

PUBLIC PROSECUTOR

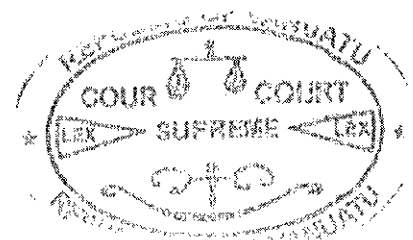
VS.

COLLINS MAHURI

Counsel: Mr. K. Massing for the Prosecution
Ms. J. Tari for the Defendant

SENTENCE

1. **COLLINS MAHURI** you appear today for sentencing. You were charged with one count of sexual intercourse with a child under care or protection contrary to section 96 1) a) of the Penal Code [CAP 135]. On 5 July 2016 you pleaded guilty to the charge and was convicted accordingly.
2. The Prosecution brief of facts is not disputed. At the time of the offending you were 31 and the complainant who is your sister in law was 16 years old. She was living with you as your wife is her elder sister. You all live at Monix Hill on the island of Santo. The incident occurred sometime in January 2015. The first incident occurred at night and you were both naked when you had sexual intercourse with the complainant and ejaculated inside her. Since then, you continued having sex with her from January 2015 to December 2015. As a result she became pregnant. She was seven months into her pregnancy when she made her statement to the Police. When you were cautioned and interviewed by the Police you admitted that you had been having sex with the complainant and that the child she was carrying was yours.
3. Your personal details as provided in the pre-sentence report are that:-
 - You completed school at year six;
 - You are married and you have a two year old daughter;



- You obtained carpentry skills through work experience and that is how you earn income to support your family and you also sell food crops from your garden;
 - You are an active member of your community.
4. In sentencing you today I have taken into account the submissions of the Public Prosecutor and Counsel on your behalf and also the Pre-sentence report filed by your probation officer.
5. This is a serious offence and is punishable with a maximum penalty of 10 years imprisonment. Section 96 1) a) of the Penal Code states:-

"96. (1) A person must not have or attempt to have sexual intercourse with any child , not being the person's spouse, who is under the age of 18 years and who:

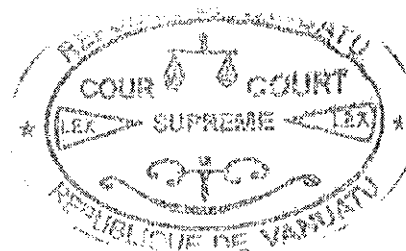
a) being the person's step child or foster child , is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family;

*.....
Penalty: Imprisonment for 10 years."*

6. The complainant is your sister in law and the fact that she consented to having sexual intercourse with you does not justify your actions. She is a child living with you as a member of your family and deserves to be protected not abused. This is what the Court said in **Talivo v Public Prosecutor [1996] VUCA 2** that:-

"All children are entitled to be protected by adults. Children must be safe in their own homes. When men who have the care of children abuse that trust we agree with the Chief Justice that they forfeit the right to remain within the community..."

7. I accept that the offending is aggravated by the following factors:-
- Breach of trust;
 - The offending was repeated;
 - The victim became pregnant;



- There is an age disparity; and
 - The victim was under care and protection;
8. Taking these factors into account, I adopt a starting point of 6 years imprisonment. Counsel on your behalf submits that you are a first time offender and you entered a guilty plea at the first available opportunity and you cooperated with the police. No custom reconciliation has been done. You attempted to perform one but it was refused.
9. For your early guilty plea you are entitled to a one third discount of your sentence which is reduced to 4 years imprisonment. I deduct a further six months for the other mitigating factors reducing your sentence to an end sentence of 3 years and 6 months imprisonment effective from **30 May 2016** when you were remanded into custody.
10. You have 14 days to appeal the decision if you are not happy with it.

DATED at Luganville this 8 day of July 2016.

BY THE COURT


D. ARU

Judge.

