

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

Criminal Case No. 58 of 2010

**PUBLIC PROSECUTOR**  
**V.**  
**MICHAEL MOTOUTORUA**

**Coram:** *Justice D. Fatiaki*

**Counsel:** *Mr. Bernard Standish and Mr. Blessing Boe for the State  
Mr. Andrew Bal for the Defendant*

**Date of Sentence:** *28 July 2010*

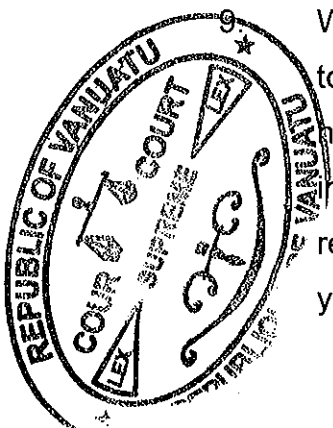
**SENTENCE**

1. Michael Motoutorua, your case is fixed for sentence today. Although you were originally charged with 5 counts in the information only one count remains on which you pleaded guilty to an offence of Act of Indecency Without Consent contrary to section 98 (a) of the Penal Code. This offence carries a maximum penalty of 7 years imprisonment.
2. The circumstances of the offence which you admitted are that on the night in question in March this year while the complainant was sleeping on a couch in the sitting room of your house, you approached her and indecently touched her buttocks outside her clothes.
3. The aggravating features in the case include the following:-
  - You are the complainant's real uncle;
  - The act took place when the complainant was living in your house under your care and protection; and



- You are an experienced mature man of 36 years with daughters of your own who took advantage of your young vulnerable niece.
4. Michael Motoutorua this was a serious breach of the trust that the complainant and her parents had in you when they allowed the complainant to come from Malekula and live in your house in Port Vila under your care and protection.
  5. I note that you are a first offence and you pleaded guilty to the offence and freely admitted it when questioned by the police. Although I am willing to treat this incident as an isolated one, you yourself are aware that what you did to the complainant was wrong and you fled when your wife confronted you about it the next morning.
  6. I am informed that since the incident the complainant no longer lives in your household and whatsmore she has forgiven you and is willing to accept a custom reconciliation ceremony which you have offered to perform to her.
  7. I accept counsel's submissions that this offence is at the lower end of the scale of possible offending and in a not dissimilar case in *PP v. Keleb [2009] VUSC 111* this Court imposed a suspended sentence of imprisonment.
  8. I propose to adopt a similar approach in this case and sentence you Michael Motoutorua to 9 months imprisonment suspended for 18 months.

What this sentence means is, although you do not have to go to prison today, you are warned that if you are convicted of another offence in the next 18 months you may be required to serve this sentence of 9 months imprisonment in addition to any other sentence you may receive for your re-offending. Michael Motoutorua, whether that occurs or not is entirely in your hands but if you are convicted of another offence in the next 18



months the Court is unlikely to show you the same leniency as it has shown you on this occasion.

10. I also urge you to perform the customary reconciliation ceremony that you offered to perform to the complainant as soon as you can as a sign of your good faith and in order to re-establish good relations between you, the complainant, and your close family relatives.
11. Michael Motoutorua if you do not agree with this sentence you may file a notice of appeal to the Court of Appeal within 14 days.

**DATED at Port Vila, this 28<sup>th</sup> day of July, 2010.**

**BY THE COURT**

