

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

Criminal
Case No. 21/2800 SC/CRML

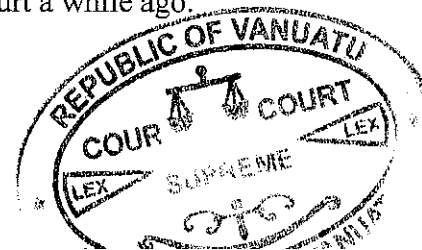
BETWEEN: PUBLIC PROSECUTOR

AND: KIPREL MARAE

Date: 24th day of February, 2023 at 8:30AM
Before: Mr. Justice Oliver A. Saksak
In Attendance: Georgina Kanegai for Public Prosecutor
Willie Kapalu for the Defendant

SENTENCE

1. Kiprel Marae the Court has found you guilty of one charge of incest contrary to section 95 (1) (a) of the Penal Code Act CAP.135 and has returned its verdict accordingly. You are now here for sentence.
2. Incest between a father and daughter is a serious crime. It carries the maximum penalty of 20 years imprisonment.
3. There was no mitigating circumstance for your offendings.
4. There were aggravating features such as a serious breach of trust. Your daughter deserved love, care and protection instead you abused her several times over a period of one month from 1st June to July 2021. The offendings occurred within the confines of the family home where the victim was supposed to feel safe. There was a great disparity between you being 45 and the victim being 22 at the times of offendings.
5. Taking all those factors into consideration, your offendings warrant a custodial sentence. This is to mark the gravity of the offending, the public disapproval of your actions, to deter you other likeminded persons, to protect women and girls and the vulnerable, and to punish you adequately.
6. I therefore sentence you to a starting sentence of 7 years imprisonment.
7. I now consider your mitigating factors to reduce your sentence. I am grateful the Probation Officer for the Same Day Presentence Report filed in Court a while ago.



8. Regrettably you are not entitled to any reduction for guilty plea as your case was a contested one. But I note that you have a clear history with no record of past criminal conviction. This is your first offending and conviction. For this factor I reduce your start sentence by 1 year. Your end sentence therefore shall be 6 years imprisonment.
9. You have not displayed any remorse. There has been no reconciliation on your part at any time. You do not appear to have accepted any responsibility at all for your actions.
10. But I have noted from your same day report that you are a family man with a wife and 6 children. That one of your sons is attending a College in Samoa, one at Malapoa College, one at Tafea College, and three others are attending schools as well. That you are responsible for paying their school fees by earning money from sale of kava and sandalwood as a subsistence farmer. The future of those children would be in jeopardy if your sentence of imprisonment was made immediate.
11. I note also that you are a member of the Presbyterian Reform Church and that you are an active member in your community, and your people regard you as a responsible leader.
12. Despite the submissions by the Prosecution that your sentence should not be suspended, it is my view the circumstances of your offending, the nature of the offence you committed and your character, and following the case of *PP v Bulewak Crm 27/2013*, warrant a suspension of your end sentence.
13. Accordingly pursuant to section 57 of the Penal Code Act, I hereby suspend your sentence of 6 years imprisonment for a period of 3 years on good behaviour. This means that you do not have to go to prison today. You will return to your community but must be offence – free for a period of 3 years. If you commit any offences within that period for which you would be charged and convicted, you will go to prison for 6 years.
14. In addition, you are sentenced to 100 hours of Community work pursuant to the Court's power in Section 58A, 58B, 58N and 58P of the Penal Code Act. A separate Order will be issued in respect of this additional sentence.
15. That is your sentence. You may wish to appeal this sentence and your convictions within 14 days of you wish to do so.

DATED at Isangel, Tanna this 24th day of February, 2023

BY THE COURT

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O. SAKSAK
Judge

