

BETWEEN: PUBLIC PROSECUTOR

AND: TOM KLEOPAS

Defendant

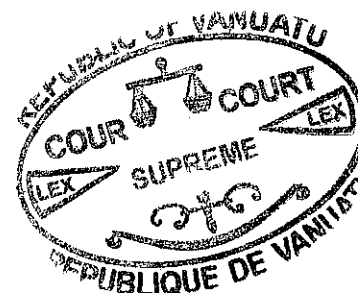
**Date of Sentence:** 10<sup>th</sup> October 2023  
**Before:** Acting Chief Justice  
**In Attendance:** Mr Christopher Shem for Public Prosecutor  
Ms Jane Tari and Ms Babara Taleo for the Defendant

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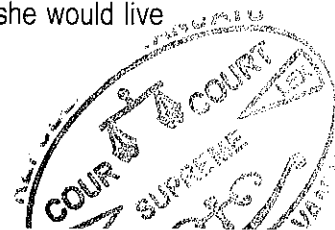
SENTENCE

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1. Tom Kleopas pleaded guilty to one charge of attempted unlawful sexual intercourse on 6<sup>th</sup> June 2023. He was charged under sections 28 and and 97 (2) of the Penal Code Act [CAP 135] ( the Act).
2. Additionally, he was charged with unlawful sexual intercourse in Count 2 under section 97 (2) of the Act. He pleaded not guilty to the charge and was tried, but found guilty on 6<sup>th</sup> September 2023.
3. The defendant is here for sentence today.
4. In relation to the attempted unlawful sexual intercourse, the victim and complainant RA was only 13 years old in 2021. Over the course of that year on several occasions the defendant had tried to penetrate the victim's vagina but was unable to do so. Instead he would therefore rub his penis on the victim's vagina until he ejaculated. Those actions occurred in the garden when the defendant sought permission from the victim's grandfather to accompany him to collect some food for the family.
5. The defendant admitted the charge and the facts as presented by Prosecution.

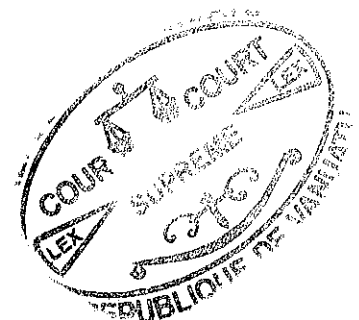


6. The maximum penalty for unlawful sexual intercourse is 15 years imprisonment. For attempting to have unlawful intercourse with a child under 15 years but of or above the age of 13 years is the same as for committing the offence of unlawful sexual intercourse.
7. The attempted offendings occurred until 2022 when the victim turned 14 years old. The defendant would take her to the garden to collect food. In the bushes the defendant would have sex with the victim. For the first time in 2022, the defendant penetrated her and she felt great pain after her hymen was torn, she cried and told the defendant to stop but he ignored her pleas. He continued and ejaculated into her. He then gave VT 200 to the victim and told her not to tell anyone. He continued having sex with the victim until December 2022 when after 3 months of pregnancy the victim visited the Liro Health Centre due to hemorrhage or loss of blood. She was told she had had a miscarriage.
8. From his pre-sentence report, the defendant has accepted the summary of facts and that he is sorry for his actions.
9. In assessing appropriate sentences I have considered the submissions by the Prosecutions and the pre-sentence report by the Probation Service. It is unfortunate that defence Counsel have not filed any written submissions despite clear directions issued on 6<sup>th</sup> September 2023 when the Court returned its verdict of guilty on the defendant. The Court will dispense with defence submissions and rely only on the pre-sentence report of the defendant.
10. From the facts the defendant was trying to be helpful to the victim's family by providing food for them. From the evidence at trial the victim's grandfather is a disabled person but with a responsibility of looking after the victim as his granddaughter. I consider this could be a mitigating circumstance but on the other hand, the defendant in doing so took advantage to have his way and sexually abused this young victim. There are simply no mitigating circumstances.
11. But I accept from the Prosecution submissions the several aggravating factors which are serious breach of trust, the degree of planning involved, the repetitive nature of offending over a period of 2 years, the unlawfulness of the actions of the defendant, loss of dignity of the victim, lack of protective measures resulting in teenage pregnancy and miscarriage causing pain and the physical and mental stress on the victim, and the lasting memory she would live



with for the rest of her life. Then of course the great age disparity between the defendant of 62-63 years and the victim being 13-14 at the times of offendings.

12. The Prosecution submitted a start sentence of 4 - 6 years imprisonment.
13. Taking the seriousness of the offendings I consider the appropriate sentence is to be one of imprisonment and the starting point shall be 5 years imprisonment on each Count to be uplifted by 2 years for the aggravating features. The total concurrent sentence shall be 7 years imprisonment. In my view this case is more serious than all the comparative cases submitted by the Prosecution.
14. In mitigation I consider first his guilty plea to the attempted charge in Count 1. His sentence of 7 years is reduced by 1 year ( 12 months) for this factor.
15. Further I consider his pervious clean record, good standing in the community and his background and personal circumstances, I reduce his sentence by a further 1 year ( 12 months). The balance is now 5 years.
16. Next I consider his pre-custodial period of 5 months and 11 days. To accommodate this factor, the Court will backdate his sentence to the date he was first remanded in custody being 29<sup>th</sup> April 2023.
17. Tom Kleopas you are now convicted and sentenced on the two counts you were charged, to an end sentence of 5 years imprisonment (as a concurrent sentence).
18. I Order that this sentence be backdated to 29<sup>th</sup> April 2023 so you do not lose your parole privilege.
19. As you are currently in custody on remand, the provision of section 50 of the Penal Code Act does not apply to you.



20. But you have a right to appeal this sentence within 14 days if you do not agree with it.

DATED at Port Vila this 10<sup>TH</sup> day of October 2023  
BY THE COURT

  
Hon. OLIVER A SAKSAK  
Acting Chief Justice

