

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

**Criminal
Case No. 16/1415 SC/CRML**

PUBLIC PROSECUTOR

V

JAPHET LESA

Date of Sentence: 20th September 2016

Before: Justice Chetwynd

In Attendance: Philip Toaliu - Public Prosecutor

Pauline Kalwatman – Defence Counsel

SENTENCE

1. The Defendant Japhet Lesa has entered a plea of guilty to unlawful sexual intercourse with the young complainant. The offence took place in 2012 when he is said to have been 20 and the complainant was 14.
2. It seems clear there was some kind of liaison between the two. However because this was an uncle/niece relationship it was wrong according to accepted societal norms, ie morally, and according to law because the girl was too young.
3. There appears to be no coercion or force involved. The complaint was a willing participant but of course the law deems her unable to consent because of her age. It doesn't matter if the sexual intercourse was consensual it was still very wrong.
4. The offence is a serious one requiring a custodial sentence. The starting point is two years imprisonment. I take into account the custom settlements in reaching my conclusion on the appropriate sentence. There is nothing which aggravates the offence. The Defendant has entered a plea at earliest




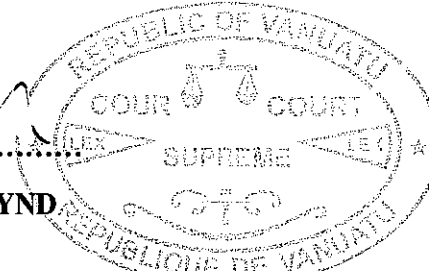
opportunity and therefore must be given full credit. The sentence is reduced by 50 percent or 1 year to leave a final a sentence of 1 year.

5. In the case of *Gideon*¹ it was said that unless there were exceptional circumstances older men taking advantage of younger women or girls for sexual gratification must forfeit their freedom. I believe there are exceptional circumstances in this case. The Defendant's age is questionable and I have to say he looks a very young 22 year old. In any event this was not a much older man taking advantage of a much younger girl. Although the behaviour accepted by the Defendant may well be said to disclose a socially repugnant sexual relationship and to have led to criminal offending one cannot ignore the apparent albeit totally misguided nature the relationship. Time has passed since the offence and Defendant not been in trouble in the interim. The relationship has ended with the complainant now living on Santo, married with a child. She has in simple terms gotten on with her life. In the exceptional circumstances of this offence I believe the sentence of 1 year should be suspended for 2 years.

DATED at Saratamata, Ambae this 20th day of September, 2016.

BY THE COURT


.....
D. CHETWYND
Judge



The seal is circular with the text 'REPUBLIC OF VANUATU' at the top and 'REPUBLIQUE DE VANUATU' at the bottom. In the center, it says 'COUR SUPREME' and 'COURT' on either side of a scale of justice. There is a star on the right side of the seal.

¹ *Public Prosecutor v Gideon* [2002] VUCA 7; Criminal Appeal Case 03 of 2001 (26 April 2002)