

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

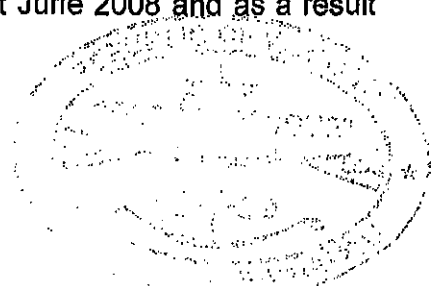
**ELIAH TABI**

**Mr Justice Oliver A. Saksak**  
**Mrs Anita Vinabit – Clerk**

**Mr Gregory Takau for Public Prosecutor**  
**Mr Kevin Nathan for the Defendant**

**SENTENCE**

1. Eliah Tabi you were charged with two counts of Unlawful Sexual Intercourse contrary to section 96(1) and 97(1) of the Penal Code Act Cap. 135.
2. On 14<sup>th</sup> April 2009 you pleaded guilty to the section 96(1) offence and not-guilty to the section 97(1) offence. However the prosecutions withdrew the second charge against you. A conviction was recorded against you on count 1.
3. I have today heard submissions as to sentence in the light of the pre-sentence report and now decide on sentence.
4. An offending against section 96(1) carries a maximum penalty of 10 years imprisonment.
5. The facts show that the victim, an 18 year old girl was your step-daughter. You had sex with her in or about June 2008 and as a result



she became pregnant. Also as a result your step-daughter has left school. The offending started when the victim was only 12 years old.

6. I have considered the following to be the aggravating features of your case –

- Breach of trust and responsibility as a father
- The young age of the victim
- The maturity of the offender
- Loss of victim's education
- Pregnancy of the victim and loss of dignity
- Repetition of offending (although not charged for those other offending).

These are factors which make your offending more serious.

7. The Prosecutor has urged the Court to follow the sentencing principles used in PP v. Kevin Gideon. Your counsel, Mr Nathan has also urged the Court to adopt the sentencing term in the case of PP v. Gratien Bae and has submitted the Court should impose an imprisonment term of 3 years. The Prosecutor on the other hand has urged the Court to make 3 years as the starting point, increasing it to 4 ½ years due to the aggravating features and making appropriate deduction due to mitigating features.

8. The cases cited are classic cases and this Court is bound to apply them. There can be no doubt that the most appropriate sentence for you will be a custodial one. The only issue is for how long.

9. In PP v. Bae the Court of Appeal said that a sentence of 3 to 5 years for incest would have withstood an appeal.



10. You were not charged with incest but with the offence of sexual intercourse with a child under care and protection (section 96(1)(a)). But both of these carry maximum sentences of imprisonment for 10 years.
11. Sexual offending since 2003 are on the increase despite the Courts imposing high penalties. It appears that men just do not seem to take any notice of this and they just continue to commit sexual offences without restraint. That being so the starting base should now be increased in order that deterrence is to be achieved. In my opinion all sexual offences carrying a maximum imprisonment term of 10 years should have a starting point of 5 years, that is half of the maximum term.
12. For you Mr Tabi, due to the aggravating features of your offending the starting point is 5 years imprisonment which is 60 months.
13. However, I have considered the following mitigating factors submitted on your behalf –
  - First-time offender
  - Guilty plea at first opportunity
  - Deep remorse followed by customary reconciliation.
14. I am told and you were able to confirm it yourself that you performed "custom" before you were taken into custody by exchanging 2 pigs valued at VT20.000 each totaling VT40.000, cash of more than VT1.000 and 2 heads of kava. You also told the Court your wife was made to pay another VT300.000 on your behalf lately. I have seen a letter produced by Mr Nathan to that effect. That is a good thing on



your part, however customary reconciliation can never wipe out your culpability. Instead the Court can allow it only to reduce sentence.

15. Your total sentence is 5 years imprisonment, which is 60 months. However, 4 months are deducted due to your early guilty plea and your clean past record. A further 4 months is allowed for the customary ceremony performed. And finally, 3 months are deducted being the time you have already spent in custody. The final calculation of sentence is as follows –

60 months (5 years)

- 4 months (For early guilty plea and clean record)

56

- 4 months (For customary reconciliation)

52

- 3 months

49 months (Balance)

16. The total term of imprisonment you have to serve is 49 months or 4 years and 1 month beginning on 9<sup>th</sup> June 2009. You may apply for parole having served half of this term of sentence.
17. You may appeal against sentence if you wish within 14 days from today.

DATED at Luganville this 9<sup>th</sup> day of June 2009.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

