

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

Criminal Case No. 101 of 2009

**PUBLIC PROSECUTOR**  
**-V-**  
**JEAN-PIERRE KAPALU**

*Mr. Molbaleh for the Prosecution*  
*Mr. Kausiama for the Defendant*

**SENTENCING**

Jean Pierre KAPALU appears for sentence, he having pleaded guilty to Count 3 in the information when he was before the Court on the 14<sup>th</sup> of October. That charge relates to a charge of indecency by exposing his private parts or genitals to the 11 year old complainant. I record that I make an order of final suppression in respect of the name of the child.

The maximum term of imprisonment is of 10 years.

I record that I have read the written submissions of the State and of the Defence and I have listened to their submissions today.

The agreed statements of facts are that the complainant is 11 years of age, the prisoner is 46. On the 28<sup>th</sup> July 2009, the victim stayed home at Freswota One in Port Vila, where the defendant and the victim live. The defendant walked to the victim at an old house in the yard and showed his private parts to her two times, or twice. The defendant admits doing that to the victim.

The pre-sentence report highlights a number of features, in particular it identifies the status of the prisoner, his contributions to the community in the past, his family status and the impact upon his family and particularly the education of his children that has been affected by his offending. It is clear from the report that the prisoner knew that he had done wrong and was willing to do anything to fix it. He expressed his remorse. He was concerned that the offending had caused grief and rift between the

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affected families. He is willing to participate in a custom ceremony and the family of the complainant are willing to do that as well, and as an early indication of the resolution of the family differences, a pig worth 40,000 vatu has been sent to Port Vila for such ceremony. There are some other features, upon which I do not dwell, relating to manoeuvring in respect of possession of property.

The submission and recommendation at the end of the report is for a term of imprisonment, but there is a strong suggestion that imprisonment with an inference of suspension, together with counselling and community service, and the conditions as recommended in the report with supervision may meet the requirements of this case.

The State for its part, representing the community, makes it clear that this is unacceptable conduct. The State refers to the case of Alain John 40 of 2005 which was a case of breast holding and vagina holding. On a plea of guilty, 2 years actual imprisonment was imposed and there was a comment that, irrespective of status, prisoners who offend in this way go to prison. In the Endery Nabid case 04 of 2009, again, a kissing of the private parts of the complainant so that there was actual contact, the defendant was sentenced to 2 years imprisonment, but it was suspended for 3 years.

The aggravating features identified by the State are the age of the victim, the prisoner's responsibility as an adult of 46 years, and that as a chief in the community, he should be expected to behave better and reflect the trust imposed in him by others as to his chiefly status. It may also be that because of his chiefly status, he was given greater leniency than others in respect of the trust imposed on him.

The State highlights that the breach of trust occurred in family circumstances in that the complainant and the defendant live in the same yard owned by the family of the defendant, and the victim and her family rent a house in that yard, so that there is frequent contact between those family members. The State emphasised the impact upon the victim of the conduct and the impact upon her of meeting with others who have knowledge of the act of indecency affecting her.



The custom ceremony should go a long way towards alerting all family members and those participating and aware of the custom ceremony that they should be on their guard with the prisoner when young children are in the vicinity.

It is clear that if it rains and any of us are in the rain, the rain falls on all of us. So there can be no suggestion that because of status you receive an exception – the law applies to every member of the community, irrespective of status. It is often said the greater the heights one achieves, the greater the fall when one falls out of grace.

But I accept the comment by the State that people in leadership roles have a greater expectancy placed upon them.

The State's submission is that of 2 years without suspension.

Mr. Kausiama for the defendant Kapalu refers to cases of Boita 9 of 2002 and Abednigo 03 of 1990, referring to cases of seriousness and lengthy terms of imprisonment. He makes the point that the cases vary as do the circumstances. There seems to be a wide variety of factual circumstances amounting to indecency and it is for the sentencing Judge to try and place those facts in some seemly order.

The cases referred to by the State Prosecutor and those of Mr. Kausiama are of graver offending than this defendant. In each case there seems to have been greater acts of indecency, actual skin upon skin contact and participation in sexual activity. Some of the factual scenarios could easily give rise to graver charges. That, I stress, is not the case here. The case here is exposing his genitalia upon 2 occasions.

I need to record that the position advanced at page 3 of the pre-sentence report under the first paragraph under "Offending" relates to other charges in the information against the defendant of which, as I grasp it, he is to be discharged after sentencing. I record I have put that information to one side.

It does also contain the information that this prisoner has been in custody since 29<sup>th</sup> July 2009.



In assessing the conduct of the defendant in exposing himself upon two occasions to this girl of 11 years, in my view a term of imprisonment in the region of 12 to 18 months as a starting point needs to be considered. That is considerably less than the State's submission and I have identified my reasons for differing. Setting that starting point I then need to make a deduction of one third, in my view, for the plea of guilty, with the advantage of the complainant not coming to Court and not being exposed to re-living the incident by giving evidence in a strange environment, thus accentuating the impact upon her, so that a genuine and real discount should be available.

So I need to take into account the prior good behaviour of the defendant, his remorse, and the basis of the custom ceremony which is yet to take place.

I impose the term of 9 months imprisonment upon the defendant for the offending. I turn to consider the provisions of Section 57 which concern the suspension of the term of imprisonment. In my view, having regard firstly to the circumstances of the offending, secondly the particular nature of the crime, which is set out in Section 57A, subsection (2), which relates to non-contact and an exposure, and I particularly add to that the prior good character of the defendant, in my view this is an appropriate case for suspension.

Accordingly the term of imprisonment of 9 months is suspended for 18 months.

I record at this time that in fixing the term of imprisonment of 9 months I have considered that this prisoner has been in custody since 29 July to the present time.

In respect of community work I order that the defendant carry out a term of 200 hours community work.

I in addition place him on supervision for 18 months, with the terms and conditions contained within the pre-sentence report. Plus a condition that he is to attend for such psychiatric or psychological assessment and counselling as directed by the Probation Officer.



I record my very real concern that the causation of this offending has not been identified so that some steps, professionally, need to be taken to identify the causation and assist this prisoner not to offend again.

The prisoner should be aware that his family circumstances weigh with me in reaching this decision. He should be aware that the responsibility to his family and his children rests with him. It is not for a sentencing Judge to uplift the responsibility and sentence the prisoner in such a way that his own children's futures are not affected. Those decisions are for him. If he wishes to put that in jeopardy again in the future, he really only has to offend.

I trust that with that sentence, the remorse, the family custom ceremony and the input of probation and any experts that are available, there is a strong possibility that this prisoner will not reappear in this Court.

You have 14 days to appeal my decision.

**DATED at Port Vila, this 21<sup>st</sup> day of October, 2009**

**BY THE COURT**

