

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

**LEE TAMATA**

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

**Mr Lent Tevi for Public Prosecutor**  
**Mr Jacob Kausiama for Defendant**

**9<sup>th</sup> May 2006**

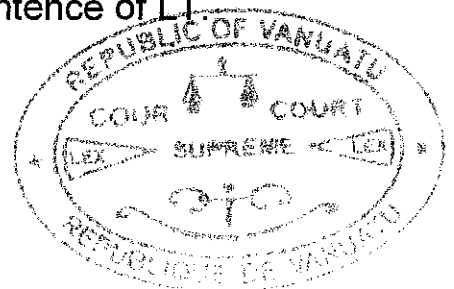
### **CONVICTION AND SENTENCE**

Lee Tamata (LT) pleaded guilty to a charge of unlawful entry contrary to section 143, and to a charge of rape contrary to section 91 of the Penal Code Act CAP. 135 (the Act).

Accordingly a conviction was entered against him in respect of the two charges.

LT is a young man of 17 years of age. He attends Gamalmaua Secondary School on North Pentecost. The offending took place on Tuesday 8<sup>th</sup> March 2006 at around 11.30 at night. LT entered a private house through the bedroom window. The occupant was a teacher at that school. She was sleeping when LT suddenly shone a torch at her with a knife in his hand. LT then placed his hand over her mouth and told her "you cry, you die." LT then removed his clothes and the victim's and forcefully had sexual intercourse with her.

The victim has produced two impact statements. Mr Kausiama objects to them. However the Court will allow only the statement by the victim and disallow that from Brenda Dalzell. The victim's impact statement will be considered in considering sentence of LT.



According to the principles of sentencing set out in the Ali August case as upheld by the Court of Appeal in the Maslea Scott case, this case is serious and calls for an immediate custodial sentence.

The aggravating features of this offence were:-

- (a) There was some degree of force used.
- (b) A weapon (knife) was used to cause fear.
- (c) The offending took place at night after a break and enter.
- (d) The victim was an expatriate volunteer teacher who was 25 years old and a virgin at the time of offending.

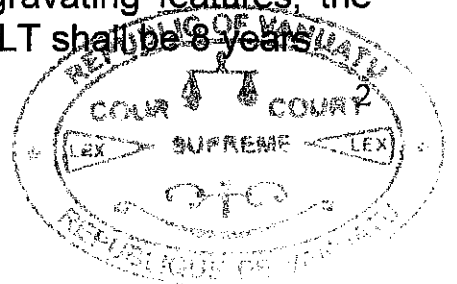
The mitigating factors as submitted by Mr Kausiama were:-

- (a) The offender is 17 years old and still at school.
- (b) He has reconciled by paying a fine of VT60.000 to the school.
- (c) He is a first-time offender pleading guilty at the first opportunity.
- (d) He has expressed remorse and seeks forgiveness.

Mr Kausiama submitted section 17 of the Act for consideration. That section affords no protection to LT against a prison term. Section 38 of the Act like wise affords no protection to LT either.

Mr Kausiama referred the Court to a case in 2004 of a similar nature where the offender received a suspended sentence for an attempted rape. No copies of the case was made available to the Court for easy reference. In any event that case must be distinguished from the present in that there, the offender was charged only with attempted rape. Here it was actually rape and unlawful entry. This case is more serious than that cited by Mr Kausiama.

In the opinion of the Court this young man must be sentenced to a term of imprisonment. In the light of the aggravating features, the appropriate sentence of the charge of rape for LT shall be 8 years.



Unlawful entry carries a maximum imprisonment of 20 years where entry is made into a house used for human habitation. LT was charged with this offence. It is a serious offence also. He did that for the purpose or reason to commit the offence of rape. It was a concerted effort or action. In my view the appropriate punishment for this offence is two years imprisonment.

In total LT is hereby sentenced as follows:-

1. For Unlawful Entry = 2 years imprisonment.
2. For Rape = 8 years imprisonment.

These two terms will be served concurrently making a total of 8 years imprisonment for Lee Tamata.

Considering the mitigating factors the Court allows credit and reduction as follows:-

- (1) 1/3 for being first offender and guilty plea -  
12 months x 8 years = 96 months /3 = 32 months  
96 months – 32 months = 64 months.
- (2) A further 1/3 for custom ceremony – Section 119 of Criminal Procedure Code Act.  
64 months /3 = 21.3 months = 43 months  
43 months is equivalent to 3 years and 7 months.

Ultimately Lee Tamata will be sentenced to a term of 3 years and 7 months or 43 months in prison at Luganville.

**DATED at Luganville this 12<sup>th</sup> day of May 2006.**

**BY THE COURT**



**OLIVER A. SAKSAK**  
Judge

