

PUBLIC PROSECUTOR -v- MARIO TOM NAUTA  
MICHEL YAWO

Coram: Chief Justice Vincent Lunabek

Counsel: Mr Tristan Karae for the Public Prosecutor  
Mr Eric Molbaleh for the Defendants

## SENTENCE

Mario Tom Nauta and Michel Yawo, you both appear today before the Court for your sentence in this case.

On 3 May 2011, each of you entered a guilty plea on the offence of Unlawful sexual intercourse, contrary to section 97(2) of the Penal Code Act [CAP.135].

In this case, each and both of you have Unlawful sexual intercourse with a complainant girl of 14 years of age but on different dates and on different circumstances.

The brief facts of this case are summarized by the prosecution. Your lawyer accepted them on behalf of each of you in the circumstances under which each of you committed the offence. Such facts are reproduced as follows:-

The complainant is a 14 years old girl. The complainant's father and mother left Erromango Island and came to Port Vila and they left their daughter with her aunty Ruth Yawo.

On the 28<sup>th</sup> of December 2010, the complainant left home with another aunty of hers by the name of Roslin and went to her house for the day. When they Were at the

house the complainant said that her aunty told her to go and hang out with Mario. Mario was also insisting that the complainant do so. But the complainant did not want to hang out with Mario but because both her aunty and Mario were insisting for them to hang out, the complainant then followed the defendant Mario.

The defendant Mario took the complainant into a near bush and told the complainant to take her clothes off which she did. The defendant then told the complainant to lie down on the grass. The defendant took of his pants half way to his knees and opened the complainant legs with his hands and pushed his penis into the complainant's vagina while he was lying on top of her. The defendant was on top of her for about three minutes or so and when he got off the complainant felt pain in her stomach and on her vagina; she also felt her vagina being very wet. After the defendant got up, he put on his° clothes and left and so did the complainant, she went straight home and did not tell anyone of what had happened to her until she reported the matter to the police toward the end of January 2011.

On the 8<sup>th</sup> of January 2011, her aunty Ruth had left her to go to another village to visit some family. The complainant was left alone at home, her aunty and the other did not return as it was getting dark so they stayed the night. The complainant however was at one of her uncle's house watching movies right up until 10.00pm. At 10.00pm the complainant returned home; she went directly into the kitchen to grab something to eat when she was shocked to see Michel Yawo there. The second defendant, Mr. Michel Yawo, came up to the kitchen and was forcing the complainant to follow him and if she didn't he threatened to kill her. Fearing for her life the complainant left with the defendant. They went to a bush next to the bush toilet and there the defendant told the complainant to take off her clothes and lie on the grass. The complainant did as she was told. The defendant then removed his pants half way and used his hands to spread the complainant's legs and then inserted his penis into the complainant's vagina and had sex with her. After the sex the complainant again felt pain in her stomach and vagina and also that her vagina felt really wet. The defendant got dressed and went home and so did the complainant.

The complainant only told her best friend Sapella about the two boys who had sex

with her and she never told anyone until she reported the matter to the police on the 27<sup>th</sup> of January 2011.

The defendants were arrested and brought in for questioning and both defendants admitted to having sexual intercourse with the complainant.

Section 97(2) of the Penal Code Act is the prohibiting section. It says:

*"97(2) No person shall have sexual intercourse with any child under the age of 15 years but of over the age of 13 years.*

*Penalty: Imprisonment for 5 years."*

For both of you, you need to be informed that offence of unlawful sexual intercourse with a child contrary to section 97(2) of the Penal Code Act [CAP.135] is a serious offence as reflected by the maximum penalty set by law.

The Court condemns strongly your individual actions in the circumstances of your respective offending on the complainant girl respectively on 28 December 2010 and on 8 January 2011.

When I consider your respective sentencing, I take into account of submissions filed by the Public Prosecutor and submissions filed by Mr Molbaleh on behalf of each of you. I have also the benefit of reading the pre-sentence report filed by the Probation Officer dated respectively 2 and 3 June 2011.

I further have the benefit of reading the Kastom Reconciliation Ceremony Report filed 21 June 2011 by the Probation Officer witnessing a custom reconciliation ceremony performed on behalf of each of you. That report contains the material items exchanged, the speeches by the Chief, the father of the complainant accepting the custom gifts and the speech of the Probation Officer.

I question whether, the performance of custom reconciliation is between the big-men only (Chiefs, the father of the complainant and the Probation Officer). If so, how about the girl complainant of 14 years of age? Has she got anything to say? Did she

accept the custom ceremony as a sign of her forgiveness to the 2 Defendants for what each did to her respectively on 28 December 2010 (Mario Tom Nauta) and 8 January 2011 (Michel Yawo) when each sexually abused her in the way she described?

If the complainant girl of 14 years of age had no involvement at all in the custom ceremony and did not accept any custom ceremony, then, I will treat the position as if no custom ceremony had been accepted by the complainant and I shall take very little consideration in mitigation when I sentence each and both of you.

However, upon the Court's request and by further report dated 6 July 2011, it is reported that the complainant girl informed the Probation Officer that during the custom ceremony, her father spoke on her behalf with her consent. She accepted the custom ceremony and gifts as a sign of her forgiveness to the 2 Defendants.

Mr Mario Tom Nauta, on 28 December 2010, you have sexually abused the complainant. You are now 19 years of age. There is an age difference (of 5 years) between you and the girl complainant. She suffered some pains in her stomach and vagina. The additional information dated 4 July 2011 shows impact of your offending on the complainant. She was stressed, shameful and humiliated. It is difficult for her to get out. The starting point of your sentence is 3 years imprisonment.

In mitigation, I consider that you are a first time offender, you cooperate with the police authorities - you have already served more than 5 months pre-sentence custody; you have performed a custom reconciliation on 21 June 2011; and you plead guilty at a reasonable opportunity. On balance between the aggravating and mitigating factors, you are sentenced to an end sentence of 12 months imprisonment. This includes your pre-custodial period waiting for your trial/sentence.

I wonder whether I should suspend your imprisonment sentence of 12 months. Your situation warrants that your 12 months imprisonment sentence to be suspended. I order that it shall be suspended for a period of 2 years. During the period of suspension, you must not re-offend. If you re-offend and convicted for the new

offence before the end of 2 years suspension period, your sentence of 12 months imprisonment will be re-activated in addition to your new sentence.

In addition to your suspended imprisonment sentence of 12 months, you are ordered to perform 100 hours of community work.

Mr Michel Yawo, on 8 January 2011, you have sexually abused the complainant. You are 19 years of age while she was 14. There is an age difference of 5 years between you and the girl. I do not accept what you told the Probation Officer in the report dated 3 June 2011 when you said you did not force or threatened to kill the complainant if she refused to have sex with you. You have asked your lawyer to accept the facts as contained in the prosecution brief of facts upon which you entered your guilty plea on 3 May 2011. The facts show that the complainant was shocked when she saw you in the kitchen of her auntie when she got there to have some food. You forced her to have sexual intercourse with you and you threatened to kill her if she refused to have sex with you. She had just done what you told her to do. The complainant suffered pains in her stomach and vagina. The additional information dated 4 July 2011, shows that the complainant was stressed, shameful and humiliated. She finds it difficult to get out. I sentence you to 4 years imprisonment as a starting point.

In mitigation, I consider that you are a first time offender, you cooperate with the police authorities, you have performed a custom ceremony on 21 June 2011 and you pleaded guilty on the first opportunity given to you by the Court; and after appropriate reduction and on balance, I sentence you to 18 months imprisonment. You have already served some pre-custodial sentence period. This reduces your sentence to 16 months imprisonment.

The next question is, should the circumstance of your offending warrant a suspension of your imprisonment sentence? You are currently doing year twelve at Tebakor College. You are doing extension courses at the University of the South Pacific. I am reluctant to suspend your imprisonment sentence. However, I decide to suspend your imprisonment sentence of 16 months on the basis that you are 19

years of age and by allowing you to continue your studies, you will be rehabilitated and re-integrated into the society. I shall give you the chance to do so on the basis that you take it and becomes a good law-abiding citizen in the future. Your sentence of 16 months imprisonment is suspended for a period of 3 years. The maximum period of supervision of 3 years ordered reflects the seriousness and gravity of the circumstance of your offending. It is a test for your rehabilitation and reintegration into the community and it is for you to use it in your advantage.

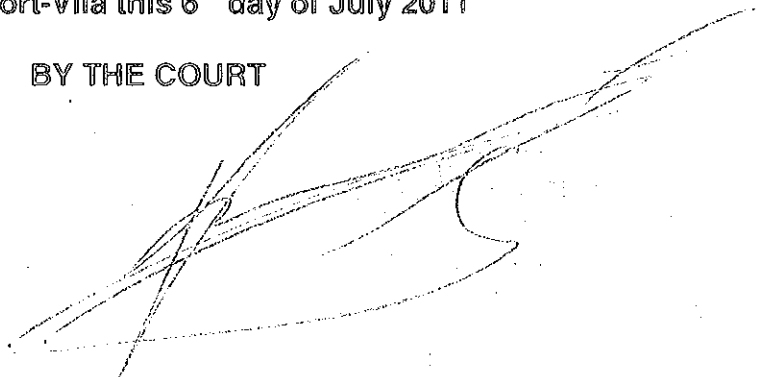
During your sentence suspension period, you shall not re-offend. If you re-offend in any event before the end of the suspension period of 3 years, and upon your conviction on the new charge, your suspended imprisonment sentence shall be re-activated in addition to your new sentence.

In addition to your suspended imprisonment sentence of 16 months, I order you to perform 150 hours community work.

Each of you has 14 days to appeal his sentence if each of you is not happy with his sentence.

**DATED at Port-Vila this 6<sup>th</sup> day of July 2011**

**BY THE COURT**



**Vincent LUNABEK**  
**Chief Justice**