

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

Criminal
Case No. 22/687 SC/CRML

PUBLIC PROSECUTOR

V

ERICK MAEL

Defendant

Date of Sentence: 17th day of June, 2022 at 9:00 AM

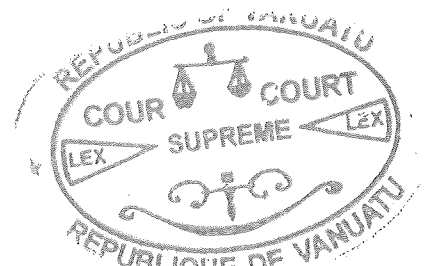
Before: Justice Oliver Saksak

In Attendance: Mr Damien Boe for Public Prosecutor

Mr Lent Tevi for the Defendant

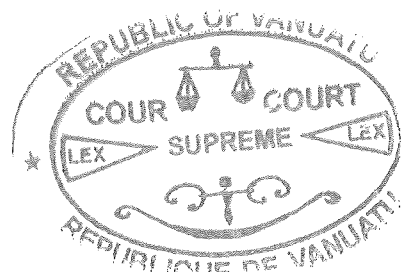
SENTENCE

1. Mr EricK Mael is for sentence today for having pleaded guilty to 2 charges of unlawful sexual intercourse with a little girl of less than 13 years old.
2. Under section 97 (1) of the Penal Code Act Cap 135 this offence carries the maximum penalty of life imprisonment.
3. Sometimes in 2020 at different times and dates the defendant took advantage sexually of AB, an underage girl of under 13 years old by putting his penis into her mouth of his victim.
4. The name of the victim is suppressed due to her young age. Only her initials AB will be used throughout this sentence.
5. The victim was in class 2 and class 4 at the Kamewa Primary School when the offendings started to happen. The offences occurred at the victim's home at Pepsi Area. The defendant is related to AB as his niece. The defendant would go into the victim's house and begin to show her his penis and inviting

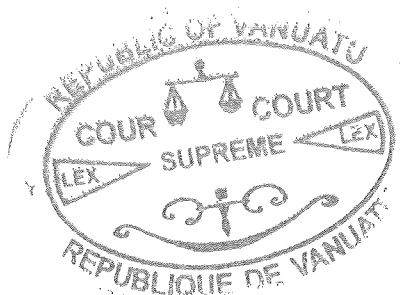


her to touch it. Subsequently he would order the victim to open her mouth and he would place his penis into her mouth until he ejaculated. These were the facts in relation to the charge in Count 1.

6. There was a time also in 2020 when the defendant invited the victim into the kitchen. He removed his trousers and made the victim touch his penis. When he was fully erect, the defendant rubbed his penis over the victim's vagina. Later he made her suck on his penis again until he ejaculated. These were the facts in relation to the charge in Count 2.
7. There were no mitigating circumstances for the defendant's offendings. But there were numerous aggravating features such as-
 - Unprotected sex
 - gross breach of trust
 - offences occurred within the confines of the home where the victim should be safe,
 - degree of force used to commit the offense
 - the offences were repeated on several occasions about 4 times.
 - The great disparity between the age of the victim and the defendant,
 - There was a degree of planning involved.
 - The mental and physical effect upon the child for all her future life.
 - The degree of pervasion and loss of dignity for the child.
8. The classic cases of PP v Gideon [2002] VUCA 7, PP v Scott and Tula [2002] VUCA 29, PP v Boita [2002] VUCA 8, Talivo v PP [1996] VUCA 2, Vuti v PP [2017] VUCA 14 and PP v Tevi [2019] VUCA 16 establish the clear principles of sentencing for these types of sexual offences. And this Court will follow those principles in sentencing the defendant.
9. These offenses therefore warrant immediate custodial sentences in order to protect the young and vulnerable, to deter the defendant and other like-minded persons, to mark the Court's disapproval of those unlawful actions, and to punish the offender adequately.



10. I therefore convict the defendant on each count and sentence him to the starting sentence of 12 years on each count to be served concurrently.
11. In mitigation I consider first his early guilty plea. Whereas it was submitted by defence counsel the defendant should be given the full 1/3 reduction, the continuous, repetitive and deliberate unlawful actions over a period of 2 years were such that the full 1/3 reduction would be too generous a reduction that would become an encouragement rather than a deterrence. I therefore allow a reduction of only 2 years imprisonment.
12. There appears to be no remorse at all for the defendant's offendings. No reconciliation has been performed. The defendant is now 31 years old married with 4 children. He was the only bread winner in gainful employment until his arrest and detention for these offences.
13. The defendant has no previous criminal convictions. In his pre-sentence report the defendant has apologized to the Court for his unlawful actions. For all these factors together I reduce his sentence by a further 1 year. His end sentence is therefore 9 years imprisonment.
14. His offendings are too serious, therefore the sentence of the defendant will not be suspended.
15. The defendant will serve his 9 years sentence with immediate effect at the Correctional Centre in Luganville.
16. I order the sentence to be backdated to 18th March 2022 when he was first taken into custody.

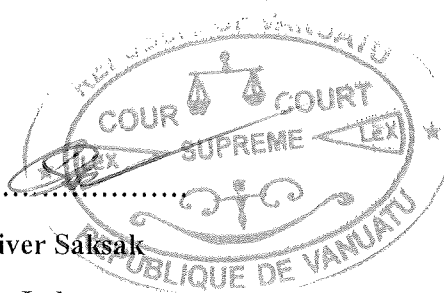


17. The defendant has a right of appeal against this sentence within 14 days.

DATED at Luganville this 17th day of June, 2022.

BY THE COURT

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Oliver Saksak
Judge

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "COUR SUPREME" are written across the center, with "COUR" on the left and "SUPREME" on the right. Above the scale, the words "REPUBLIC OF VANUATU" are written in a semi-circle. Below the scale, the words "REPUBLIQUE DE VANUATU" are written in a semi-circle. The word "LEX" is written on a banner that curves around the bottom of the scale. A small star is located on the right side of the seal.