

**BETWEEN: Public Prosecutor**

**AND: Michael Luen**  
*Defendant*

**Before: Justice Aru**

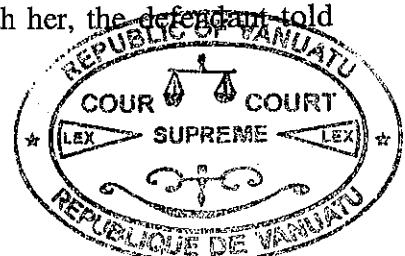
**Counsel: Mr. M. Tasso for the Public Prosecutor**  
**Ms. P. Kalwatman for the Defendant**

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**SENTENCE**

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1. MICHAEL LUEN you appear today for sentencing.
2. This defendant was charged with two counts of incest contrary to section 95 (1) (a) of the Penal Code [CAP 135]. On 6 March 2018 he plead guilty to both counts.
3. The two victims of the offending were adopted by the defendant and his wife into their family as they could not bear children of their own. Victim A is the youngest, she was 21 at the time of the offending and Victim B was 25. They are all from Buninga Island where they live.
4. Around January 2017, their mother came to Vila and left the two complainants with their father. One night in January the defendant entered Victim A's room and carried her to his room and undressed her then had sexual intercourse with her. It was her first experience and she was afraid but could not resist or stop the defendant from doing what he was doing to her. She was later told not to tell anyone and was sent back to her room.
5. The next day she felt pain in her vagina when she went to the toilet. Around February 2017 she did not see her period and after seeking medical attention it was confirmed that she was pregnant.
6. The second incident occurred sometime between November 2016 and February 2017. When the incident occurred their mother was in Vila and the complainants were left with their father. On the night of the incident the defendant entered Victim B's room, woke her up and told her in words to the effect that "*Daddy wants to have sex with you*". She could not do anything or resist because she was afraid and followed the defendant to his room. After having sexual intercourse with her, the defendant told



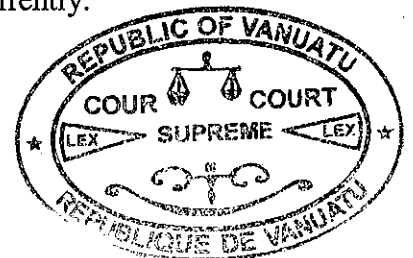
Victim B that he also had sexual intercourse with her sister, Victim A and she became pregnant.

7. Following his arrest the defendant admitted to the Police that he had had sexual intercourse with the two victims at different times.
8. Committing incest is a serious matter as the maximum penalty is 10 years imprisonment. This was recently increased by Parliament to 15 years to reflect the seriousness of the offence. However this case was brought under the old regime before the law changed.
9. As the father figure, you abused your adopted daughters for your own sexual gratification. You were not even deterred by the fact that your first victim became pregnant.
10. The offending is aggravated by the fact that there was breach of trust. The offending occurred in the home where the victims were expected to be protected, instead they were violated which resulted in Victim A becoming pregnant. There is also an age disparity as the defendant was 45 years old at the time of the offending. The psychological impact on the victims will remain with them for the rest of their lives.

11. In **Public Prosecutor v. Bae** [2003] VUCA 14 the Court Appeal said :

*"The principles are simple. Parents who use their children for their own sexual gratification will go to prison. It is almost impossible to imagine circumstances in which that will not be the necessary response."*

12. A custodial sentence is warranted and I adopt a starting point of 8 years imprisonment.
13. The Pre-Sentence report filed shows that the defendant comes from a family of seven and he is the sixth child. He completed his education at primary level and was unable to continue due to his family's inability to pay his school fees. He now helps out with community activities in his village and is also an elder to the Seventh Day Adventist Church in his area. He is willing to perform custom reconciliation but has not done so as yet. Whilst being held in custody he found out that he had hepatitis B.
14. In Mitigation Counsel submits that the defendant is a first time offender with no previous record and entered a guilty plea at the earliest opportunity. It was also submitted that the defendant did spend roughly 11 weeks in custody which should be deducted.
15. For the early guilty plea, the defendant is entitled to a full one third discount on his sentence which reduces the sentence to 5 years and 3 months imprisonment. Recognising that the defendant is a first time offender with no previous record I deduct 1 year which further reduces the sentence to 4 years and 3 months imprisonment. For the time spent in custody, 3 months is deducted which leaves an end sentence of 4 years imprisonment which is to be served concurrently.

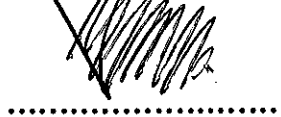


16. The sentence is effective from 4 May 2018 the date you were remanded in custody for breaching bail.

17. You have 14 days to appeal your sentence if you are not happy with the decision.

DATED at ~~Port Vila~~ this 27 day of July, 2018

BY THE COURT



D. Aru  
Judge

