

**PUBLIC PROSECUTOR VS- HERNE MALTOCK**

**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Micheline Tasso for Public Prosecutor  
Linda Bakokoto for Defendant*

**Date of Plea on re-arraignment:** *14<sup>th</sup> December 2017*

**Date of Sentence:** *21<sup>st</sup> December 2017*

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**SENTENCE**

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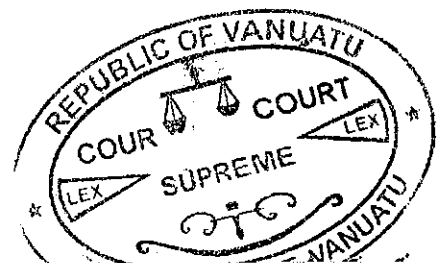
1. Herne Maltock, you are here for sentence for having pleaded guilty to one count of act of indecency without consent on 14<sup>th</sup> December 2017. This is an offence contrary to section 98 (a) of the Penal Code Act [CAP 135] which states:-

“98. A person must not commit an act of indecency on, or in the presence of another person:

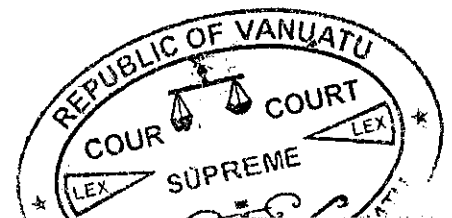
- a) Without that person’s consent, or....”

Penalty: Imprisonment for 7 years

2. The facts are simple. On the night of 26 August 2016 at the complainant’s house at Erakor Half-Road you sought permission from the complainant DM to sleep or spend the night at their house because you mother had chased you out of the home. The complainant’s husband, a bus driver was out of the house on business and the complainant was alone. She accepted your request because you are a cousin of her husband. She invited you into the house and told you to sleep in the arm chair. She then went into the bedroom to take a pillow. You however followed her there and told her you wanted to sleep with her in the room because you wanted to have sex with her. At that point you held her hand and t-shirt and tried kissing her. You then grabbed her breasts with your hand. She however resisted by pushing you to fall onto the floor. She saw her chance to run out of the house and reported the incident to her mother Natu Lauto on the same night. Subsequently a complaint was lodged with the Police who obtained a statement from you on 3<sup>rd</sup> September 2016 in which you said you would only speak in Court.



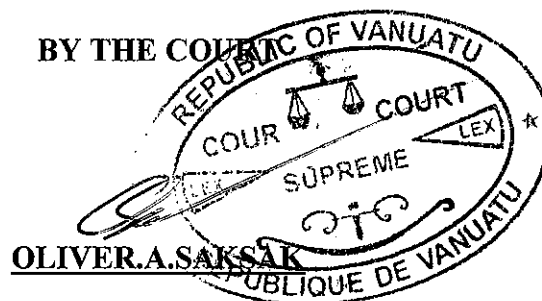
3. You initially pleaded not-guilty to the charge on 11<sup>th</sup> September 2017 but sought leave to be re-arraigned on 14<sup>th</sup> December 2017 when the matter was listed for a trial hearing. The charge was re-put to you and you pleaded guilty.
4. You have accepted the facts as stated above. The only explanation you have given for your actions is that you were under the influence of alcoholic drinks at the time of the offending. You must know that drunkenness cannot afford you any defence or a good excuse to behave in the way that you did. The complainant is the wife of your cousin. You asked her for shelter for the night because of the way your mother treated you that night. Having won her favour you then made sexual advances which were out of place and character and it was done in the confines of her bedroom. These add to the seriousness of the offence.
5. In assessing the appropriate penalty I am grateful to Ms Tasso for the written submissions filed on 19<sup>th</sup> December 2017. Three cases were cited: Public Prosecutor v. Gideon [2002] VUCA 7, Public Prosecutor v. Buroro [2012] VUSC 13 and Public Prosecutor v. Weweu [2015] VUSC 75. I do not consider that Gideon's case is applicable. Weweu's Case is more serious and is not relevant. But I consider and adopt Buroro's case although it is distinguishable on its facts.
6. I consider that the offence and the aggravating features of it warrant a term of imprisonment and the starting point shall be 3 years with no uplifts. I therefore convict you and sentence you to imprisonment to a starting sentence of 3 years imprisonment.
7. I now consider reducing your sentence. First I accept that you are entitled to 1/3 reduction due to your guilty plea. Although it was made at the time when trial was to have started, the complainant and her witness were not in Court and the trial was adjourned to the afternoon on 14<sup>th</sup> December. Your guilty plea saved everyone's time and costs and further for the complainant having to go through the pains of retelling the story before the public and relatives. Your sentence is therefore reduced to 2 years imprisonment.
8. I have read your pre-sentence report dated 8 December 2017. It predates the date of your re-arraignment and presumably it may be an error, but only the Probation Officer can explain that. In any event I note you are a student and have enrolled at USP for a Foundation Level. Your desire is to pursue law. You have regretted your actions and have realized this may jeopardize your enrolment. You have accepted and taken responsibility and apologized for your actions. You have performed custom ceremony by paying VT2.000 to the victim. The victim and her husband have accepted the ceremony. You cooperated well with the police. And you are willing to work with the community to restore trust and confidence. You are a young man of 22 years, and



single. For these factors I reduce your sentence further by 6 months leaving the balance to be 1 year 6 months.

9. By comparison to the cases cited by both the Prosecution and Defence Counsel, I considered that your offending falls on the lower end of the scale for this category of offences.
10. For all those factors together, it is necessary that I should suspend your end sentence in order to give you a chance to rehabilitate. I therefore suspend your end sentence of 1 year and 6 months for a period of 2 years from the date hereof. This suspension is made under section 57 of the Penal Code Act on condition that you do not reoffend or commit any other offence for which you would be charged and convicted. If you do, you will go to prison immediately to serve your imprisonment term.
11. To achieve deterrence and mark the seriousness of your offending and the disapproval of the Court, I will impose an additional sentence of community work for a period of 80 hours. This is done under section 58 N of the Penal Code Act. A sentence of Community work was imposed in addition to an imprisonment term with suspension in the case of PP.v.Albert [2013] VUSC 17.
12. You must serve these 80 hours within 12 months from the date hereof. And you must report to the Probation Service as soon as practicable, not later than 72 hours from the date of sentence.
13. That is the sentence of the Court. You have a right of appeal against the sentence within 14 days, if you so choose.

**DATED at Port Vila this 21<sup>st</sup> day of December, 2017**



**Judge**