

IN THE SUPREME COURT
REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 1649 of 2016

PUBLIC PROSECUTOR

-v-

KATIPA KEIMIT

Before Justice David Chetwynd
Hearing 15th May 2017
Mr Toaliu for the Public Prosecutor
Mr Livo for the Defendant

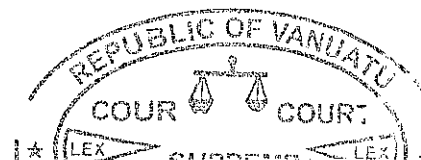
Sentence

1. The defendant was convicted following trial of sexual intercourse without consent. The brief facts found were that the complainant met the defendant in his garden. She asked if he could cut some coconut leaves for her. It was raining so he said he couldn't. The meeting was not planned. The complainant is a close relative of the defendant. He asked her for sex and she said no because of that relationship and told the defendant so. Nonetheless the defendant used a degree of force to have sexual intercourse with her.
2. Although the defendant overcame the complainant's attempts to break free from him by dint of his superior strength he used no weapon and the degree of force was not excessive. This was a chance meeting in March 2016 where the defendant decided he wanted to have sex with his relative and would not accept no for an answer.
3. Looking at the sentencing guidelines in this jurisdiction¹ it is clear that the defendant will be sentenced to imprisonment for at least 5 years. That is the minimum sentence for rape committed without any aggravating or mitigating factors in a contested case. There are aggravating factors in this case with the complaint having to suffer unprotected sex and with the additional humiliation and embarrassment in custom of being forced to have sex with a close relative.
4. The comments of the Chief Justice in *August* must also be born in mind when he said:

"At the top of the scale comes the defendant who has committed the offence of rape upon a number of different women or girls. He represents a more than ordinary danger and a sentence of fifteen years or more may be appropriate".

In this case the defendant has a previous conviction for rape. That conviction came in April this year and was recently upheld by the Court of Appeal. However this is

¹ *Public Prosecutor v Ali August* [2000] VJSC 73 and *Public Prosecutor v Andy* [2011] VUCA 14



not a case where the defendant has been convicted of an offence, served a sentence and then re-offended. In fact the offence for which he was convicted by the Chief Justice in April was one committed after the offence being dealt with today. The former dates from April 2016 and the latter March 2016. The offences did involve different victims but this is not a matter of the defendant raping a large number of women. In all the circumstances the sentence should be one of 6 ½ years.

5. As for mitigating factors, there is only one, his involvement in a custom reconciliation ceremony. Other than that the defendant has shown no remorse and in his interview with the Probation Officer says he does not accept the verdict of the Court. In the circumstances his sentence can only be reduced by 6 months to six years.

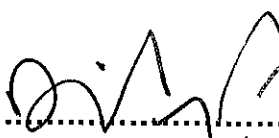
6. The difficult aspect of the case is deciding when the sentence today should start. It would be open to the Court to say the sentence imposed today should be consecutive to that imposed in April. Although no details of the sentence imposed by the Chief Justice are available today the recollection I have is a sentence of 4 years plus being handed down. That would lead to a total sentence of imprisonment of close to 10 years. That is not proportionate to the offending even though the defendant could technically be viewed as a serial rapist. The women were known to the defendant and the two offences were committed close together. I will order that the sentence imposed today starts today although it will be served concurrently with the sentence imposed in April. That will mean that upon the April sentence being served the defendant will still have a portion of today's sentence remaining.

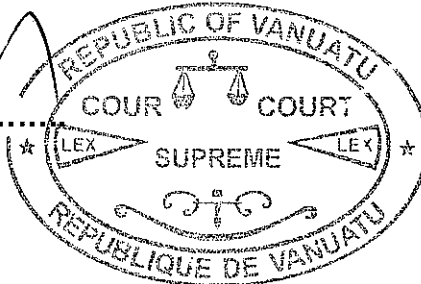
6 Bearing in mind the Court of Appeal's comments in *Gideon*² the sentence cannot be suspended. There are no exceptional circumstance which would merit a suspension.

7 Finally, I will remind the defendant 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 Port Vila this 15th day of May 2017.

BY THE COURT


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D. CHETWYND
Judge

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the word "SUPREME" is written above a decorative flourish. On either side of the flourish, the word "LEX" is written within a small triangle. Above the scale, the words "COUR" and "COURT" are written on either side.

² *Public Prosecutor v Gideon* [2002] VUCA 7; Criminal Appeal Case 03 of 2001 (26 April 2002)