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

CRIMINAL CASE No.07 OF 2010

PUBLIC PROSECUTOR -v- FRANK METO

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Ms Viviane Laumae for the Public Prosecutor
The Defendant, Mr Frank Meto in person*

ORAL VERDICT

The Defendant, Frank Meto, is initially charged with the following offences:

Count 1: Incest, contrary to section 95 of the Penal Code Act

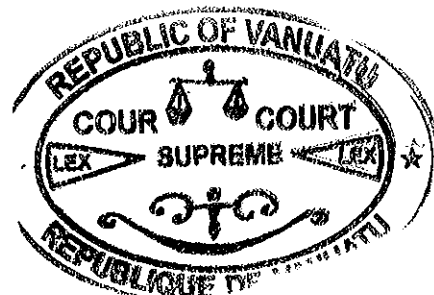
Count 2: Unlawful sexual intercourse, contrary to section 97(2) of the Penal Code Act [CAP.135]

Count 3: Sexual intercourse without consent, contrary to section 91 of the Penal Code Act [CAP.135]

Count 4: Threats to kill, contrary to section 115 of the Penal Code Act [CAP.135].

The Defendant pleaded not guilty to each of these offences.

The trial proceeded on that basis. Section 81 was read and explained to the Defendant. At the middle of the trial, the prosecution applied for a nulli prosequi under section 29 of the Criminal Procedure Code Act [CAP.135] in relation to the offence of threats to kill, contrary to section 115 of the Penal Code Act (charged in count 4). The nulli prosequi was entered in relation to count 4. The Defendant was discharged and acquitted of that offence.



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The prosecution also applied to amend the charge of Incest in count 1 under section 95 of the Penal Code Act and substitute it to the charge of sexual intercourse with child under care or protection, contrary to section 96 of the Penal Code Act.

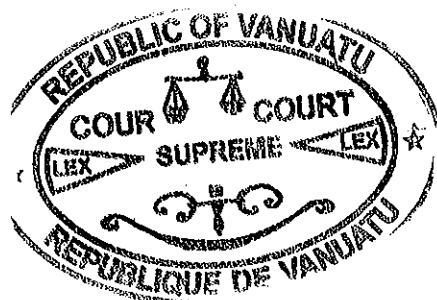
The Court granted that application of the prosecution. The Defendant, Frank Meto, was then charged with the offence of sexual intercourse with child under care or protection, contrary to section 96 of the Penal Code Act. The Defendant was called to plead and he pleaded not guilty to the new charge. He was asked and he declined to cross-examine the prosecution witnesses on that new charge. In summary, the Defendant was charged and tried with one count of sexual intercourse with child under care or protection; one count of unlawful sexual intercourse and one count of sexual intercourse without consent (as per the Amended Information dated 8 April 2010).

The law is for the prosecution to prove each and all essential elements of these offences beyond reasonable doubt before the Defendant could be convicted. The evidence of the Defendant witnesses will be considered on the same basis as the evidence of the prosecution witnesses. If at the end of the trial, there is a reasonable doubt, it will be interpreted in favour of the Defendant. The Defendant will be discharged and acquitted of these offences. If on the evidence, I am sure of the guilt of the Defendant, I must be satisfied of the Defendant's guilt on beyond reasonable doubt before I convict him.

THE PROSECUTION CASE

The prosecution case is that the complainant in this matter is the Defendant's step-daughter. The Defendant, Frank Meto lives with his wife, Wendy Frank and all their children including the complainant at Tanoliu, North Efate until December 2009.

It is the prosecution case that the accused, Frank Meto, had sexually abusing his step-daughter (the complainant) from year 2002 to December 2009.



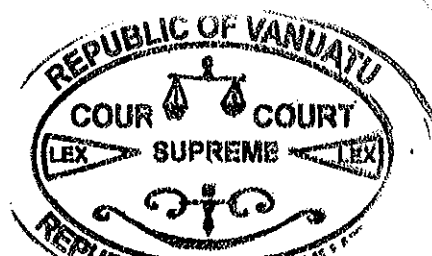
The prosecution called evidence from the complainant girl, her mother Wendy Frank, her younger sister Elsie and the examining doctor (Dr. Boniface Damutalau).

The complainant girl gave evidence of the fact that her step-father sexually abused her on several occasions and at different times and years. She could not recall about the dates and the times. But she had clear recollections of the places her father sexually abused her. One occasion was inside their house at Tanoliu on the bed of her mother and father. Another occasion was inside the toilet. Another was inside the garden and at night when the Defendant went to hunt flying foxes with the complainant, her sister and Samu. Those sexual abuses happened at Tanoliu. Her evidence is that she received threats and was afraid of her step-father. She said she was forced to have sexual intercourse with her father.

Wendy Frank gave evidence confirming that her husband, the Defendant sexually abused her daughter, the complainant, since 2002 until December 2009 when she went with the complainant at the police station and lodged the complaint against the Defendant.

She gave evidence of an occasion in 2002 where she saw the Defendant inside their bedroom with the complainant. The Defendant was holding his penis and tried to push it into the complainant's trousers. She told the Defendant of what she saw and the Defendant assaulted her. She gave account of another occasion, she saw the Defendant standing behind the complainant. She said she looked in front of the Defendant's trousers and saw that the Defendant was stimulating standing behind the complainant whilst the complainant and her younger sister Elsie were sweeping the floor in their house at Ohlen Matasso. Wendy said she approached the Defendant and talked to him. The Defendant got angry at her and assaulted her.

Elsie Frank gave evidence. She is 12 years of age. She said she saw her sister (the complainant) and her father on various occasions but she did not know what her father was doing to her sister. She gave account of one occasion she saw her father (the Defendant) going inside the toilet whilst her sister was still inside the toilet bu



she did not know what they did. On another occasion, she said she, the complainant, Samu and her father went looking for flying foxes at night. Her father told her and Samu to walk first. He and her sister (the complainant) will come after them. She also gave evidence of an occasion she and her sister (the complainant) went looking for navara. She said her father came and forced her sister to go to the toilet. She said her father was standing there and washed her sister doing her toiletry in the bush. She finally gave evidence of another occasion when the Defendant assaulted her mother (Wendy) and took her inside the house. Her father told her and her sister to go to the river. She said her father (Frank Meto) followed after them. At the river, she said she saw her father, Frank Meto, forced her sister (complainant) to remove all her clothes but her sister refused to do so. He forced her. He was holding a knife. Her sister started crying. She then removed all her clothes. Her sister stood beside the river full naked and was crying.

Dr. Boniface gave evidence of his examination of the complainant after the incident of 23 December 2009. He said he examined the complainant on 27 December 2009. The complainant informed him that her step-father sexually abused her on 23 December 2009. He makes findings of a recent scar and also old lacerations.

THE DEFENCE CASE

The case of the Defendant is that he had sexual intercourse with her step-daughter with her consent. It is his case they agree to have sex on 23 December 2009. It is his case the complainant told her that she is 16 years of age. She had a boyfriend. She had sex with her boyfriend on many occasions.

Section 88 of the Criminal Procedure Code Act [CAP.135] was read and explained to him. He exercises his right to remain silent. He called two witnesses. Sem Timataso is his first witness. This witness says he is the Defendant's chief. Wendy Frank was in his house on 24 December 2009. He said he heard Wendy Frank talking to her sister in the Mele village through mobile phone. Wendy told her sister to go and take the complainant who was with the Defendant at Tanoliu village, North Efate. He was at home until the complainant arrived with her mother and her auntie. He gave



evidence that as a chief he tried to settle the matter with the complainant's mother's chief. But he said it was unsuccessful because Wendy Frank reported the matter to the police and she is determined that the Defendant must be prosecuted.

Violet Peter is the second witness of the Defendant. She gave evidence that the complainant told her she had a boyfriend. She said the complainant told her that when she and her mother went to lodge the complaint to the police, she did not talk but her mother only filed in her statement.

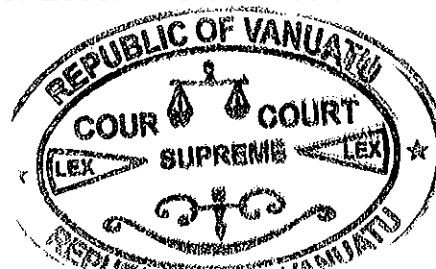
DISCUSSION ON EVIDENCE

I have listened and observed the witnesses and their demeanour in the witness box. Although she did not recall about the dates and times of the sexual abuses of her step-father on her, I find the complainant is a reliable and trustworthy witness. She is trustworthy witness.

Wendy Frank's evidence is also accepted as corroborating the evidence of the complainant. She is also a reliable witness.

Elsie Frank is a powerful witness despite her young age. She was very specific and gave detailed accounts of what she saw the Defendant (her father) was doing to her sister (the complainant). Her evidence also corroborates the evidence of the complainant. He is impossible when she answered questions asked by her father during her cross-examination.

The doctor's evidence of a scar and old lacerations confirmed the evidence of the complainant that she was sexually abused. On inference, it is rational to infer that the scar which was related to most recent incident was the sexual abuse of 23 December 2009. The Defendant admitted he had sexual intercourse with the complainant on 23 December 2009. The Defendant admitted this in his open statement of his defence as part of his case. What he was disputing was that the sexual intercourse occurring on 23 December 2009 was consensual. He disputed that he never had sexual intercourse with the complainant before 23 December 2009. This submission of the



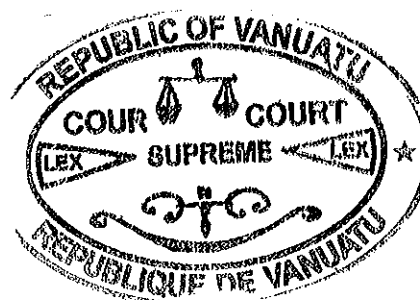
Defendant cannot be accepted and is rejected. The Defendant's submissions or contentions that he never forced or threatened the complainant is rejected. There is overwhelming evidence that the Defendant had sexually abused the complainant before 2009 and such abuses occurred with force or threats of violence on the complainant girl. The evidence of the first witness of the Defendant Sem Timataso is not advancing the case of the Defendant in any event or otherwise. Witness Timataso may be genuine in his belief as the chief but he could not substitute himself to the process of the criminal justice, namely lodging complaint and dealing with serious sexual offence cases as the chiefs have no such power in law.

The evidence of the Defendant's second witness, Violet Peter, is not helping the defence case either. It is hearsay and rejected. The story of the boyfriend was not put by the Defendant to the complainant. The evidence that the mother of the complainant lodged the complaint at the police station is the only responsible thing to do by a mother when her husband sexually abused her child.

The Defendant's own admission of his sexual intercourse with the complainant on 23 December 2009 when he gave detailed description as to what and how he did when he had sexual intercourse with the complainant on 23 December 2009.

The Defendant in this case exercises his right to remain silent. He must not be criticized for exercising his right. Inferences can be drawn from the absence of any explanation from the Defendant who had the "unique knowledge of the incidents to which the charges relate". Inferences are available to be drawn from unchallenged evidence. This is so as a matter of common sense from his lack of explanation. (See **Swanson v. Public Prosecutor**) [1998] VUCA; Criminal Appeal Cases 06 and 11 of 1997 (26 June 1998).

In the present case, there is overwhelming evidence that the Defendant, Frank Meto, sexually abused her step-daughter, the complainant on many occasions from 2002 to 23 December 2009.



I am satisfied beyond reasonable doubt that the prosecution has proved the following offences charged against the Defendant, Frank Meto:

- (1) Sexual intercourse with child under care or protection, contrary to section 96 of the Penal Code Act [CAP.135];
- (2) Unlawful sexual intercourse, contrary to section 97(2) of the Penal Code Act [CAP.135];
- (3) Sexual intercourse without consent, contrary to section 91 of the Penal Code Act [CAP.135].

I inform the Defendant that in law the complainant is a child. She is a minor person. Her consent to sex is irrelevant.

VERDICT

I find Defendant, Frank Meto, guilty of the following offences:

1. Sexual intercourse with child under care or protection, contrary to section 96 of the Penal Code Act [CAP.135] - (count 1);
2. Unlawful sexual intercourse, contrary to section 97(2) of the Penal Code Act [CAP.135];
3. Sexual intercourse without consent, contrary to section 91 of the Penal Code Act [CAP.135].

DATED at Port-Vila this 9th day of April 2010

BY THE COURT

**Vincent LUNABEK
Chief Justice**

