

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

Criminal
Case No. 22/2556 SC/CRML

**BETWEEN: The Public Prosecutor
Prosecutor**

AND: Fabrice Naliususu
Defendant

Coram: Justice Aru
Counsel Mr. D. Boe the Public Prosecution
Mr. R. Willie for the Defendant

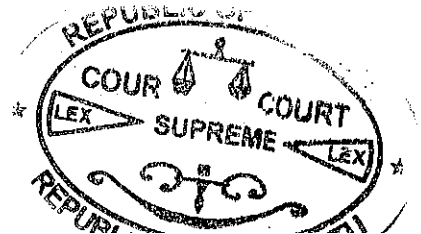
SENTENCE

Introduction

1. Mr Fabrice Naliususu pleaded guilty to two representative charges of unlawful sexual intercourse with a child under 13 years and one representative charge of unlawful sexual intercourse with a child under 15 years but over 13 years and one representative charge of sexual intercourse with a child under care and protection. He now appears for sentencing.

The facts

2. In 2019 the complainant was living together with her mother and the defendant as her father. She attended school at Big Bay primary school .The defendant accompanied the complainant to school every day and also picked her up from school each day after the school ended. While on their way home the defendant would tell the complainant to follow him into the bushes. There he would undress them both and have sexual intercourse with the complainant.
3. On several occasions in 2019 the defendant would have sexual intercourse with the complainant when they were returning home after school. The complainant was in pain but forced to have sexual intercourse by the defendant. These would continue through 2019, 2020, and 2021. In 2022 the complainant passed her exams to continue her education at De Quiros School in East Coast of Santo. The complainant lived inside the school area but the defendant continued to visit her and have sexual intercourse with her until she reported the matter to the Police.
4. Following his arrest, the defendant was cautioned and interviewed and admitted his offending.



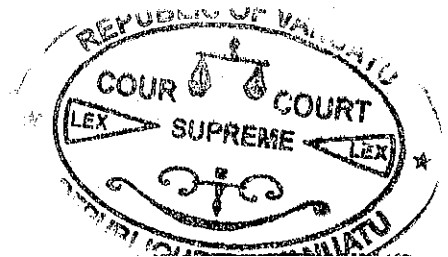
Starting point of sentence

5. When determining the starting point of sentence regard must be had to the maximum sentence available and taking into account any aggravating or mitigating factors of the offending. The maximum sentence for unlawful sexual intercourse where the complainant is under 13 years of age is life imprisonment. Where the complainant is under 15 years of age but over 13 years the maximum sentence available is 15 years imprisonment and the maximum sentence for sexual intercourse with a child under care and protection is 10 years imprisonment.
6. The offending is aggravated by a number of factors. There is a gross breach of trust. There is an age disparity. There is high degree of planning involved. The offending was repeated over a three year period. The complainant was exposed to pregnancy and sexually transmitted diseases. The effect of the offending on the complainant will continue to affect her mentally. There are no mitigating factors of the offending.
7. I have considered the guideline judgments referred to me by the Prosecutor namely **Public Prosecutor v Scott and Tula** [2002] VUCA 29, **Public Prosecutor v Gideon** [2002] VUCA 7 and **Public Prosecutor v Boita** [2002] VUCA 8.
8. In **Peter Talivo v Public Prosecutor** [1996] VUCA 2 the Court of Appeal said:

“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 trustthey forfeit the right to remain within the community..”
9. Taking unlawful sexual intercourse with a child under 13 years of age as the lead offence the starting point of sentence is set at 11 years imprisonment and increased to 14 years imprisonment taking into account the representative nature of the two charges of unlawful sexual intercourse with a child under 13 years.

Mitigation

10. The defendant entered his guilty plea at the earliest available opportunity as a sign of remorse. The sentence will be reduced by a one third discount.
11. A Same Day Report was filed. The following information is gathered from the report. The defendant is 26 years old from Big Bay area and is a first time offender. The complainant is his adopted daughter. He is married and has a son and two biological daughters. He is an active member of his community. He is the breadwinner of the family and earns his income by selling cattle, kava and copra. Being a first time offender and taking into account his personal factors the end sentence is reduced by 12 months.
12. The defendant performed a custom reconciliation to the victim and the chief of the community by giving the following items:-



- 1 laplap
- 6 mats
- 6 bundle taro
- An amount of VT 20,000

13. For the custom reconciliation the end sentence is further reduced by 3 months.

End sentence

14. The end sentence on the lead offence which is unlawful sexual intercourse with a child under 13 years is 8 years imprisonment. On the charge of unlawful sexual intercourse with a child under 15 years but over 13 years the end sentence is 4 years imprisonment and on the charge of sexual intercourse with a child under care and protection the end sentence is 2 years imprisonment. The sentences are to be served concurrently with effect from 19 October 2022 when the defendant was remanded into custody.

15. The defendant has 14 days to appeal if he is not satisfied with the decision.

DATED at Luganville this 21st day of October, 2022

BY THE COURT

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D. Arup
Judge

