

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

**Criminal  
Case No. 20/569 SC/CRML**

**BETWEEN: The Public Prosecutor**

**AND: Paul Kemkem**

**Defendant**

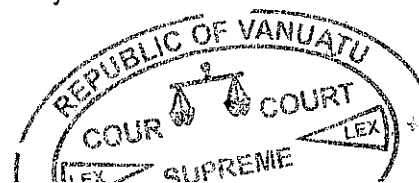
**Date of Plea:** 7<sup>th</sup> September 2020  
**Date of Sentence:** 30<sup>th</sup> September 2020  
**Before:** Justice Oliver Saksak  
**In Attendance:** Ms Micheline Tasso for Public Prosecutor  
Ms Kylie B Karu for Defendant

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**SENTENCE**

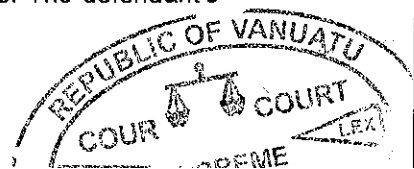
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1. Paul Kemkem pleaded guilty to one charge of unlawful sexual intercourse contrary to section 97 (1) of the Penal Code Act CAP [135] on 7<sup>th</sup> September 2020 when he was re-arraigned. He had initially pleaded not-guilty to the charge due to him not understanding the charge as it was read in English and also due to his hearing impairment.
2. The defendant pleaded not guilty to the second charge in Count 1 but the Prosecution applied to the Court to enter nolle prosequi pursuant to section 29 of the Criminal Procedure Code Act [CAP 136]. He has been discharged of this charge
3. Unlawful sexual intercourse is a very serious offence because it now carries the maximum penalty life imprisonment.
4. From the accepted facts the offence took place between 1<sup>st</sup> January 2019 and 31<sup>st</sup> July 2019 at the defendant's house at Ohlen Area. The victim was a 7 year old girl.
5. The defendant called the girl into his house and put his penis into her vagina. The girl's mother discovered the incident and took her daughter to hospital. She was told to return and to solve the matter in custom. Chief Thomas Tao facilitated a custom ceremony between the



defendant's family and the victim's family during which root crops, kava roots, a pig valued at VT 80.000 and traditional red mats with VT 10.000 were exchanged. The total expenditure for the ceremony was VT 136,650. The defendant admitted to the Police on interview he had sex with the victim only once and confirmed the custom ceremony. His age is given as 83 years old. The victim and the defendant were neighbours living next door to each other. They are related.

6. I consider the following to be the aggravating features of the defendant's offending.
  - (a) Age disparity- A difference of 75 years.
  - (b) Breach of trust- As close neighbours and relative.
  - (c) Offending occurred within the confines of the family house where the victim was supposed to enjoy security and protection from an elderly man and relative.
  - (d) Unprotected sex exposing the child victim to serious bodily harm and STD.
  - (e) Long term mental and physical effects on the victim
  - (f) Some degree of planning
  - (g) Loss of dignity of the victim.
  
7. I consider the following mitigating circumstances:
  - (a) No threats, force or violence involved or used.
  - (b) No weapons of any kind involved.
  - (c) No resistance of any sort by the victim.
  
8. Applying **PP v Gideon** [2002] VUCA 7 the appropriate penalty for the defendant is to be a custodial sentence. And Applying the principles set out in **Moses v R** [2020] NZCA as applied in **Jimmy Philip v PP** [2020] VUCA 20, I set the starting sentence of the defendant for the charge of unlawful sexual intercourse to be 8 years imprisonment.
  
9. I now consider his mitigating and personal factors to reduce his start sentence. First for his guilty plea I allow the full 1/3 reduction. That means the start sentence of 8 years is reduced by 2 years and 8 months down to 5 years and 4 months imprisonment.
  
10. For his other mitigating factors such as old age of 70 and 83 years, custom reconciliation and clean past record, I allow a further reduction of his sentence by 10 months. The defendant's



end sentence shall be 54 months or 4 years and 6 months imprisonment. But I note he has already spent 5 months from 7 March 2020 to 13 August 2020 when he was realised on bail. These are deducted accordingly.

11. Paul Kemkem I now convict and sentence you to an end sentence of 4 years and 24 days imprisonment for one count of unlawful sexual intercourse.
12. I do not see any exceptional circumstances warranting a suspension of sentence. Your sentence of 4 years and 24 days imprisonment has immediate effect as of today.
13. You have a right of appeal against this sentence within 14 days if you do not agree with it.

**DATED at Port Vila this 30<sup>th</sup> day of September 2020**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

