

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

Criminal
Case No. 17/3421 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Prosecutor

AND: TUNA LULU
Defendant

Before: *Justice Oliver A. Saksak*

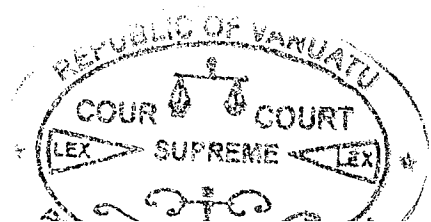
Counsel: *Damien Boe for Public Prosecutor*
Jane Tari Aru for Defendant

Date of Plea: *3rd September 2018*

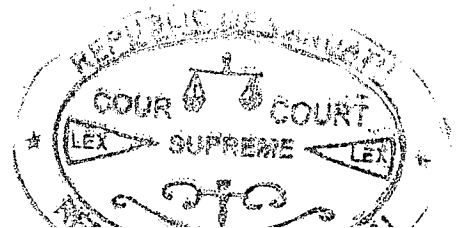
Date of Sentence: *6th September 2018*

SENTENCE

1. Tuna Lulu, you are here for Sentence today for having pleaded guilty to one charge of Act of Indecency with a Young Person contrary to section 98A of the Penal Code Act [CAP 135].
2. The maximum penalty for this offence is 10 years imprisonment. It is a serious offence.
3. Your victim was a very little and young girl of just 2 years old, a baby. It happened on 12 February 2016 in your own kitchen house at Tassiriki. The girl's mother Naomi Joel went to collect a copra bag from your kitchen at about 12 O'clock midday. The door was closed. She opened it and went inside and discovered you were lying naked under a bed. Your clothes were on the ground. Your legs were moving and she called out saying "Eh, what are you doing? You got a shock. You turned and faced the wall. She saw the little girl stand up and put her clothes on. She called her outside and ran with her to Robert to report the incident. She felt really bad and cried. A medical report was obtained 3 days later on 15 February 2016 when the matter was reported to the Police by Naomi Joel. The medical report did not show any bruises, cuts or bleeding. It discloses normal findings.



4. You made a caution statement first on 23 September 2017 but you did not say anything about what happened on 12 February 2016. You only spoke about meeting the girl in the toilet and her going into your kitchen at around lunch hour. However on 4 October 2017 a Record of Interview was conducted and at Q21 you admitted sleeping on top of the girl with the intention of having sex with her when her mother came in and discovered you both. At Q23 you admitted to putting your penis on her vagina and only started to move when the girl's mother came in and you stopped.
5. You could have hurt this little girl very badly had her mother not come in at the time. As a 59 year old fully grown up man with a wife what you did is an action of a person with no right mind. You should really be ashamed of yourself. The offence happened in your kitchen house at a time no one was around. There was a risk you could have really damaged her or hurt her if she did not do what you wanted. It appeared you had planned it all to happen at that particular time. The age difference between you and her is 57 years. Then there is the mental impact on the victim which is likely to be for long time. You have not made any customary reconciliation so there is no remorse.
6. The law is clear from PP v. Gideon [2002 VUCA 7 that men who take advantage sexually of young people forfeit their right to be in the community. That is a Court of Appeal decision. The case of PP v. Boita [2002] VUCA 38 is another Court of Appeal decision which supports a term of imprisonment. With respect the cases of PP v. Atuary [2014] VUSC 140 and PP v. Keleb [2009] VUSC 111 did not follow those clear sentencing principles. But this Court will apply those cases to impose a custodial sentence to mark –
 - (a) A deterrence for you and others.
 - (b) The seriousness of your offending.
 - (c) The Court's disapproval of your actions.
 - (d) Protection to the young, weak and vulnerable members of the Society.
 - (e) Adequate punishment for you.
7. Taking all those features into consideration the Court sentences you to a term of imprisonment and your starting point shall be 4 years imprisonment without any uplift.



8. Now I consider reduction of your sentence due to your personal circumstances and mitigating factors in your Same Day Report and your Counsel's submissions. You are a first time offender with clean past record. You were remanded in custody from 23 September 2017 to 1 November 2017 a period of 1 month and 7 days. Mrs Mary Lulu speaks well of your contribution to the community but said what you did was a one-of situation and a mistake. You are a family man and sole bread winner, a simple village man living on sale of kava, cattle and garden crops and produce. You appear to have a medical condition but no medical report. For all these I reduce your 4 year sentence by 1 year (12 months) leaving the balance of 3 years imprisonment.
9. I deduct a further 1/3 for your guilty plea which means that another year or 12 months comes off the 3 years leaving your end sentence of exactly 2 years imprisonment.
10. There will be no suspension of sentence. You shall begin your Sentence of 2 years with immediate effect today.
11. That is the sentence of the Court. If you do not agree to your sentence, you have 14 days to lodge an appeal. But you must begin to serve your sentence today.

DATED at Luganville this 6th day of September, 2018.

BY THE COURT


OLIVER A. SAKSAK

Judge

