

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

**Criminal Case No. 40/ 2015**

**PUBLIC PROSECUTOR**

**V**

**KENNETH JEFFREY**

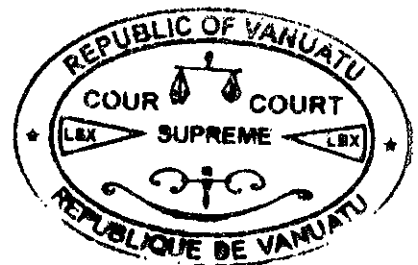
*Hearing: Friday 14 August 2015 at 10:30 am*  
*Before: Justice SM Harrop*  
*Appearances: Betina Ngwele for the Public Prosecutor*  
*Andrew Bal (PSO) for the Defendant*

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**SENTENCE**

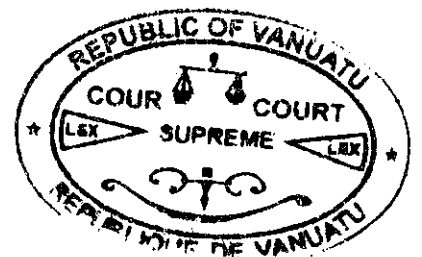
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1. Mr Jeffrey you are here for sentence at age of 48 on one count of having unlawful sexual intercourse contrary to section 97 (2) of the Penal Code. This relates to an occasion in September 2014 at Takara Village, North Efate. The victim was MW (to protect her identity I will not name her). She was 14 years old at the time.
2. This is a serious charge as indicated by the maximum penalty of 5 years' imprisonment. The essential facts are set out in the Public Prosecutor's submission. She was alone in the garden doing some weeding, you approached her with a knife, threatened her and demanded to have sex with her. You took her into the bush, forced her remove her clothes and you had sex with her. As a result of the incident she found out she was pregnant, she did not



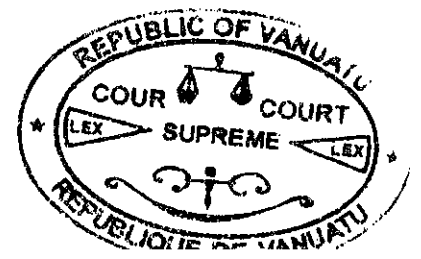
have sex with anyone else, and the baby was born this year and is now a few months old.

3. When you were spoken to by the Police you admitted that intercourse had occurred on that one occasion and you have pleaded guilty at the first opportunity to the charge particularised in that way.
4. I should record her that in the earlier phases of this case there were allegations of your having had sexual intercourse over a three-year period with MW but I emphasise that the charge to which you have pleaded guilty relates only to that one occasion in September 2014. I therefore proceed to sentence you only on the basis of that one occasion.
5. The effects on a young girl like MW of this kind of offending are always serious and inevitably long-lasting. In this case there is the particular aggravating feature that she became pregnant and has had a baby who will be a life-long remainder to her of this incident. She told the Probation Officer that she had to leave school because of this incident and because of her pregnancy. She was ashamed because her fellow students were of course aware of her condition. She has felt embarrassed in the community and within her extended family and she describes the offending as a nightmare for her which she will never forget during her entire life.
6. In her submissions, Ms Ngwele records some further comments made by the victim. She says she is really struggling to look after



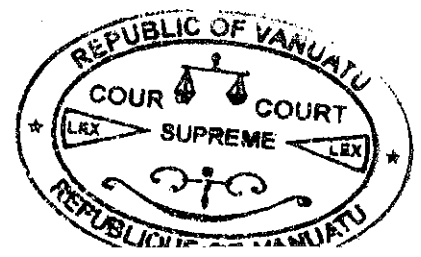
her baby because she has no job. She feels that she has become a burden to her parents because they have to help her look after the baby and she has no money to help care for it. She regrets what happened every day because she has found herself in situation that she did not choose.

7. I also take into account what her father has said, he had provided accommodation to you and your wife for nearly 22 years since 1990 and he says he has treated you like a real biological brother. Not surprisingly he describes your offending as like a slap on his face. When he was spoken to by the Probation Officer, he had tears in his eyes and needed to have a break before continuing the interview. He says that his daughter's career and her education have been badly affected, that you have abused his daughter's virginity, and you have tarnished her name and the family name. He says you do not have respect towards his family.
8. So although the victim was not related to you in the biological sense, she was a form of de facto daughter and the offending involved a gross breach of trust both of her of course but also of her family who had been generous to you over many years.
9. This law is designed to protect children against sexual offending when they are too young to give proper consent and perhaps too young to understand the significance of what is happening. So even if a child under the age of 15 actually consents to what happened the Court is directed by Parliament to take a tough line in sentencing. Here of course there is no suggestion that MW consented; on the contrary she only had sex with you because you



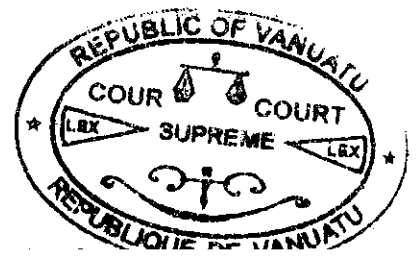
threatened her with a knife. So this was a rape. It is no less serious than any other rape case indeed it could be said to be more serious than most because of the age of the victim and because of the pregnancy and baby which has resulted. But of course I am constrained by the charge of which you have been convicted and its maximum penalty available of five years' imprisonment.

10. The Court of Appeal in the *PP v Gideon* [2002] VUCA 7 made clear the correct approach of the Courts of Vanuatu is to this kind of offending. The Court of Appeal said at page 6: "*there is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any abuse of young people in our community. Children must be protected..... It will only be in a [sic] most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community.*"
11. So there is no doubt in this case that an unsuspended prison sentence must be imposed to reflect the seriousness of what you did, to hold you accountable and to deter you and others from this kind of conduct. Counsel agree that that must be the outcome.
12. The only question here today is: what is the least restrictive length of prison sentence that I can reasonably impose on you? I have of course taken into account what is said in the pre-sentence report

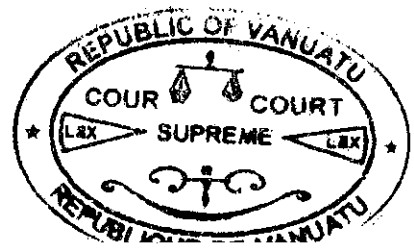


which I found to be particularly thorough and helpful. You are married to your wife Rita and you have two children, a son and a daughter and you are the grandfather of two children from your daughter.

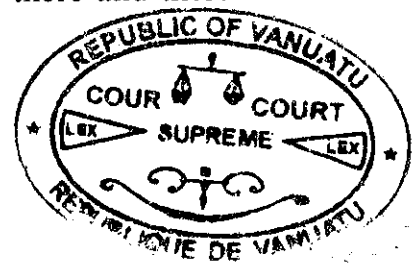
13. I pause here to mention that I understand your daughter is in her mid-twenties and that he daughter is 12 years of age. I wonder how you would feel if someone trusted by your family treated either your daughter or your granddaughter in the way that you treated MW? I should think that you would want the Court to send the offender to prison for a very long time. As a father of a daughter and grandfather to her daughter you are ideally placed to understand how MW's father feels about what you did. That alone should have stopped you from giving in to your sexual urges but it did not.
14. I also point out that you have made victims of your own family here. You have shamed your wife and your other family members and you have deprived them of your presence as a father and someone who could earn income for them during the period that you will be in custody. They of course are entirely innocent just as MW is and they have become victims of your offending in a very real sense, although I hasten to add not in any way in the same league as MW.
15. You are described as having a good relationship with your wife, as being a good helper in terms of providing for you family and as being the Chief's policeman in your community at Takara. You work hard in your garden and sell your crops to help your family.



16. You are described by Church member of being a good character and that you often attend church services on Sundays. I often read this in Probation reports and it always surprises me how hypocritical people can be. You must have known as a Christian person, especially at your age, that what you were doing was completely wrong and unchristian. I regard it as an *aggravating* feature, not a mitigating feature that you are a churchgoing person.
17. You are said to be remorseful but frankly I am sceptical about that because you must have known before you did this that it was completely wrong and I suspect your remorse is more about being caught rather than for what you actually did. I do take into account that you are willing to undertake a custom reconciliation ceremony but I also understand, and this does not surprise me, that MW and her family are not prepared to be involved in any sort of ceremony of that kind; in effect and quite understandably they are saying there is nothing you can do that would even begin to put matters right.
18. In terms of assessing the appropriate sentence, I have of course considered the submissions made by the Public Prosecutor and by Mr Bal on your behalf. There is no great difference between them as to the appropriate starting point and for that reason I will not go into great detail in referring to other authorities. I am satisfied that the appropriate starting point in this case is one of 4 years imprisonment. I come to that view having regard to the maximum penalty of 5 years, to other case authorities that have been mentioned and to the aggravating features of this offending.

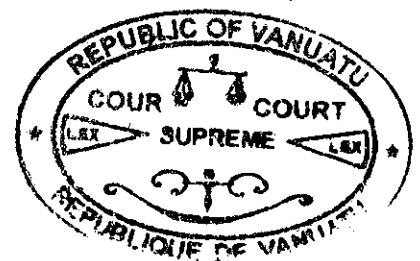


19. As to the latter, I first note the age difference between you; you were 48 at that time, she was only 14, so it is a very different case from a situation where perhaps a 16 year-old boy and a 14 year-old girl engage in some adolescent sexual experimentation.
20. Second, you had a knife and you threatened her. The whole experience must have been very frightening for her even before the rape occurred.
21. There is the obvious aggravating and ongoing factor of MW's pregnancy and of her need to look after a baby at a very young age and for the many years of its growing up. As I have said, the child will be a constant reminder to her of what you did. That child too can be seen as a victim. In a real sense you have stolen MW's childhood and, to a large extent, you have ruined her life. I hope she can recover from this but it will not be easy.
22. The next aggravating feature is the breach of trust that I have mentioned, both in respect of her and her family.
23. I have considered the authorities referred to by Mr Bal and I note that he submits in the James case, *PP v. James* [2010] VUSC 179, a similar starting point was adopted but he says that was a more serious case because there were five incidents of intercourse. I can accept that in that sense it was more serious but here we have the pregnancy and I think that is a significant aggravating factor which puts it in the same category as the *James* case.
24. Mr Bal also referred to another judgment, *PP v. Vinia* [2011] VUSC 265. The facts were rather different there and there were



three defendants involved but I note that the learned Judge there adopted a starting point of 4 years in what can be seen as a fairly similar case, there was however an error in his Lordship's arithmetical calculation when he came to give credit for the guilty plea, he ended up with a sentence of 22 months rather than 32 months, which is obviously what he intended.

25. Weighing everything up I am satisfied that the least restrictive starting point I can adopt here is one of 4 years or 48 months imprisonment. That includes all of the aggravating features, which is the proper way to determine a starting point.
26. As I have said, you are entitled to full credit for pleading guilty at the first opportunity and that means a one-third reduction or 16 months bringing the sentence down to 32 months or 2 years and 8 months.
27. The only other mitigating factor is your absence of previous convictions. At the age of 48 you have obviously been of good character for a lengthy period and you are entitled to credit for that. I would deduct a further 10% or 3 months for that to bring it down to 2 years and 5 months. I have also included in that consideration your willingness to attend a custom reconciliation ceremony.
28. Finally you have been in custody since 2 June 2015, some 2 ½ months and that period must be credited to your sentence. So in imposing a sentence of 2 years and 5 months imprisonment I direct Corrections to treat that sentence as having started on the 2





June 2015. I do that rather than attempting to reduce the sentence imposed to reflect the time in custody.

- 29. You have a right to appeal against this sentence if you disagree with it; if you wish to appeal you must lodge it within 14 days from today.

BY THE COURT

*Seper Mtani*

