

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

**Criminal
Case No. 23/337 SC/CRML**

BETWEEN: Public Prosecutor

AND: Tom Noel Pakoa

Coram:

Justice Aru

Counsel:

Ms. M. Taikie for the Public Prosecutor

Mr. J. Garae for the Defendant

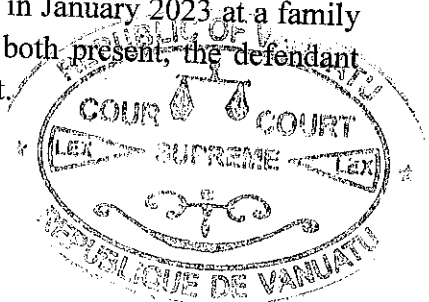
SENTENCE

Introduction

1. The defendant, Mr Tom Noel Pakoa pleaded guilty to one count of incest.

Facts

2. The defendant and the complainant are related as the complainant is the granddaughter of the defendant. Since childhood, the complainant grew up with the defendant and his wife as her grandparents at Banban area. Her parents live at the showground area and she would regularly move around staying at both places from time to time. At the beginning of 2019 the complainant was 12 years old and doing year 7. The defendant would give her money up to VT 1000 on occasions and started having sexual intercourse with her at their house at Banban area.
3. The sexual intercourse continued into 2020 when the complainant was doing year 8 and she was 13 years old. Between 2020 and 2021 she could not continue with her studies because she became pregnant. The defendant continued having sexual intercourse with her up until 2022. When the complainant was 14 to 15 years old she gave birth to a baby boy. She did not tell anyone about what the defendant was doing to her or that he was the father of the baby.
4. Family members became suspicious of the defendant and in January 2023 at a family meeting where the defendant and the complainant were both present, the defendant admitted that he was having an affair with the complainant.



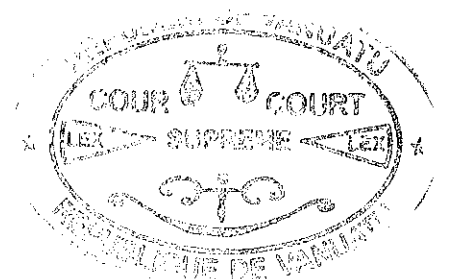
5. The defendant under caution admitted the allegations against him to the Police when he was interviewed.

Starting Point

6. When I consider what should be the appropriate starting point, I must have regard to the maximum penalty available and taking into account any aggravating or mitigating factors of the offending. The maximum penalty for incest where the victim is under 16 years is life imprisonment. In this case, a number of aggravating factors exist. First there is an age disparity as the defendant is a mature person in his 60s and the complainant was only 12 years old when the offending started. The sexual intercourse was repeated over a period of time until the complainant became pregnant. There was a breach of trust as the defendant was the complainant's grandfather and the offending occurred in the home where the complainant is meant to be protected. There is also an element of planning involved and the defendant had unprotected sex with the complainant which led to her pregnancy.
7. There are no mitigating factors of the offending.
8. I adopt a starting point of 9 years imprisonment.

Mitigation

9. First the guilty plea. The defendant admitted his offending at the first available opportunity as a sign of remorse. The sentence start point will be discounted by 33%.
10. A same day report was filed as directed. The report states that the defendant is a first time offender and is now 66 years of age. At the time of his offending he was 62. He was married and divorced and now lives with his new partner at Banban area. He is a class 3 leaver and earns his income by driving his own taxi. He is the main breadwinner in the family and continues to support the complainant and her baby as well. For his clean record and lack of previous conviction, the sentence start point is further reduced by 6 months.
11. The defendant performed a custom reconciliation by giving a mat and rooster and VT 10,000 to the complainant's father. He gave 4000VT to the chiefs. He also gave a mat, a rooster, root crops and VT 10,000 to his wife and VT 44, 000 to the victim. I allow a further 6 months reduction for the custom reconciliation.



End sentence

12. The end sentence I impose is 5 years imprisonment **effective from 9 March 2023 when the defendant was remanded into custody.**
13. The defendant has 14 days to appeal if he is dissatisfied with the decision.

DATED at Luganville this 26th day of May, 2023

BY THE COURT

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D. Aru
Judge

