 years of age at that time.
4. On 13 December 2012, after your wife had left for work, you summonsed this young girl to come to you, you put your hand over her mouth and you forcefully put her onto your bed and removed her clothing. You also removed your lower clothing and you raped her. You told her that you would hit her if she resisted. You also told her that she was not to tell her mother.

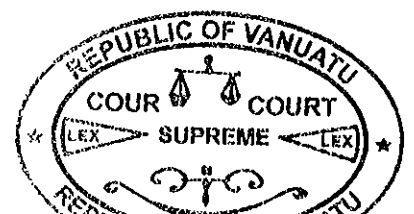


5. It is clear that this young girl was confused as to what had occurred because of course you were one of the adults in her life that she could expect to have been concerned for her safety and security. She was also concerned as to what her mother's reaction would be if this came out. That is a perfectly understandable reaction and it typical of the confusion of emotions that the Court invariably becomes aware of with young girls who are sexually abused within a family environment. They become worried that they will be alienated from those they love if they make the disclosure. They become worried that the family unit will break down and they will be blamed for it. They become worried that they may be considered the cause of the offending. That type of emotional outcome is all quite natural for a young girl who is sexually abused in a domestic environment such as was the case here.
6. Not content with violating this young girl on one occasion, you raped her four further times during December 2012. The last occasion was on New Year's Eve, 31 December 2012.
7. Fortunately, your offending was disclosed to the police and you were arrested the following day, 1 January 2013. You have been in custody since that time.
8. Your offending is serious offending of its type. This type of offending is serious which of course is reflected in the maximum penalty that is carried by this particular offence being life imprisonment.
9. Your offending is serious because it involves a much younger girl with you at 43 and this young girl at 13 years of age. There was physical force involved with her detention while you carried out the rape. There were threats of violence designed to ensure that your offending would not be disclosed. It occurred not just once but five times over a period of about three weeks. There was also an appalling abuse of trust given that you were her step father and so you were an adult who should have been concerned about her wellbeing.
10. If this offence had occurred on only one occasion, the appropriate starting point would be eight years imprisonment in accordance with authority. However, to reflect the fact that it occurred on five separate occasions I lift that to 10 years imprisonment. Such an



uplift is designed to recognise the seriousness of the offending, to hold you accountable for the harm that you have done this young girl, to mark society's outrage that someone like you has preyed upon a young and vulnerable member of this community and someone who was a family member. There is always the need to send out the clear and emphatic message out that sexual offending against the young and the vulnerable is not tolerable in a right thinking community and it will be met with imprisonment.

11. You say that you are remorseful but it is of significance that you attempted to shift the blame for this offending on to your wife. You told the probation officer that this offending came about because your wife declined to have sexual intercourse with you. That, of course, is no excuse and your wife is perfectly entitled to make her own mind up as to whether she is to have sex with you or not. Somehow, in your twisted thinking on this, you considered that your wife's response to your overtures provided some justification for you turning your attention to her (that is your wife's) 13 year old daughter. This runs contrary to any proper feeling of remorse which must surely include some empathy for the victim in order for credit to be given for it. No empathy for this young girl has been detected by me from all the material provided.
12. All I can take from the material is that you are sorry for the position that you are now in and no doubt sorry for the trouble that you have caused to your family.
13. You have offered to undertake a custom reconciliation ceremony as part of the "*klinem fes*" approach but that has been rejected by the complainant and her mother. That is their right. They do not have to accept custom reconciliation. They are entitled to feel anger towards you and they are entitled not to forgive you. In the end, of course, it is up to the court to determine what the appropriate punishment should be for this offending.
14. You have no previous convictions but that is not a matter that can be raised in mitigation. If you had previous convictions, particularly of a like nature, they would usually be treated as an aggravating feature for sentencing purposes. However, the absence of previous convictions should not by itself be taken as a mitigating factor because to do so would be effectively to double-count that issue in the sentencing equation.



15. I note that you have been prominent in the community but this offending is so appalling, it is so blatant, and it is the type of offending that must be stamped on so firmly by the Courts that I am not prepared to allow you any credit for what contribution you may have made to your church if it is to be viewed as evidence of previous good character.
16. You did plead guilty at the first available opportunity and for that you are entitled to credit of one third against the sentence that would otherwise be imposed upon you.
17. Taking that offending end point of 10 years imprisonment and removing one third for your early guilty pleas, that leaves me with a sentence calculation of 6 years and 8 months imprisonment.
18. In my view a sentence of 6 years 8 months imprisonment is appropriate, it is the least restrictive outcome and it is the sentence that I impose now upon you. It will be deemed to have commenced on 1 January 2013 being the date that you were apprehended and first held in custody.
19. You have 14 days to appeal this sentence if you do not accept it.

BY THE COURT

