

4

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

Criminal Case No. 01 of 2010

PUBLIC PROSECUTOR
V.
SAMUEL KALSARURU

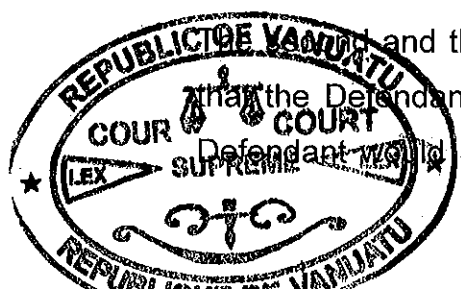
Coram: *Justice D. Fatiaki*
Counsel: *Mr. Tristan Karae for the State*
Mr. Tom Loughman for the Defendant
Date of Sentence: *9 June 2010*

SENTENCE

On 8th March 2009 the Defendant was charged with 2 Counts of Act of Indecency with a young person and a single Count of Sexual Intercourse without consent. He pleaded guilty and was convicted on all 3 offences which involves two young 11 year old girls who shall be named JA and SE to protect their identities. The Defendant appears today for sentencing.

The brief facts of the case which is conveniently summarized by the Prosecution and admitted by the Defendant, tells of how, in the incident involving the girl JA who is related to the Defendant and calls him "small daddy", the Defendant had called her and when she came to him, the Defendant lifted her onto his lap, kissed her on the cheeks and touched her stomach and private part. JA was fully dressed at the time.

and third Counts relates to incidents involving SE. She complained that the Defendant used to call her to him and whenever she went to him the Defendant would indecently touch her on the stomach and on her private part.



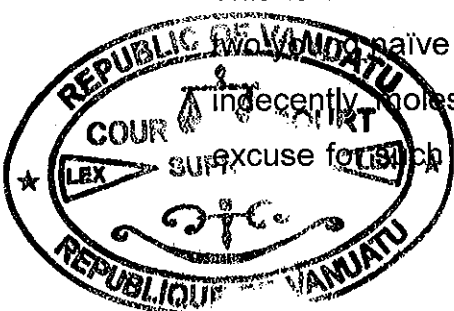
On several occasions she felt pain when the Defendant's finger(s) penetrated into her vagina. Complaints were lodged with the police and the Defendant was arrested.

The Defendant was later interviewed about the incidents and he frankly admitted indecently touching the "tabu part" of both girls and in SE's case he had "*pusum finger igo insaed long tabu part blong hem*". At the time of doing this the Defendant admitted "*itruue mi stap thinktink nogood be from hemi small tumas, so me touchem hem*". He had previously boasted to a sexual partner that he had sexually assaulted other girls who he named, including the two complainants.

On 8 March 2010 when the Defendant was convicted the Court directed that he assist the probation officer in the preparation of the pre-sentence report which his counsel had requested. Unfortunately the Defendant decided not to cooperate in the process and signed a document to that effect because he claims, that since his conviction and remand "*none of my relatives come to visit me so I just want to be judged for what I did*".

I have received helpful written submissions from defence counsel in which the following mitigating factors are highlighted namely: the Defendant's pleas of guilty, his cooperation with the police investigation; and the absence of any prior criminal record. Counsel also urges the Court to consider a suspended sentence of imprisonment and other non-custodial measures I cannot agree. I have also been able to glean from the committal papers that the Defendant is aged 62 years, is unmarried, and a distant relative of JA. Despite the absence of any injury in this case and the advanced years of the Defendant, there is nothing "*exceptional*" in this case which would support the suspension of any sentence of imprisonment that the Court might impose on the Defendant.

This is an unfortunate case of an elderly man deliberately taking advantage of naive girls who answered his calls for them to come to him, only to be indecently molested and fondled by the Defendant. There is and can be no excuse for such predatory behaviour and the Court would be failing in its duty to



protect the weak and vulnerable in society if it did not impose a deterrent sentence. The Courts in this Country have said on several occasions in the past that men who behave in this manner "*forfeit the right to remain in the community*".

The sooner that men in Vanuatu realize that any form of penetration of the female vagina by penis, finger, or inanimate object, is considered, in law, to be sexual intercourse, and, if committed without the victim's consent, is an offence punishable by life imprisonment, the sooner will they realize the seriousness of such acts.

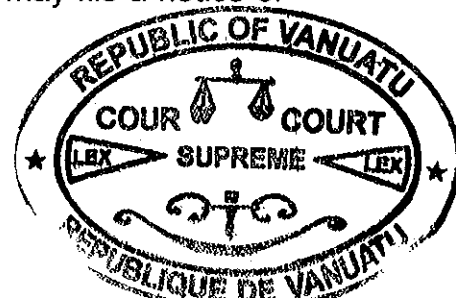
Samuel Kalsaruru you ask "*to be judged for what you did*" and this Court will do just that. The sentences which this Court imposes are:

- On Count 1 for the Act of Indecency with JA, a sentence of 9 months imprisonment;
- On Count 2 for Sexual Intercourse without Consent with SE, a sentence of 3 years imprisonment; and
- On Count 3 for the Act of Indecency with SE, a sentence of 9 months imprisonment;

The sentences on Counts 2 and 3 are ordered to be served concurrently but consecutive to the sentence imposed on Count 1 making a total sentence of 3 years and 9 months imprisonment.

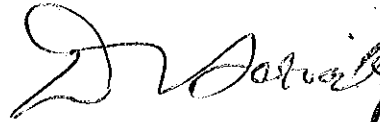
I deduct from that total sentence a period of 5 months being the time that the Defendant has spent in remand since his committal by the Magistrate's Court making a final effective sentence of 3 years and 4 months imprisonment which the Defendant must serve.

Samuel Kalsaruru if you do not agree with this sentence you may file a notice of appeal to the Court of Appeal within 14 days.



DATED at Port Vila, this 9th day of June, 2010.

BY THE COURT



D. FATIAKI
Judge.

