

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

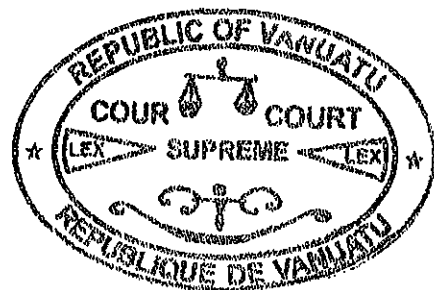
**STEVEN TOA**

Mr Justice Oliver A. Saksak

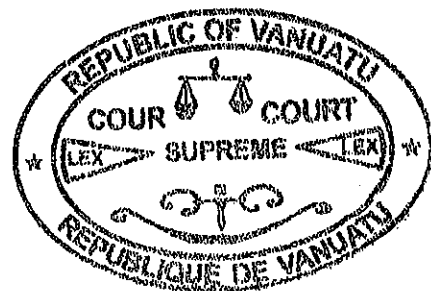
Mrs Kayleen Tavoia – Public Prosecutor  
Mrs Marisan P. Vire for the Defendant

**SENTENCE**

1. Steven Toa, you pleaded guilty to two counts of (a) Sexual Intercourse Without Consent contrary to Section 91(b) to sexual intercourse with child under 13 years contrary to section 97(1) of the Penal Code Act Cap. 135.
2. Your victim was an 11 year old girl. The offending occurred on 16<sup>th</sup> May 2008 at about 7 O'clock p.m.
3. This is the second time you have come before this Court on a sexual charge. The first time was on 13<sup>th</sup> September 2007 when this Court convicted you and sentenced you to imprisonment for 5 years for a charge of indecent assault.
4. Your victim at that time was 13 years old. This time she is 11 years old. This indicates you have a tendency of taste for young girls.
5. You do not appear to have learnt from your previous sentence. The Court sentenced you to 5 years imprisonment but reduced it to 3 years due to your mitigating factors. And the Court had your 3 years suspended with supervision orders. One of the conditions was that you should not re-offend.
6. However, on 16<sup>th</sup> May 2008 only 8 months after you were sentenced you re-offended. This time on a much younger victim. And this time you committed two sexual offences in one act. And both are serious.



7. Rape or Sexual Intercourse without consent carries a maximum of life imprisonment and sexual intercourse with a child under 13 years of age carries a maximum of 14 years imprisonment.
8. In assessing your sentence I have had regard to your Pre-Sentence Report, the Public Prosecutor's submissions and the Defence Counsel's submissions. I have also taken into account your previous Criminal Conviction and Sentence.
9. Your victim was a very young girl of 11 years old. She was lucky not to have sustained any physical injuries. The offending occurred at night. Her life was placed in some risk. You asked her to bring you some food and she did. Then you turned around and abused her when you should have shown gratitude. You applied some physical force on her person. These are the aggravating features of this case.
10. The only mitigating factor the Court can accept is the fact that you immediately changed your plea on the date of trial. The Court will allow credit, for that. The Court does not accept that you are remorseful because true remorse is usually followed by some act of reconciliation. You have not done any of that.
11. Your case warrants a custodial sentence. You are a risk to young girls in the Community. According to the principle in Ali August you will forfeit the right to remain in the Community.
12. Your suspended sentence of 3 years in Criminal Case No. 7 of 2007 is now reactivated. You will now serve those 3 years imprisonment.
13. For your offending in this case, the Court after having considered the cases submitted by both the Public Prosecutor and the Defence Counsel, the starting point could have been 8 years for both charges. However the Court accepts it would begin at 6 years for both reducing it by 1 year on the second count. The Court therefore imposes as follows:-
  - (a) For Count 1 - Sexual Intercourse Without Consent – 6 years imprisonment.
  - (b) Count 2 - Sexual Intercourse with girl under 13 years of age - 5 years imprisonment, concurrent to Count 1.



In effect you will serve a total of 6 years.

14. In addition to these 6 years you will also serve the 3 years imprisonment term in respect of Criminal Case No. 7 of 2007.

15. In total you will serve an imprisonment term of 9 years.

16. You will not be eligible to apply for parole until you have served 4 ½ years of your 9 years.


17. Your terms of imprisonment began on 20<sup>th</sup> November 2008.

18. That is the Sentence of the Court.

19. You may appeal within 14 days from the date of this sentence if you are not happy with your terms of imprisonment.

**DATED at Luganville this 17<sup>th</sup> day of March 2009.**

BY THE COURT



OLIVER A. SAKSAK  
Judge

