

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

Criminal Case No. 3657 of 2016

PUBLIC PROSECUTOR

-v-

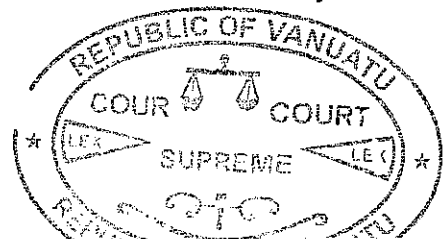
NANO NIMINYANO

*Before Justice David Chetwynd
Hearing 17th March 2017 (Written reasons published 21st March 2017)
Mr Massing for the Public Prosecutor
Ms Tari for the Defendant*

Sentence

1. The defendant Nano Niminyano has entered a guilty plea to an offence of sexual intercourse without consent. The complainant was, to all intents and purposes, his step daughter and had been living in his house for some 10 years. She was 15 when the offences took place. The complainant alleges a number of incidents but the defendant seems to say it happened only once. I make it plain that I am sentencing on the basis of more than one incidence of rape. I also have the submissions of counsel together with a very helpful pre-sentence report compiled by the Probation Service in very short time to assist me in disposing of this case.
2. The complainant became pregnant and has in fact given birth but the defendant denies it is his child. There is a boyfriend on the scene and the defendant says the child is his. There is no DNA evidence and I will have to accept what the defendant says.
3. Counsel indicate in their helpful submissions I should have regard to the case of *Scott*¹ and start at 5 years. I agree and I would also take note that in the same case the court said that if any aggravating features were found they would merit a substantial increase over and above the 5 years.
4. Despite the defendants protestations I accept that there was more than one and probably as many as five occasions when the defendant raped the young victim. There is a substantial disparity in age between the victim and complainant as well. Finally there is the breach of trust issue. The defendant may not have had the care of the young complainant in an official sense but she had been accepted into his home as part of the family and should have been afforded the same protection as a daughter. It must have been profoundly distressing for her to have been abused by

¹ *Public Prosecutor v Scott* [2002] VUCA 29; CA 02-02 (24 October 2002)



someone she thought she could trust as a proxy parent. In all the circumstances the appropriate sentence is one of 7 years imprisonment.

5. The defendant has shown some remorse but from what he told the Probation Officer he does not strike me as being particularly sorry for what he did. He has made some custom reconciliation for his behaviour. He has never been in trouble before. I bear in mind that in such cases as this the Court in *Scott* said a man's good character did not count for much, "*Previous good character is of only minor relevance*". Taking these factors into account the sentence should be reduced by 1 year to 6 years.

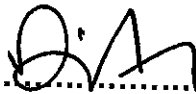
6. The defendant is entitled to a full one third deduction from his sentence for his early guilty plea. The end sentence is one of 4 years.

7. There are no particular circumstances which would enable me to consider suspending all or part of the sentence. The defendant will go to prison immediately and his sentence will be deemed to have started when he was first taken into custody on 14th November 2016.

8. Finally, I will remind the defendant of what I said in court, namely if he is unhappy with the sentence handed down then he has the right to appeal. The time for appeal will start to run when his counsel receives a copy of these written reasons.

Dated at Luganville this 17th day of March 2017.

BY THE COURT


.....
D. CHETWYND
Judge

