

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

**BERNADINE BULEMEME**

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

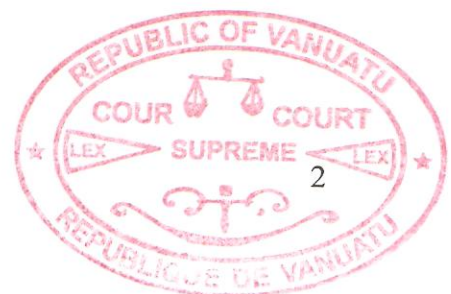
**Mrs Kayleen Tavoia – Public Prosecutor**  
**Mr Henzler Vira – For Defendant**

### **SENTENCE**

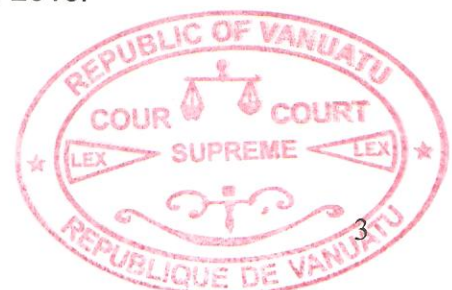
1. Bernadine Bulememe, on 13<sup>th</sup> October 2009 you pleaded Not-Guilty to one charge of sexual intercourse without consent laid under section 91 of the Penal Code Act. Trial was adjourned from that date until 16<sup>th</sup> March 2010 when this matter was called. The Public Prosecutor informed the Court a new charge had been laid and an order for postponement of trial on the original charge was sought. Leave was granted. And after a new charge was served on you, you were asked to be re-arraigned on a lesser charge of unlawful sexual intercourse laid under section 97(2) of the Act. You then pleaded guilty to the new charge. In view of that guilty plea, the Court enters a conviction against you.
2. I am told by your Counsel that you have been in custody on remand from August 2009. That is some 6 months and 17 days to yesterday 17<sup>th</sup> March 2010. The Public Prosecutor confirmed that position.
3. I have heard the facts and submissions from the Public Prosecutor which show the following aggravating features:-



- (a) Your victim was 15 years old at the time of offending.
  - (b) She was attending year 7 at Rowhani School and was expelled as a result of the incident.
  - (c) There was a degree of physical force evident in the fact that you had grabbed her by the neck and opened her legs.
  - (d) Sexual activity was painful.
  - (e) Act of pervasion by ejaculating on her stomach.
  - (f) A 1 centimetre tear on the left side of vagina.
4. Your Counsel concedes on your behalf that the facts and the aggravating features are not in dispute. The following mitigating factors were submitted in order to reduce sentence:-
- (a) That you had both agreed to be future partners.
  - (b) A customary ceremony was performed during which a VT20.000 fine was paid.
  - (c) Being a first-time offender.
  - (d) Pleading guilty to the new charge at first opportunity.
5. Your Counsel referred the Court to the sentencing principles in Public Prosecutor v. Kora Tomol Crc No. 52 of 2007 to support his submission for a suspended sentence with supervision. But the Court rejects this submission. The case of Kora is slightly different in that the offender and the victim had been living together in a defacto relationship after the incident with a 5 month old baby. The facts of your case do not show you were living together with the victim before and after the incident. The victim has not confirmed anywhere that there is an on going relationship between you and her after the incident, and to date. Therefore, the Kora case cannot be followed.



6. The Pre-Sentence Report by Probation Service recommends a sentence of Community Service but that is not an appropriate punishment in your case.
7. The Public Prosecutor submits the Court should follow the principles of Public Prosecutor v. Kevin Gideon case and impose a custodial sentence of 2 years as a starting point. The Court accepts that submission.
8. A custodial sentence would serve as –
  - (a) A deterrence to yourself and to others; and
  - (b) Adequate punishment to you under the circumstances of your case.
9. For those reasons, I now sentence you to 2 years imprisonment. This sentence is increased by 1 year to 3 years due to the aggravating features available in your case.
10. For the mitigating factors, the Court deducts 6 months from the 3 years leaving the balance of 2 years and 6 months.
11. There is a further deduction of 6 months and 17 days from the 2 years 6 months sentence to cover the period you have already taken in custody under remand.
12. Ultimately, you are left with 1 year, 11 months and 13 days to serve at the Correctional Centre.
13. This sentence commences today 18<sup>th</sup> March 2010.



14. You will be eligible to apply for parole after you have served half of your term of sentence which is 1 year, 11 months and 13 days.
15. That is the sentence of the Court.

DATED at Luganville this 18<sup>th</sup> day of March 2010.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

