IN THE SUPREME COURT
REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 4016 of 2016

PUBLIC PROSECUTOR

-v-

TEMBES QUARA

Before Justice David Chetwynd
Hearing 16th March 2017 (Written reasons published 22nd March 2017)
Mr Boe for the Public Prosecutor
Ms Tari for the Defendant

Sentence

1. The defendant Tembes Quara has admitted one count of sexual intercourse without consent but has entered not guilty pleas to a charge alleging unlawful sexual intercourse and another charge alleging sexual intercourse with a child under his care or protection. The second count, unlawful sexual intercourse, seems to cover the same period as the count to which he has pled guilty. It is either an alternative charge or bad for duplicity. That must be the case because the defendant has admitted sexual intercourse with the victim and as she was born on 3rd July 2003 she would have been 12 or 13 years old depending on when the offence took place. Those are the ingredients of an offence under section 97(1) of the Penal Code [Cap 135]. The maximum sentence that would apply to an offence under section 97(1) in this case would be 14 years. The maximum sentence for rape is life. There are not two separate offences here even though it is accepted that the victim was raped several times over a 7 month period. In all the circumstances a conviction on count 2 would not affect the end sentence.

2. When looking at count 3, the sexual intercourse with the victim is admitted and it is accepted fact that she is the daughter of the defendant's wife. At the time of the alleged offence she was under 18. The only issue is whether those facts mean the victim was under the defendant's care or protection. The answer to that question seems to me to be quite obvious. Again there would not appear to be two charges involved here, the admitted rape and the sexual intercourse with a child under care or protection. They are one and the same. It is also relevant that the maximum sentence for a section 96 offence is 10 years. Again a conviction would have no effect on the end sentence faced by the defendant.

3. The difficulty now is the prosecution did not nolle the two remaining charges. They remain to be tried. Of course the prosecution could still nolle them but as it stands they are live matters. In other jurisdictions the court could simply order that the charges lay on the file. There is no similar provision in Vanuatu. It is therefore a matter for the Office of the Public Prosecutor to consider.

4. The sentence I am going to impose is for the admitted rape only. I will deal with the defendant on the admitted facts. They are that the defendant repeatedly had sexual intercourse with his wife's daughter over a long period of time. According to his comments to the Probation Officer this abuse has been going on since the victim was 11 years old in 2014. Even if that is not the case there is no doubt the defendant repeatedly raped the victim over a period of 7 months from October 2015 to April 2016. Any charge of rape attracts a sentence of at least 5 years. Factors which aggravate the offence lead to a substantial increase in the sentence. That is the effect of the Court of Appeal decision in *Scott* [1].

5. There are undoubted aggravating factors in this case. There is the tender age of the victim; the repeated abuse over a prolonged period; the unprotected sex; the other sexual indignities the victim was forced to endure and the breach of trust. Even if the victim was not formally in the official care and protection of the defendant she was living in his house. She was entitled to believe she was safe from abuse living with her mother's husband but she clearly was not. The whole sordid affair must have had an enormously detrimental effect on the young victim. The appropriate sentence is one of 8 years imprisonment.

6. There is little that is good that can be said for the defendant. He has no previous convictions and he performed a custom reconciliation ceremony. He shows little remorse otherwise. His sentence will be reduced by 12 months to 7 years. The defendant did enter a guilty plea in this court. I appreciate he also entered not guilty pleas but for the reasons discussed above I will give him full credit in respect of his plea and his sentence is reduced by 1/3rd to 4 years and 8 months.

7. Looking at all the circumstances of this case there is simply no possibility of the sentence being suspended. Tembes Quara will go to prison immediately and will serve 4 years and 8 months. The sentence shall be deemed to have commenced on 9th November 2016 when he was first taken into custody.

8 The defendant is reminded of what I said in court, namely if he is unhappy with the sentence handed down then he has the right to appeal. The time for appeal will start to run when his counsel receives a copy of these written reasons.

Dated at Luganville this 16th day of March 2017.

BY THE COURT

D. CHETWYND
Judge

REPUBLIC OF VANUATU COUR COURT LEX SUPREME LEX REPUBLIQUE DE VANUATU

[1] *Public Prosecutor v Scott* [2002] VUCA 29; CA 02-02 (24 October 2002)