

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

DAVID TOA

Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit – Clerk

Mr P. Wirrick for Public Prosecutor  
Mrs M.P. Vire for Defendant

### SENTENCE

David Toa the Court has found you guilty of attempting to have sexual intercourse with Aterina Woi, your step-daughter in November 2009 and again in April 2010, contrary to Section 96(1)(a) Penal Code Act Cap 135. When the offendings occurred your victim was under the age of 18 years.

There was absolutely no reason for you to go out of your way to desire after your step-daughter and abused her on two occasions when you had your wife as your help-mate. Your uncontrollable desires for women and girls makes you a risk to the community.

You let yourself, your family (wife & children) the church, your pastor, chief and community down very badly. Relationships have been disturbed. Families and relatives have been and adversely affected by your selfish and lustful desires.



Your offendings are already serious despite they were only attempts. Your aggravating features are –

- (a) Serious breach of trust as a father, elder and community leader.
- (b) Offending taking place within the confines of your home which is supposed to be a place of refuge, love and care.
- (c) The great disparity between your age of 45 and the victim at 15.
- (d) Offending was repeated more than once.
- (e) When in the night at a secluded area exposing the victim to risk of assaults if she refused.

The Court is bound to follow the guideline principles in the cases of PP v. Gideon [2001] VUCA and PP v. Atis [2003].

The only appropriate sentence for you is to be a custodial one. The starting point for you is 6 years imprisonment increasing it by 2 years for the aggravating features making a total of 8 years imprisonment.

Therefore for Count 1 – You are convicted and sentenced to 6 years imprisonment concurrent with the sentence for Count 2.

For Count 2 - You are convicted and sentenced to 8 years imprisonment.

I take into account your mitigating factors as submitted by defence Counsel. The factor under (6) and (7) are not accepted as mitigating factors. And section 28(5) is not applicable to your case. For those mitigating factors, your concurrent sentence of 8 years imprisonment is diminished by 4 years leaving the balance of 4 years



imprisonment at the Correctional Centre in Luganville Santo. The Court exercises its discretion in decreasing sentence by 4 years under Section 24 of the Act.

The purpose of imposing a severe custodial sentence for two incidents of attempted sexual assault are –

- (1) so that the Courts do not open the floodgates for more such cases to come in the future. This is therefore to be a deterrence to both yourself and others.
- (2) To punish you adequately.
- (3) To mark the gravity of the offending and the public condemnation for such behavior.

Your sentence of 4 years imprisonment starts with immediate effect today.

You have a right of appeal against conviction and sentence within 14 days.

That is the sentence of the Court.

DATED at Saratamata this 20<sup>th</sup> day of April 2011.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

