

PUBLIC PROSECUTOR

v.

JEFFERY MUL

TOM IARUEL IAKORUM

Coram: Justice Mary Sey

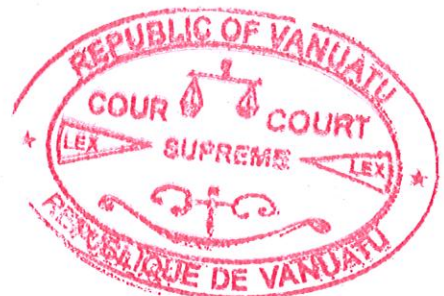
Counsel: Tabisa Harrison for the State

Jacob Kausiama & Harrison Rantes (PSO) for the Defendants

Date of Sentence: 12 February 2015

SENTENCE

1. **Jeffery Mul** you are for sentence today having pleaded guilty on 10 February 2015 to one count of Aiding And Abetting Act Of Indecency With A Young Person contrary to section 30 and 98A of the Penal Code Act [Cap 135].
2. **TOM IARUEL IAKORUM** you are also for sentence today having pleaded guilty on 10 February 2015 to one count of Act Of Indecency With A Young Person contrary to section 98A of the Penal Code Act [Cap 135].



3. THE LAW

Section 30 provides that:

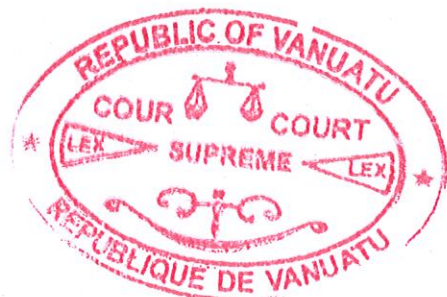
Any person who aids, counsels or procures the commission of a criminal offence shall be guilty as an accomplice and may be charged and convicted as a principal offender.

Section 98A states:

A person must not commit an act of indecency upon, or the presence of another person under the age of 15.

Penalty: Imprisonment for 10 years.

4. Undoubtedly, the fact that section 98A of the Penal Code carries a maximum penalty of 10 years imprisonment is some indication of the seriousness of the offence.
5. The brief facts of the case are not disputed by the defendants and they acknowledge the seriousness of the charges laid against them.
6. The offending occurred on 16 August 2012 and the complainant Anika Johnny filed a written statement against the two defendants who are from Loumia village, middle bush Whitegrass. The two defendants were on a horse when they approached the victim Anika and three other girls and asked for their parents' names.
7. Tom Iakorum chased away Sylvie Iakar and Alice Kissel and he blocked the victim and her friend Felina Noka. Then he jumped down from the horse and made sure that the two girls did not run away. Tom Iakorum held on to Anika and Felina Noka tightly and he pushed Anika down and that was when Felina managed to escape.



8. Tom Iakorum held Anika tightly and blocked her mouth. Anika kicked and tried her best to push Tom Iakorum away while Jeffery Mul was on top of the horse blocking Anika from running away from them. Tom Iakorum then pushed his hand inside Anika's trousers and touched her vagina.
9. One Johnny Son heard Felina screaming down the road and also Alice and Sylvie had told Johnny about the incident. He approached the two defendants but they ran away leaving the horse behind. Anika Johnny was 14 years old at that time of the offending and was schooling at Lampruan Center School. Anika recognized Tom Iakorum because at one time she had gone to eat wild mandarin at his place but she does not know Jeffery Mul whom she described as skinny and was wearing black t-shirt and had his head covered.
10. Following the conviction of both defendants, defence counsel sought a pre-sentence report and the same was ordered together with sentencing submissions from counsel. I am grateful for the same day pre-sentence report and the assistance provided to the Court by counsel's sentencing submissions within the limited time available.
11. The following personal details of the defendants have been extracted from the pre-sentence reports:

Jeffery Mul is 20 years of age and originates from Loumia village, middle bush area in Tanna. He is married and living with his wife and one year old child. He said he was 17 years of age when he committed the offence and during the commission of the offence towards the victim he thought it was some sort of fun or joke and he had no idea



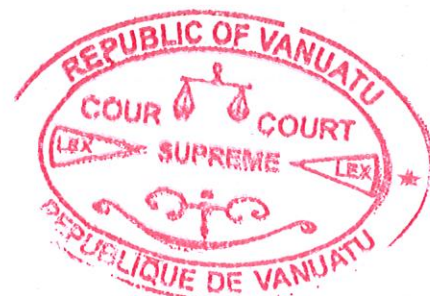
his action was serious or unlawful. He stated that he later felt guilty and remorseful for his actions when he was approached by the Police. He also said his parents did not give him a chance to attend school and that he cannot read and write. He added that he is a subsistence farmer and he depends on subsistence farming for his daily living.

His father, Mr. Iaruel Mul, confirmed to the probation officer that a Kastom meeting and reconciliation between the offenders and the victim has taken place at Loukalau Nakamal. He said the offender presented a pig, two kava stems and a rooster to the victim and her family and the items were accepted.

12. Tom Iaruel Iakorum is 24 years of age and originates from Loumia village, middle bush area in Tanna. At the time of the commission of the offence he was 21 years old. He is now married and living with his wife and their three children. He said he had no opportunity to pursue a better education. He told the probation officer that he cannot read and write. He added that he is a subsistence farmer and he depends a lot on subsistence farming for his family's daily needs.

Mr. Iaruel Mul and Mr. Sam (community leaders) confirmed to the probation officer that a Kastom meeting and reconciliation between the offender and the victim took place at Loukalau Nakamal. They said the offender presented a pig, two kava stems and a rooster to the victim and her family and the items were accepted.

13. The prosecution submits that the offending is serious given the aggravating features and that the two defendants should be given custodial sentences to mark the seriousness of the offence and to send



a message out to the public. The prosecution further submits that the Court should consider a starting point of 5 years imprisonment uplifted by two years for aggravating features and one third discount for early guilty plea.

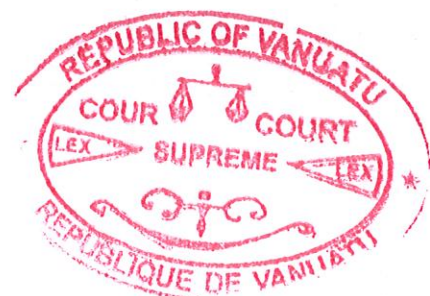
14. However, it is the submission of defence counsel that the starting point for the period of imprisonment prior to adjusting the sentence having regard to the aggravating features and mitigating factors is one of 2 years imprisonment with one year uplift.
15. In support of his submissions, defence counsel relies on cases such as Public Prosecutor v Banga [2013] VUSC 34, Public Prosecutor v Keleb [2009] VUSC 11, Public Prosecutor v Mahit [2012] VUSC 231, Public Prosecutor v Kalsal [2007] VUSC 48 and Public Prosecutor v Samuel [2009] VUSC 84. In these cases, the defendants were charged under section 98A of the Penal Code and suspended prison sentences, community work orders and compensation orders were imposed.
16. The Court is also invited to consider the case of Public Prosecutor v Melseben Livae Criminal Case No. 53 of 2014 and that of Public Prosecutor v Lenny Robson Criminal Case No. 56 of 2014 although the circumstances of the offending differ from this present case. It is submitted by the defence that this offending by Jeffery Mul and Tom Iaruel Iakorum falls on the lower scale of seriousness.
17. I am inclined to agree with defence counsel's categorisation of the defendants' offending in this case. Moreover, with the timely intervention of Johnny Son, the offending was not aggravated further than the thrusting of Tom Iaruel Iakorum's hand into the victim's trousers and the touching of her vagina.



18. In mitigation, defence counsel highlights the early guilty plea entered into by the defendants at the earliest opportunity and their full cooperation with police enquiries. I have also taken into consideration the fact that this is the defendants' first offence and the fact that they have performed a custom reconciliation to the victim's family.
19. Nonetheless, I consider that only a custodial sentence is appropriate in this case. I take as a starting point a sentence of 24 months imprisonment which is increased to 36 months imprisonment to reflect the aggravating features in the case.
20. Defence counsel has referred me to the case of PP v Gideon [2002] VUCA 7 where the Court of Appeal said:

"As is always the case, having reached that conclusion, it is necessary to consider what reduction should be allowed for mitigating factors. The first and most obvious in this case was the plea of guilty. That always will attract a substantial reduction particularly when it occurs at the first available opportunity. It is also an indication of remorse and contrition."

21. Consistent with the view of the Court of Appeal in PP v Gideon and Public Prosecutor v Andy [2011] VUCA 14, I have considered what reduction should be allowed for mitigating factors in this present case. From the 36 months imprisonment imposed, I deduct 12 months for the defendants' early guilty plea. I also deduct a further 12 months for mitigating factors making a total end sentence of 12 months imprisonment.
22. In addition, both defendants are sentenced to 300 hours community work and 12 months supervision.



23. I have considered the provisions of Section 57 of the Penal Code and I am of the view that a suspended term of imprisonment would still serve the overriding principles of deterrence and denunciation for the individual, the community and the nation as a whole. In Public Prosecutor v Bage [2013] VUSC 34, the defendant caressed the victim's vagina and removed his trousers then showed his penis to the young victim. The Court sentenced the defendant to 2 years imprisonment suspended with special conditions.
24. Given the circumstances of the offending in this present case, I will suspend the 12 months imprisonment for a term of 2 years from today's date. Jeffery Mul and Tom Iaruel Iakorum you should both note that even though you are not going to prison today, you now have a criminal record. If you re-offend and you are convicted before the 2 years' suspension period expires, your sentence of 12 months imprisonment shall be re-activated and you may be required to serve this sentence of imprisonment in addition to any sentence that may be imposed on you for your re-offending.
25. You have 14 days within which to file a notice of appeal against this sentence if you do not like it.

Dated at Isangel, Tanna this 12th day of February, 2015.

BY THE COURT


M.M. SEY
Judge

