

**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU**  
*(Criminal Jurisdiction)*

**Criminal  
Case No. 19/3386 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Moroni Takalolo**  
**Defendant**

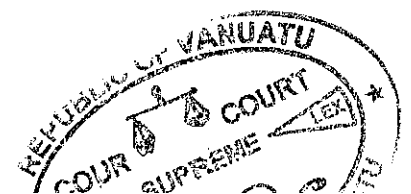
**Date of Plea :** 25<sup>th</sup> February 2020  
**Date of Sentence:** 28<sup>th</sup> February 2020  
**Before:** Justice Oliver.A.Saksak  
**In Attendance:** Damien Boe for Public Prosecutor  
Rollanson Willie for Defendant

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**SENTENCE**

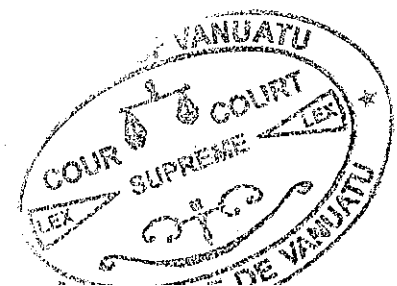
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1. Moroni Takalolo is in Court today for sentence having pleaded guilty to one charge of unlawful sexual intercourse contrary to section 97 (2) of the Penal Code Act [ Cap 135].
2. The maximum penalty for this offence is 15 years imprisonment.
3. The facts are simple. On 22<sup>nd</sup> August 2019 the defendant had sexual intercourse with Dalida Seone. She was a 13 year old school girl attending class 6 at the Santo East Primary School. She was born on 10<sup>th</sup> may 2006.
4. On 22<sup>nd</sup> August 2019 the complainant called the defendant on the phone. She asked him to collect VT 200 to buy credit which he had asked from her on Saturday 21<sup>st</sup> August. The defendant went to the complainant's house at Show ground area to collect the money but did so at night. The complainant asked her grandmother for VT 200 but was given VT 1000 which the defendant accepted as an advance, to be refunded by him. The defendant then demanded to have sex with the complainant. She declined and said she would ask her grandmother. However the defendant pulled her by the hand to the back of the house and demanded to have sex. It was raining so she asked grandma to open the door. They both entered the house. The defendant made the complainant lie down on a mat and he proceeded to have sex with her. She felt pain. They both went outside and the defendant left her. She went back into the house



and saw blood on her skirt. She took some water from the icebox and removed the stain. Her grandmother saw her walking badly and asked her what happened. She tried to conceal the incident from her grandmother.

5. The complainant made a complaint statement to the police on 18 November 2019. She was examined on the same date. The doctor's report shows no abnormalities. There was absence of the hymen showing evidence of previous penetration through sexual intercourse.
6. The complainant was over 13 years old but less than 15 years old. That is what made the act of sexual intercourse with her on 25<sup>th</sup> August 2019 unlawful.
7. The aggravating features of the defendant's offending were that-
  - a) The defendant took advantage of demanding money for mobile phone from a school girl when he was a taxi-driver to gain access into her home.
  - b) The offence occurred within the confines of the complainant's home.
  - c) There was a degree of planning on the defendant's part.
  - d) There was a disparity between the ages of the defendant and the complainant.
  - e) Loss of dignity and a feeling of guilt and shame
  - f) Risk of teenage pregnancy and/or venereal diseases
  - g) Lack of respect for the privacy of the grandmother's home
8. The law is trite on the purposes of sentencing and these are to protect young girls, women and the vulnerable members of the society, to denounce the conduct of the offender, to deter the offender and others from committing the offence or similar offences in future, to punish the offender justly and appropriately and to mark the seriousness of the offender's offending.
9. The case of PP v Gideon [2002] VUCA 7 lays down very clear principles, including that man who takes advantage sexually of young people forfeit the right to remain in the community. Further from this case, suspension of sentence can only be available in the most extreme or exceptional circumstances. There is nothing extreme or exceptional about your circumstances.



10. Taking all those features into account, I accept prosecution submission that your sentence will be one of imprisonment without suspension. And taking all the aggravating features and circumstances of your case together, the starting sentence for you will be 5 years imprisonment. There will be no further uplift.
11. In mitigation I note from your presentence report that-
- a) You performed custom reconciliation ceremony showing remorse.
  - b) You have no previous criminal record.
- For these 2 factors I deduct your 5 years sentence by 1 year leaving 4 years as the balance.
12. I deduct a further 1/3 for your early guilty plea. This means a further reduction of 1 year and 4 months are made.
13. Your end sentence is therefore 2 years and 8 months. I sentence you accordingly.
14. There is no suspension of sentence. Your sentence of 2 years 8 months takes immediate effect as of today.
15. I note the sworn statements of Dalita Jimmy the complainant and Chief Wycliffe. But the Court of Appeal has made it clear in past cases that custom reconciliations cannot be used as a "bargaining chip" to absolve punishments. They can only be taken as mitigating factors to reduce sentence. And this has been done in your case.
16. That is the sentence of the Court. You have a right of appeal against your sentence within 14 days if you do not agree with it.

**DATED at Luganville this 28<sup>th</sup> day of February, 2020**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

