

**PUBLIC PROSECUTOR -v- MAICHA NICHOLSON**

**Coram:** Chief Justice Vincent Lunabek

**Counsel:** Mr Felix Toa Ngwango for the Public Prosecutor  
Mr Tom Loughman for the Defendant

**SENTENCE**

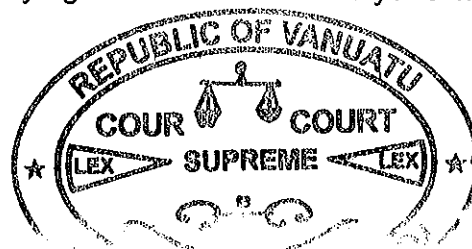
On 2 March 2011, you pleaded guilty to 1 count of Unlawful Sexual Intercourse, contrary to section 97(2) of the Penal Code Act [CAP.135] and you were convicted of that offence accordingly.

You appear today for sentence. The facts of this case are set out by the prosecution. Your lawyer accepts these facts on your behalf. They are set out as follows:-

The Complainant is a girl of 14 years of age. She attended Sainte Janne d'Arc School in class 6 but is no longer attending school. She is living with her parents at No.2 Wallis. She was asked to go to the police station by her parents after she reported her relationship with you. You and the Complainant were in a relationship dating back to last year 2010 in March when you asked the Complainant to go out with you to which she declined at first but after you told her that you liked her, the Complainant finally agreed to it.

You both kept your relationship under wraps as you are both related to each other. You came from the Island of Banks and stayed with the Complainant's family. You both liked each other, but the Complainant's parents did not approve of your relationship as you might be the Complainant's real brother. There are also occasions where you would engage yourselves in sexual activity to which the Complainant cannot recall the exact number of times you did it but it was quite a lot.

The first time you had sex was on the 8<sup>th</sup> of April 2010, at night at 10 pm at No. 2 Wallis in your room in the house that you are staying in. At that time everyone was



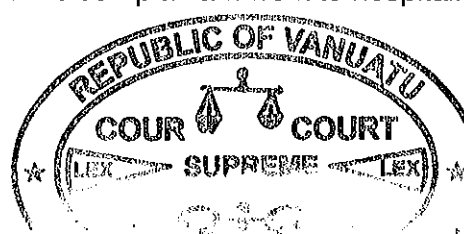
fast asleep, you called the Complainant to your room telling her that you wanted to sleep with her and said that you really liked her. The Complainant did not want to at first resulting in you pulling her to you and kissed her. You then asked the Complainant to remove all her clothes. You removed your clothes as well making both naked.

You went over to the bed and lay down on the bed and told the complainant to come and lie on top of you. You started kissing the Complainant's mouth and breasts. You then proceeded to touch the Complainant's vagina and started licking and kissing the Complainant's vagina. You then told the Complainant to do likewise to you to kiss and suck your penis which the Complainant did. You turned the Complainant to lie down and you laid on top of her. You then opened both the Complainant's legs and slipped on a condom over your penis and inserted it into the complainant's vagina and had sexual intercourse with her. After sex, you removed yourself from the Complainant and also removed the condom and disposed of it. You both got dressed and parted ways. The Complainant went to her house and slept till morning telling no one about the previous night's happenings.

After your first meeting, you would call the complainant to your room when no one is around on many occasions. No one knew about your relationship with the complainant until one day at Saralana when she told her parents about it causing her father to whip her. The last time you both had sex was on Tuesday the 7<sup>th</sup> December 2010 at Ifira Point. You rang the Complainant's father's phone and told the complainant to meet you at Ifira Point. The Complainant left their house on the 04<sup>th</sup> of December 2010 and stayed with you until on the Wednesday 08<sup>th</sup> December 2010. On the night of the 7<sup>th</sup> December 2010 you asked the Complainant to remove all her clothes and you doing so as well. You then asked the Complainant to lay down on you as you started kissing the Complainant's mouth, breasts and vagina. The Complainant, upon your request did likewise, sucking your penis.

You continued and opened the Complainant's legs with your hands and inserted your penis into the Complainant's vagina and had intercourse with her. You continued until you were tired and told the Complainant to lay on top of you again. The Complainant did so by inserting your penis into her vagina and thus moving up and down until you indicated that it was enough. You both got dressed and slept till morning.

The complainant's parents arrive in the morning to Ifira Point to take both of you to the Police Station. You were then locked up in No.6 while the complainant went to hospital.



I have considered the prosecution submissions and submissions from your lawyer. I peruse the pre-sentence report filed to assist the Court in your sentencing.

The nature of your offending is a serious offence. It is aggravated by the breach of trust because of the relationship which existed between you and the complainant; the offence occurred more than once.

In mitigation, your lawyer submits that you are 20 years of age at the time of the offending. You were currently employed in a private company. You were in a boy and girl relationship back in 2010 until the time the offence occurred. You are remorseful and apologize to the Court and to the complainant and her families who have been affected as a result of your action. You tell your lawyer to inform the Court that you have learned a lot from your wrongdoing and you promise to change your life after your punishment.

I sentence you to 4 years imprisonment on aggravation. I reduce it to 2 years on balance of mitigation.

In the circumstance of this case, I suspend your sentence for a period of 2 years. In addition, I order that you perform 200 hours community work.

You shall note that during the 2 years suspension period of your sentence of 2 years imprisonment, you shall not re-offend. If you re-offend and convicted before the 2 years suspension period expires, your sentence of 2 years shall be re-activated.

You have 14 days to appeal this sentence if you are not happy with it.

**DATED at Port-Vila this 31<sup>st</sup> day of March 2011**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**

