

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

Criminal Case No. 40 of 2010

PUBLIC PROSECUTOR
V.
NICOLE NAVUE

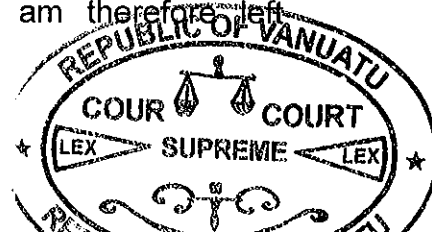
Coram: *Justice J. Macdonald*

Counsel: *Mr. S. Blessing for the State*
Mr. H. Vira for the Defendant

Date of Decision: *27 August 2010.*

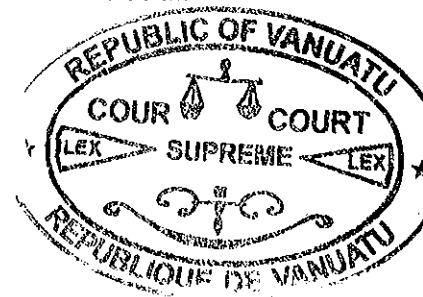
SENTENCE

1. Ms. Navue, you are for sentence, having pleaded guilty to one count of unintentional harm causing the death of your newly born daughter. This occurred on 14 March 2010 on Atchin Island.
2. The charge is brought under section 108 of the Penal Code and carries a maximum penalty of 5 years imprisonment.
3. Initially you had faced a far more serious charge of intentional homicide under section 106, which carries a maximum penalty of life imprisonment.
4. This is a sad and tragic case. You became pregnant in mid 2009 but you chose to hide the fact of your pregnancy from your parents and other family members because you were afraid that they would be angry with you.
5. To the Probation Officer you were more specific and said that you feared the reaction of your father, as he had been disappointed with you when you had your first child who is now 2 years old.
6. Reflecting on matters now if it was simply to avoid disappointing your father that hardly sounds a compelling reason to hide your pregnancy, let alone abandon your baby after she was born. I am therefore left

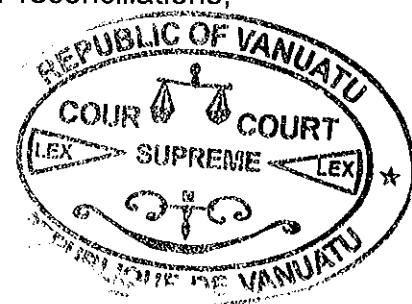


wondering whether there might be more to this. However, whatever the true position I accept that your fears were real and you were desperate that your pregnancy remain a secret.

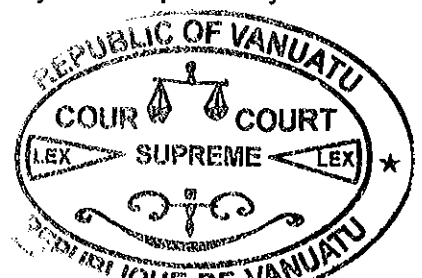
7. You gave birth to your daughter on 14 March 2010. Immediately after the birth you wrapped her in some cloth and went away leaving her on her own for approximately 1 ½ hours. You went for a swim in the sea and you had a sleep. When you returned to check on your baby you found that she was dead. You placed her in a cardboard box and took her to the house of your grandmother. The following day you buried her in a shallow grave at the beach.
8. The details of what happened to her after that are terribly distressing. She was uncovered by the tide, dogs attacked her and when she was discovered several limbs were missing and her sex could not be determined.
9. You were interviewed by the police on 15 March 2010 and you frankly admitted what you had done.
10. No cause of death was ever determined so precisely what happened is unknown. What is known, however is that your daughter died abandoned and alone.
11. Looking at what you did I am sure that no woman in her right mind would abandon her new born baby in the way you undoubtedly did. I appreciate that I do not have any psychiatric or psychological opinion to rely upon but I think it highly likely that you were suffering from some form of post natal depression, with your fears about the birth being discovered being part of it. You were not in your right mind and you acted in a totally irrational way.
12. At the age of 22 you have no prior convictions. There is nothing in your past to indicate that you would harm your child. On the contrary the presentence report portrays you as somebody who has led a blameless life and made a valuable and worthwhile contribution to your community.
13. You are regarded as being a good mother to your 2 year old son and there is no suggestion that you pose any risk to him or indeed to anybody else.
14. Your educational achievements indicate that you are an intelligent young woman. Prior to your remand in custody you were assisting part time as a teacher at a primary school. I note, too, that you have an ambition to become a doctor. Whether or not that is realistic now must be doubtful.



15. I acknowledge and I will take into account that you have already taken part in two kastom ceremonies back in March and you are prepared to perform another kastom reconciliation towards your chief and the community.
16. You are currently in good health although you did attempt suicide after your baby was discovered on the beach. The author of the pre-sentence report commented on your tearfulness throughout the interview and the fact that you claimed to often have heart-breaking moments when recalling what happened.
17. I accept that you deeply regret what you did and in light of that I accept that for the rest of your life you will live with the knowledge that you have caused the death of one of your children. Although it is self inflicted I will treat it as part of an ongoing penalty that has already been imposed.
18. The main purposes of the sentence I impose to day are to denounce what you have done and to hold you accountable for the harm caused. This was a needless death. There were other options as I am sure you now appreciate.
19. As to the gravity of your offending I have perhaps already given a hint as to my views. I think that the Public Prosecutor has granted you an indulgence in deciding to bring an amended or lesser charge under section 108. That is not said in any critical way as to adopt a compassionate approach is entirely understandable in the circumstances. However, on any analysis, I think that what you did was as close as it gets to intentional homicide. I say that because a failure to care for your new born baby, or rather to immediately abandon her and leave her on her own for 1 ½ hours at a time when she needed you most, is arguably no less blameworthy than inflicting death in some more direct way. I sense too that you either knew, or ought to have known, that she would not survive your prolonged absence.
20. There is also the aggravating factor in that you took steps afterwards to conceal the commission of your crime.
21. In terms of matters that mitigate your crime there is the reduced responsibility flowing from my acceptance that it was highly likely that you were suffering from some form of post natal depression.
22. As to your personal circumstances there are no aggravating factors but there are a number of mitigating factors. At the relatively young age of 22 there is your prior good character, reflected in part by your lack of any previous convictions. There is your remorse, the kastom reconciliations, and your prompt guilty plea.



23. As a general principle of sentencing I must endeavour to impose a sentence that is consistent with sentences imposed in similar cases. Of course, the difficulty here is that I am informed by counsel for the prosecution that no comparable cases can be found. By that he means that there are none similar in a factual sense as generally charges under section 108 relate to deaths arising from motor vehicle incidents.
24. However, a comparison has been drawn with what can loosely be termed "*infanticide*" cases, where a young mother has killed her new born baby. In that regard I have been referred to 5 cases: Public Prosecutor v. Abel [2006] VUSC30; Public Prosecutor v. Tom [2005] VUSC 74; Public Prosecutor v. Banga [2004] VUSC21; Public Prosecutor v. Nato [2005] VUSC7; and Public Prosecutor v. Napat [2003] VUSC45.
25. The sentences imposed in those cases ranged from a suspended prison sentence (perhaps coupled with supervision) to prison sentences of 2 to 3 years.
26. I need to bear in mind, of course, that the maximum penalty in those cases was life imprisonment and so substantially greater.
27. Having said all that I turn to consider the appropriate sentence. Looking at your crime, with its aggravating and mitigating factors and against a maximum penalty of 5 years imprisonment I consider an appropriate starting point is 3 years imprisonment.
28. Turning to the personal mitigating factors I allow a deduction of 6 months for your age, prior good character and lack of any previous convictions. Although remorse is usually encompassed within any credit to be given for a guilty plea I think I should recognize it separately, allied as it is with the fact that you will have to live with the burden of knowing that you have caused the death of your child. I therefore deduct a further 6 months. I also allow a further 6 months to recognize the kastom reconciliations that have taken place.
29. That takes the sentence down to 18 months. I allow a one third deduction for your guilty plea. And, finally, you have spent 4 months in custody on remand which is also deducted. The end sentence is 8 months imprisonment.
30. In my view such sentence should be suspended. Both counsel support that. It is justified having regard to your status as a first offender, the unlikelihood that you will re-offend and on the basis that you would benefit in a rehabilitative sense from a sentence of supervision which I will also impose. You have also already spent 4 months in custody and importantly



you have a two year old child. You should be permitted to resume the responsibility of caring for him.

31. The prison sentence will be suspended for 12 months, which will coincide with the length of supervision I am about to impose.
32. You need to understand that if you re-offend within that 12 month period the suspended sentence can be activated.
33. You are sentenced to 12 months supervision. That will be on the standard conditions and on one special condition that you are to undertake and complete the Niufala Rod Programme, and any other course or counselling to address your offending, as is directed by and to the satisfaction of your Probation Officer.
34. I have considered imposing a sentence of community work but I think it is unnecessary. You have already performed that in your community voluntarily over many years and I have no doubt that you will continue to do so in the future.
35. You have 14 days to appeal against the sentence I have just imposed.

DATED at Port Vila, this 27th day of August, 2010.

BY THE COURT



J. MACDONALD
Judge.

