

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

**JONATHAN BOESALEANA**

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

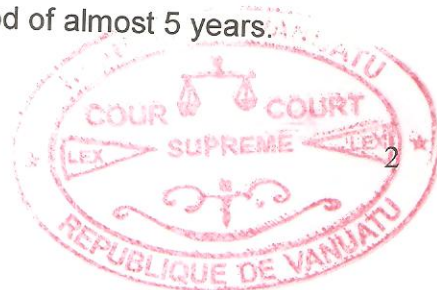
**Mr P. Wirrick for Public Prosecutor**  
**Miss J. Tari for Defendant**

## **SENTENCE**

1. Jonathan Boesaleana you pleaded guilty to 20 counts on 28<sup>th</sup> August 2011 as follows:-
  - (a) Sexual Intercourse without consent contrary to section 91 of the Penal Code Act (the Act) Cap. 135 – 8 counts. These carry a maximum of life imprisonment.
  - (b) Act of Indecency with Young Person contrary to section 98 A – 3 counts. These carry a maximum of 10 years imprisonment.
  - (c) Incest contrary to section 95 (1) (a) and (2) – 8 counts. These carry a maximum of 10 years imprisonment.
  - (d) Attempts contrary to sections 28 and 91 – 1 count.



2. I don't think you realize yet that you have committed very serious sexual offences that could see you spend your whole life time in prison at the Correctional Centre.
3. Your victim was and is your own daughter, your own life blood. These offendings started back in 2007 when your daughter was only 8 years old. These sexual abuses continued until May 2011. These offendings took place within the confines of your home, where the victim was supposed to feel secure under your care and protection as her father. You owed her that duty but you breached that duty of trust and fatherly care. You performed acts of sexual perversions on her on at least 3 occasions. She has lost her dignity and self-esteem, all at the expense of a lustful desire and self gratification of a selfish and uncaring father. You are a mature man of 38 years old who should have known better. The offendings were done also to your older and adopted daughter in December 2010. These are the aggravating features that places your case on the higher end of the scale.
4. The cases of PP v. Scott [2002] VUCA 29; PP v. Gideon [2002] VUCA 7 and PP v. Ali August Criminal Case 14 of 2000 and PP v. Gratien Bae Criminal Appeal Case 3 of 2003 all lent support to the Court's view that all your offendings warrant an immediate custodial sentence to be imposed. There is no other option that is seen as appropriate.
5. In the Court's view, and following the guidelines principles in PP v. Scott, the starting point for the lead offence of sexual intercourse without consent including the attempted act should be 8 years as the starting point but increased by 2 years to 10 years imprisonment for each count.  
The following are the aggravating features –
  - (a) The offence was repeated over a period of almost 5 years.



(b) The offences were carried out on two very young victims who were your daughters.

(c) The effects upon the victims physically and mentally.

6. For the 8 counts of Incest, the starting point in view of the aggravating features will be 8 years imprisonment on each count. These would be cumulative to the sentences for the Sexual Intercourse without consent and the Attempted Charges because offendings of Incest were done against your daughter Jeanine as well in Count 15 and 16.

7. For the 3 counts of Acts of Indecency with Young Persons, in view of the aggravating features will be 5 years imprisonment on each count. These will be consecutive to four concurrent sentences for sexual intercourse without consent and incest charges. The reasons for this is that under counts 15 and 16, you had sexual intercourse with your other daughter Jeanine in the presence of Griselda acting as a guard. That is a separate offending and it should be cumulative.

8. In summary, the Court sentences you as follows:-

(a) For Sexual Intercourse without consent x 8 counts, to a term of imprisonment of 10 years for each count concurrently as a starting point. In total, you will serve only 15 years of these sentences.

(b) For Attempted Sexual Intercourse without consent x 1 count, to 10 years imprisonment but made concurrent with 15 years for the 8 counts of Sexual Intercourse without consent.

(c) For Incest x 8 counts, to 8 years imprisonment on each count concurrently as a starting point. In total, you will serve only 10 years of these sentences but these will be cumulative to your total of 15



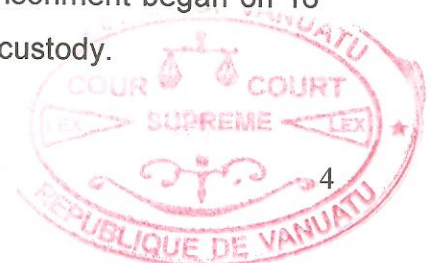


years imprisonment for Attempt and Sexual Intercourse without consent.

(d) For Acts of Indecency with Young Persons x 3 counts, to 5 years imprisonment as a starting point. In total, you will serve only 6 years of these but again, this will be cumulative to your sentences for Sexual Intercourse without consent, Attempt and Incest.

So in total, you are sentenced to 31 years imprisonment for all the 20 counts of four sexual offences.

9. You do not appear remorseful at all about all your offendings. However, the Court will accept only two mitigating factors and will allow reductions accordingly. These are –
  - (a) Your early guilty plea; and
  - (b) Your good cooperation with police at investigation making admissions to the allegations.
10. For early guilty plea, it is clear from PP v. Scott that you are entitled to 1/3 reduction. Therefore from your total term of 31 years imprisonment, 10 years and 4 months are deducted leaving the balance of 21 years and 8 months imprisonment.
11. A further reduction is made in respect of your good cooperation with police and admissions during investigations. 8 months are deducted, leaving the balance at exactly 21 years imprisonment.
12. You will serve a total of 21 years imprisonment at the Correction Centre in Luganville, Santo. Your term of imprisonment began on 16<sup>th</sup> August 2011 when you were first remanded in custody.



13. You will be entitled to apply for parole after you have served up to half of your 21 years imprisonment term.
14. This high penalty imposed serves the following purposes –
  - (a) To mark the seriousness of your offendings;
  - (b) To mark public condemnation of your behaviour;
  - (c) To act as a deterrence to both yourself and other men who maybe acting in the same way as you did;
  - (d) To punish you adequately; and
  - (e) To protect women and young girls at all times.
15. There is a right of appeal within 14 days should you so choose.

DATED at Luganville, this 13<sup>th</sup> day of September 2011.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

