

**PUBLIC PROSECUTOR**

-v-

**REGINALD SAMSON**

*Coram: Vincent Lunabek, Chief Justice*  
*Counsel: Ms Kayleen Tavoia, Public Prosecutor*  
*Mr Andrew Bal for the Defendant*

*Date of Pleas: 27<sup>th</sup> September 2013*  
*Date of Sentence: 1<sup>st</sup> October 2013*

**SENTENCE**

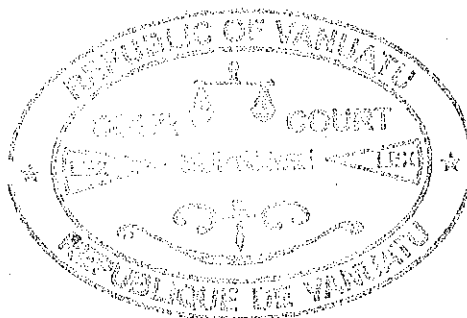
Accused Reginald Samson, you appear today for sentence. You are charged with one count of sexual intercourse with a child under care or protection, contrary to section 96(1) (a) of Penal Code [Cap 135].

On Friday 27 September 2013 you entered a guilty plea on that count as charged against you in the information dated 20 September 2013.

The prosecution sets out the brief of facts of your offending. You and your lawyer accept these facts before you entered a guilty plea on Friday 27 September 2013. They are as follow:

Your adopted daughter is the complainant in this case. Her name is not going to be mentioned but she will be referred to by the initials (F.R.). Her complaint against you is that on the 16<sup>th</sup> of May 2010, you and her had gone to the bush to cut natangura. While you were in the bush with her, you grabbed her and pushed her to the ground. You removed her pants and had sexual intercourse with her. At that time, she saw bleeding on her body and the joints of her body were painful. When she came home that day, she reported the incident to her uncle and her mother Cicilian.

At that time she was 13 years of age and she attended year 6 at Tasuare Primary School. She stated that she is still afraid of you for what you have done to her.



It is against the law for a person who had the care or protection of a child to sexually abuse that child. Section 96(1) (a) is the prohibiting section. It provides:

*"96(1) A person must not have or attempt to have sexual intercourse with any child, not being the person's spouse, who is under the age of 18 years and who:*

*(a) being the person's stepchild or fosterchild, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family; and*

*(b) not being the person's stepchild or fosterchild and not being a person's spouse, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family and is under the person's care or protection.*

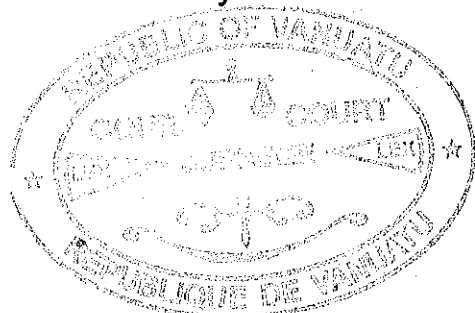
*Penalty: Imprisonment for 10 years.*

(2) It is no defence to a charge under this section that the child consented.

Mr Reginald Samson, you pleaded guilty to this offence as the complainant of this case is your step daughter and upon your conviction, you are liable to 10 years imprisonment. Sexual intercourse with child under care or protection is a serious offence. The seriousness of this offending is reflected in the maximum penalty imposed by law.

Offences of sexual nature always attract an imprisonment sentence term. The courts of the Republic condemn in the strongest terms sexual offences in general and particularly sexual abuses involving children. The Court of Appeal has set sentencing guidelines that are applied when sexual offences are committed.

The general approach of the court in respect of sexual offending both within the family and generally are fully discussed in Public Prosecutor -v- Gratien Bae [2003] VUCA 1, Criminal Appeal Case No.3 of 2003 which is consistent with earlier decision of that Court in Public Prosecutor -v- Kevin Gedion [2002] VUCA 7; Criminal Appeal Case No.3 of 2001 and which in turn followed what is said by the same



court in Peter Talivo –v- Public Prosecutor [1996] VUCA 2; Criminal Appeal case No. 2 of 1996. The position of the Court is reflected in the following passages:

*"All children are entitled to be protected by adults. Children must be safe in their own homes. When men who have the care of children abuse that trust....they forfeit the right to remain within the community. In this case the custom dealing with that matter could not in and itself be sufficient to deal with it.... What this man did was deplorable conduct. The Court has an obligation to mark the community's disapproval of it in a serious way", (Peter Talivo –v- Public Prosecutor [1996] VUCA 2).*

Again the Court stated:

*"There is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuse young people in our community. Children must be protected. Any suggestion that a 12 year old has encouraged or initiated sexual intimacy is rejected. If a twelve year old is acting foolishly then they need protection from adults. It is totally wrong for adults to take advantage of their immaturity. It will be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community.", (Public Prosecutor –v- Kevin Gedion [2002] VUCA 7).*

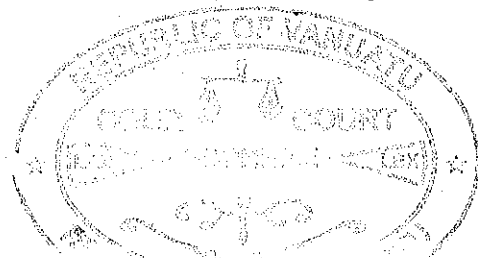
In the present case, the circumstance of your offending is aggravated by the following facts:

- Breach of trust:

You are the stepfather of the child complainant. She looks upon you as a fatherly figure to her who may think you would be there at home to care and to protect her but yet you breached that trust by sexually abused her.

- Age Difference:

There is an age difference between the girl of 13 years of age and your age of 50 years. It is a significant differential age of 37 years between you and the child. You are an adult and mature person while the child depends on you for her own protection, care and safety and therefore, she is vulnerable.



- Planning or premeditation:

There was some degree of planning and premeditation in your offending when you had sexually abused the child while you were alone in the bush with her to cut natangura as her mother or any one else was not there. This must be a calculated opportunity.

You are sentenced to 5 years imprisonment as a starting point when considering the seriousness and the aggravating factors of your offending.

Your Defence lawyer informed the court that you are originated from Lekwel village on the Island of Mere Lava. You were born on the 24<sup>th</sup> August 1963. Your father is from Lekwel village in Mere Lava and your mother is from Mission Basis village on the island of Mere Lava. You have a brother and two other sisters.

You attended school at Lekwel Primary School on the island of Mere Lava. You ended your education at grade six and did not further as you dropped out in grade six. After grade six, you assisted your parents in making gardens and in generating income for your family.

In late 1980, you moved to live with your sister on the island of Santo and later found yourself a job in 1987 with the Fisheries Department and were employed on a temporary basis as a handy man. You later quitted your job and returned back to your home island in Mere Lava.

You later found yourself a wife and got married in 1997. You have three children (two boys and a girl). Your two sons were no longer attending school and are currently living in Luganville with your sister. Your daughter is currently in year 11 at Rowani Secondary School in Luganville and her school fees were paid by your sister.

Further, your wife died and you later entered into a defacto relationship with another woman from Mere Lava. You have no child with your defacto wife.

At the moment you have no permanent job and you only do gardening to sustain your living. The fact that you were here for this matter, your defacto partner suffers greatly in making gardens since in Mere Lava, it is very difficult for women to construct gardens.



A handwritten signature in black ink, consisting of a stylized, cursive letter 'd' followed by a vertical stroke.

You are a member of Lekwel community and you participated a lot in community works especially with church and school. You listen to your chiefs and obey their commands especially when requesting you to assist in any work related to your community.

You stated that you have no plans for future except to develop your land at Gaua and build a permanent house on your land so that you can move over to settle there with your biological children.

In mitigation, your lawyer asks the court to take the following mitigating factors into consideration:

- You enter a guilty plea at the first opportunity given to you by the Court
- You are a first time offender
- You have no previous criminal record
- You cooperated well with Police and made full admissions
- You are remorseful for your action
- You do a lot of garden for your family and you are the only one who finds income for your family
- You have a defacto wife who depended on you
- You promised not to commit the same offence or any other offences

I must now assess the mitigating factors and cross reference each of them with the aggravating factors. On balance, the aggravating factors outweigh the mitigating factors.

I deduct from your sentence of 5 years, 12 months for your genuine remorse and other mitigating factors. Your sentence is reduced to 4 years imprisonment.

I reduce your term of 4 years further by 1/3 to reflect your early guilty plea. Your end sentence is now 2 years and 6 months imprisonment.

I consider but I decline to suspend your imprisonment term of 2 years and 6 months.

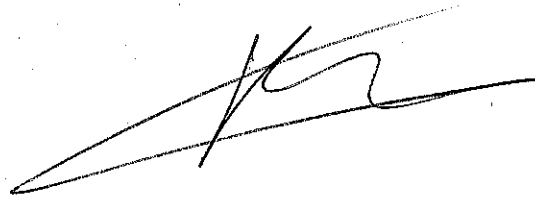
You are ordered to serve 2 years and 6 months imprisonment with immediate effect.



You have 14 days to appeal your sentence if you are unsatisfied with it.

**DATED at Sola, Banks this 1<sup>st</sup> day of October 2013**

**BY THE COURT**

A handwritten signature in black ink, appearing to be 'Vincent Lunabek', written over a horizontal line.

**Vincent LUNABEK  
Chief Justice**

