

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

**TITUS LUKAI  
EMMA LUKAI**

**Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit – Clerk**

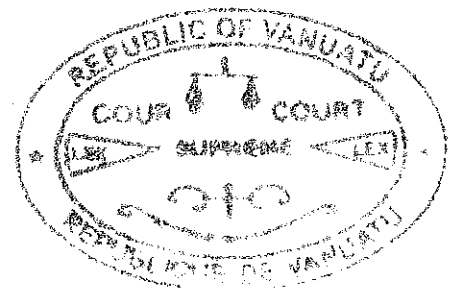
**Mr Lent Tevi for Public Prosecutor  
Mr Jacob Kausiama for the Defendants**

### **CONVICTION AND SENTENCE**

The defendants are husband and wife. Titus Lukai (TL) is 54 years old and his wife Emma Lukai (EL) is 52 years old. TL is charged with one count of rape contrary to section 91 of the Penal Code Act [CAP. 135], (the Act) and EL is charged with aiding the commission of rape contrary to sections 28 and 91 of the Act.

Both plead guilty to the charges and the Court accordingly enters convictions against each of them.

The victim is a young girl of 21 years. She has a medical condition known as epilepsy according to a medical report. The offending took place sometimes in 2004 and not complained of until 5<sup>th</sup> December 2005 when the victim made a statement to the police. The facts are simple. The victim's mother had gone to the market in town. She was alone. EL approached her and told her to accompany her to the garden to dig some root crops called "vovile". She took her bush knife and followed EL. On the way, they met TL who told them he would go with them. Arriving in the garden the victim heard TL asking EL whether it was alright for him to have sex with the victim. EL agreed. EL then cut down four taro leaves and placed them on the ground.



She then asked the victim to lie down. She did and TL removed his clothes and had sex with her while EL stood by and watched. He ejaculated outside of her. She got up and dressed and returned to the village because she felt bad and ashamed of what the couple had done to her. At the time of making the complaint, the victim was seven months pregnant. The medical report confirms that fact.

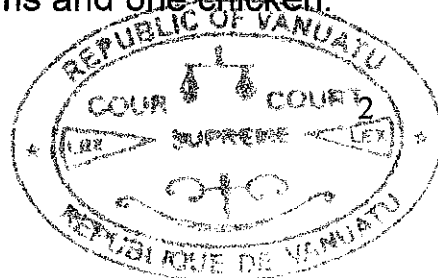
In sentencing this couple I take into consideration the guiding principles as laid down in Public Prosecutor v. Ali August as upheld by the Court of Appeal in Maslea Scott and Jeremiah Tula.

The aggravating features of this offence are:-

- (a) EL and TL are mature persons.
- (b) Victim is quite young and has a medical condition.
- (c) As such the mature couple stood in a position of trust towards her.
- (d) They breached that trust.
- (e) As a result of their action, the victim became pregnant.

The mitigating factors submitted on their behalf were that –

- (a) TL is an old man.
- (b) 2 children of their 6 children attend school and they are obliged to pay their school fees of VT30,000 per term for one attending the USP Centre and VT17,000 and VT11,000 for one attending a secondary school.
- (c) Both are first-time offenders.
- (d) Both pleaded at the first available opportunity.
- (e) They have performed a customary settlement by paying a fine of VT30,000 with gifts of kava, yams and one chicken.



I accept that rape is a serious offence and calls for immediate custodial sentence. It can be no excuse that the defendants are old. In 2004 this Court sent Charles Mark who was older than these two defendants by 3 and 5 years to 8 years imprisonment for sexual offences involving indecent assault, unlawful sexual intercourse and aiding and abetting. His wife received a suspended sentence. The Court will follow that same path.

In the circumstances I impose the following sentences –

- (1) On Titus Lukai – An imprisonment term of 6 years or 72 months. There will be a 1/3 reduction for being a first-offender bringing the sentence down to 48 months. A further reduction of 1/3 is allowed for a settlement under section 119 of the Penal Code Act bringing the sentence down to 32 months. In years, it will amount to 2 years and 8 months in jail. In total, Titus Lukai will serve a term of imprisonment of 2 years and 8 months with immediate effect.
- (2) For Emma Lukai – She is treated the same as her husband. Her total sentence is 2 years and 8 months but this term will be suspended for a period of 3 years from this date. This suspension is made under the provisions of the Suspension of Sentences Act CAP. 67.

That is the sentence and order of the Court.

**DATED at Luganville this 9<sup>th</sup> day of May 2006.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**  
Judge

