

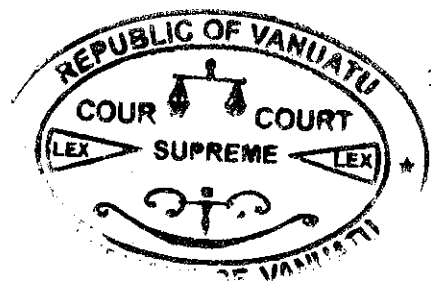
PUBLIC PROSECUTOR VS CISSI USIMOLI

Coram: Justice Dudley Aru

Counsel: Mr Ken Massing for the Public Prosecutor
Ms Jane Tari for the Defendant

SENTENCE

1. Cissi Usimoli you were charged with one count of unlawful sexual intercourse contrary to section 97 2) of the Penal Code [CAP 135]. On 14th of April 2015 you pleaded guilty to the charge and you were convicted accordingly. You are in court again today to receive your sentence.
2. The brief facts of your offending as accepted by defence counsel on your behalf are that the offending occurred on Namoru village, south Santo on 25 and 29 January 2015 on two different occasions. On 23 January 2015 after meeting the complainant by the sea you went home and waited for her. On her way home you convinced her to follow you to your house. The complainant stayed with you for a week. On 25 January 2015 at around 900pm at night you were both in a bush house and you had sexual intercourse with the complainant until you ejaculated. The second incident occurred on the 29 January 2015 in the morning and you had sexual intercourse with the complainant outside the house until you



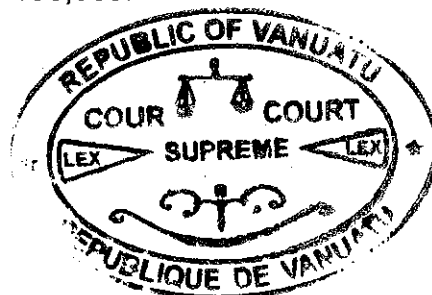
ejaculated. You remained in the bush until the evening and you both returned to your home. On 30 January 2015 the complainant returned to her home. A Medical examination of the complainant later revealed that she had had previous sexual intercourse.

3. When you were cautioned and interviewed by the Police you admitted the allegations. Having sex with a girl who is under 15 years but over 13 years is a criminal offence punishable by imprisonment for 5 years. The law recognizes that young girls must be protected from such sexual abuse.

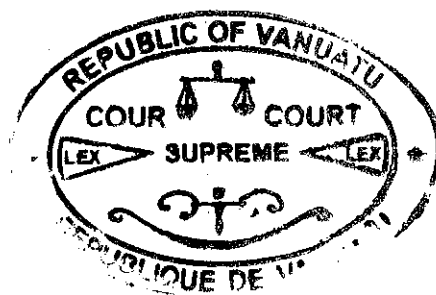
4. Your Presentence report provides that :

- You are 17 years old from Namoru village , south Santo but live with your family at the show ground area in Luganville;
- You are the fourth child in a family of seven and you have a good relationship with your family and community;
- You were attending year 9 at College de Santo until the incident;
- You want to be a government employee and you are skilled in electrical wiring;
- You are a member of the Protestant church and you attend church regularly and your father is a pastor;
- You depend on your parents for your livelihood.

5. You told your probation officer that the complainant is your girlfriend and you intend to marry her. No custom reconciliation has been done as yet due to the complainant's family demanding a fine of VT 100,000.



6. Factors which aggravate your offending are that there is some degree of planning on your part to commit the offence and also you repeated the offending before the complainant went back to her home.
7. Defence counsel on your behalf submits the following factors as mitigation :
- You are 17 years old ;
 - You are a first time offender ;
 - You entered a guilty plea at the earliest opportunity and
 - You cooperated with the Police ;
8. Counsel for the Prosecution submits that I adopt a starting point of 3 to 4 years imprisonment and after taking account of any mitigation impose an end sentence of 2 years imprisonment.
9. Defence counsel on your behalf submits that this case concerns two consenting teenagers having sex as there is no threat or force used and submits that a suspended sentence of imprisonment is warranted.
10. I note the clear sentiments of the Court of Appeal expressed in *Public Prosecutor v Gideon* [2002] VUCA 7 which sets the bottom line that men cannot take advantage sexually of young people otherwise they forfeit their rights to remain in the community. On the other hand it is also noted that there are cases where young people themselves are involving in underage sex. Cases referred to me by Counsel are *Public Prosecutor v Roy* [2011] VUSC 295, *Public Prosecutor v Kiki* [1998] VUSC 71 and *Public Prosecutor v Daniel* [2014] VUSC 108.



11. Having considered these cases I adopt a starting point of 2 years imprisonment which is uplifted to 3 years after taking into account aggravating factors. For your early guilty plea you are entitled to a full one third (1/3) discount of your sentence which is reduced to 2 years imprisonment. As you are a first time offender and you cooperated with the Police I make a further deduction of 1 year leaving you with an end sentence of 1 year imprisonment. This is suspended for two years but should you reoffend during this time then you will serve the full term in custody.

12. In addition to your suspended sentence you are to do 100 hours community work.

13. You have 14 days to appeal this decision if you are not happy with it.

DATED at Luganville this 24th April 2015

BY THE COURT

DUDLEY ARU

Judge.

