

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

**Criminal
Case No. 23/2179 SC/CRML**

BETWEEN: Public Prosecutor

**AND: Erickson Clement
Defendant**

Coram: Justice Dudley Aru
Counsel: Mr. C. Shem for the Public Prosecutor
Mr. B. Livo for the Defendant

SENTENCE

Introduction

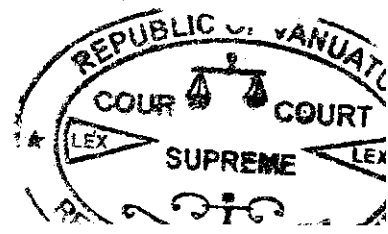
1. Mr Erickson Clement pleaded guilty to a single charge of unlawful sexual intercourse with a child under 13 years of age. This is his sentence.

Facts

2. The defendant and victim are both from Aneityum and are related. Sometime in 2019 when the victim was in grade 4, she was in the sitting room of their home doing homework with her siblings when the defendant went to their home. He parents were in the kitchen. When her siblings left the room, the defendant took the victim's hand and inserted it into his trousers touching his penis.
3. On another occasion the defendant went into the victim's room then removed her clothes and inserted his penis into her vagina. She told the defendant she felt pain and the defendant removed himself and told her not to tell anyone about what happened.
4. The defendant continued to have sex with the victim whilst she was in grade 4 right up to grade 6. The defendant ceased having sex with her when the victim reached grade 7.
5. The defendant admitted the offending to the Police after being cautioned.

Starting point

6. The maximum sentence for unlawful sexual intercourse with a child under 13 years of age is imprisonment for life. Next, I consider whether there are any aggravating factors of the offending. First there is a breach of trust as the victim and the defendant are related. Second there is an element of planning involved. The offending was repeated over a number of years when the victim was in grade 4 up to grade 6. The unprotected sex exposed the victim to the risk of unwanted pregnancy and the risk of contracting sexually transmitted diseases.



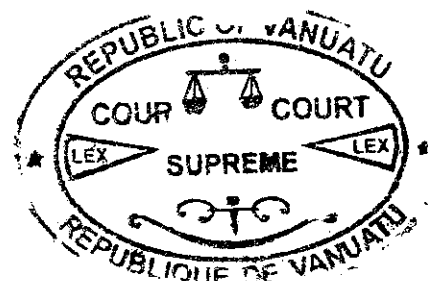
7. Finally, the offending occurred in the victim's home where she should be safe and protected. The effect of the offending on the victim will continue to affect her mentally.
8. There are no mitigating factors of the offending.
9. The Public Prosecutor submits that I adopt a starting point of 8 years imprisonment to reflect the seriousness of the offending. It was submitted that the offending in this case is similar to Public Prosecutor v Tanis [2023] VUSC 45 and Public Prosecutor v Kamisak [2021] VUSC 19. In both these cases, the Court adopted a starting point of 8 years imprisonment.
10. The factual circumstances of this case are distinguished from the facts of the cases referred to. However, the seriousness of this type of offending is well reflected in remarks made by the Court of Appeal in Public Prosecutor v Gideon [2002] VUCA 7 that: -

"...there is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuse young people in our community. Children must be protected..."

11. The defendant on the other hand submitted that the starting point should be between 5 to 6 years imprisonment. Considering the above, I set the starting point of sentence at 8 years imprisonment.

Mitigation

12. A pre-sentence report was filed which gives the following personal information about the defendant. He is 27 years of age and originates from the island of Aneityum. He is the eldest amongst seven siblings. He completed his education from class 1 to 5 and could not continue due to financial difficulties. He does farming and fishing to support his family and is an active member of his community.
13. The defendant is a first-time offender. Taking this into account and considering his youth and other personal circumstances, I deduct 12 months from the sentence start point.
14. A custom reconciliation was performed by the defendant to the victim and her family which included the exchange of the following items: -
 - 1 pig
 - 10 local baskets
 - Some island food crops
 - 10 mats
 - 4 local roosters
 - 2 kava stems
15. For the custom reconciliation the sentence start point is further reduced by 6 months.



Guilty plea

16. The defendant pleaded guilty at the first available opportunity therefore the sentence start point is discounted by 33%.

End sentence

17. This case warrants a custodial sentence to condemn the defendant's behaviour and to serve as a deterrence to the defendant and to the public at large. The defendant is sentenced to an end sentence rounded off to 4 years imprisonment **effective from 19th September 2023** when he was remanded into custody.
18. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Port Vila, this 14th day of December, 2023

BY THE COURT

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Dudley Aru
Judge.

