

IN THE SUPREME COURT
REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 192 of 2014

PUBLIC PROSECUTOR
-v-
URI MOLISINGI

Mr Massing for Prosecution
Ms Pauline Kalwatman for the Defendants

Hearing 29th April 2015

Sentence

Uri Molisingi you have pleaded guilty to two counts of an act of indecency with a young person. There were other acknowledged incidents over a period of more than 12 months involving the same young girl. I will not go through the facts in great detail again.

By any plain English definition this was sexual abuse and even by the more technical definitions used by bodies such as the World Health Organisation this was sexual abuse. As there was a young girl involved it should be more properly considered as child sex abuse. The Republic of Vanuatu signed the United Nations Convention on the Rights of the Child (30th September 1990) and ratified it on 7th July 1993. The Convention requires ¹:-

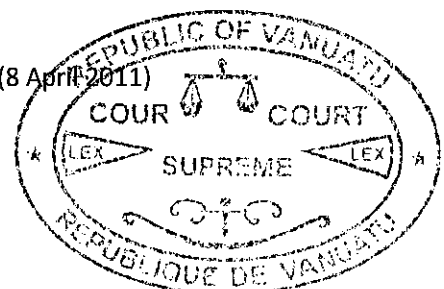
States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) The exploitative use of children in pornographic performances and materials.*

The Republic of Vanuatu has therefore agreed to protect children from, amongst other things, sexual abuse. The courts have their part to play in that process and indeed the courts have been active in setting out the law or rather the consequences of breaking the law when such involves child sex abuse. The most recent and perhaps the leading case on sentencing, Public Prosecutor v Andy ², deals with unlawful sexual intercourse

¹ Article 34 UN Convention on the Rights of the Child

² Public Prosecutor v Andy [2011] VUCA 14; Criminal Appeal 09 of 2010 (8 April 2011)



with a child under 13. Prior to that there were decisions by Coventry J supported by the Court of Appeal in Public Prosecutor v. Gideon³ and Public Prosecutor v. Scott⁴. These cases set out with some force the seriousness of the offences involved.

Whilst the cases referred to above concern unlawful sexual intercourse where there was actual penetration there is no doubt that many of the comments relate to cases of child sexual abuse where there was no actual penetration as in this case. I remind myself that the maximum sentence for unlawful sexual intercourse contrary to section 97 (1) of the Penal Code is 14 years whereas for an offence contrary to section 98A such as concerns the court in this case, the maximum sentence is 10 years. I should not therefore simply adopt the length of the sentences from the cases cited but I can and should take guidance from what is said in those cases.

The first two incidents concerning you and the young girl involved removing both her clothing and yours and rubbing your penis against her. This was undoubtedly an act of simulated sex. This puts the offence towards the top end of the scale. The second count relates to exposing your penis to the young girl and groping her breasts. This is still a serious offence but not as serious as that first described. I will deal with the sentence of the most serious matter and any sentence for the second charge admitted will run concurrently.

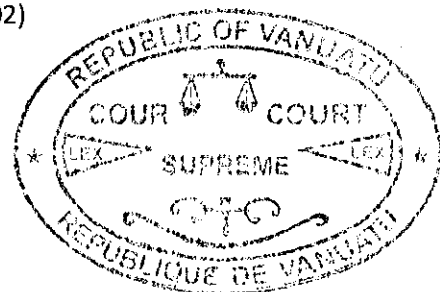
I am of the view the basic sentence for an offence contrary to section 98A, the starting point, would be 3 years imprisonment. Here the offence is aggravated by the age difference, by your abuse of your position of authority as a Church Elder and President of a school and by the very nature of the things you did. I have no doubt they had a traumatic effect on the young girl. The proper sentence in respect of the first count is 4 ½ years or 54 months.

It is accepted that you had the courage to admit what you had done and you pleaded guilty at the earliest opportunity. You will be given full credit for that and your sentence will be reduced by 1/3 rd or by 18 months. That will reduce your sentence to 3 years or 36 months.

Before the offences you could be considered a man of good character but of course you have now lost that and you will never regain it. However you must be given some credit for your previous lack of criminal behavior and your previous good character. You have also engaged in a Church process where the young lady and her guardian forgave you. This indicates a degree of remorse for which you should be given credit. Your sentence will be reduced for by a further 12 months. Finally, you should be given credit for the

3 Public Prosecutor v Gideon [2002] VUCA 7; Criminal Appeal Case 03 of 2001 (26th April 2002)

4 Public Prosecutor v Scott [2002] VUCA 29; CA 02-02 (24 October 2002)



time you have served on remand which reduces the sentence by a further 2 months. The total sentence you will serve will be 22 months imprisonment.

On the second count I consider the appropriate sentence to be 4 years. With the reductions in sentence applied you will serve a period of 16 months. You will serve that concurrently.

Counsel has made submissions on your behalf for a suspension of the sentence. It is quite clear from the cases cited earlier that there can be no suspension. In Gideon the Court of Appeal said,

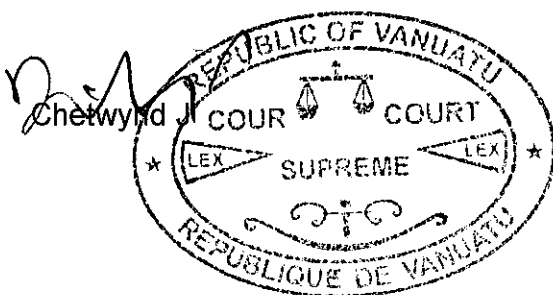
*"It will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse.....Men must learn that they cannot obtain sexual gratification at the expense of the weak and vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community"*⁵.

There is nothing about this case which would bring it into the extreme category and which would enable me to consider suspension of part or all of the sentence.

You will serve the totality of the sentence of 22 months. The sentence will start to run from today.

You have the right to appeal if you are unhappy about the sentence I have imposed on you today. You have 14 days in which to do so. You do not have to, but if you are considering an appeal, I suggest you seek legal advice. In any event, if you intend to appeal you should not delay in lodging your notice of appeal and supporting documents.

Dated: 29th April 2015



⁵ Public Prosecutor v Gideon ibid