

PUBLIC PROSECUTOR VS- BOE MOLI

Coram: *Mr. Justice Oliver A. Saksak*

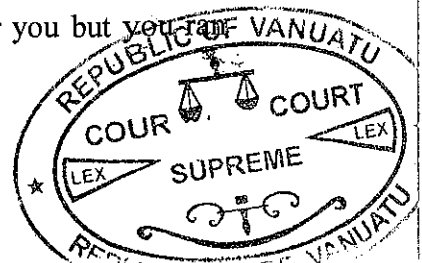
Counsel: *Laura Lunabek for Public Prosecutor
Kylie B Karu for Defendant*

Date of Plea: *3rd April 2018*

Date of Sentence: *28th May 2018*

SENTENCE

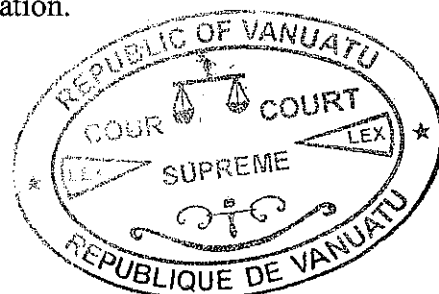
1. Boe Moli you are for sentence today for having pleaded guilty on 3rd April 2018 to one charge of unlawful entry contrary to section 143 (1) and to one count of act of indecency without consent contrary to section 98 (a) of the Penal Code Act [Cap. 135] respectively.
2. These are serious offences because unlawful entry carries a maximum penalty of 20 years imprisonment and act of indecency without consent carries a maximum penalty of 7 years imprisonment.
3. The facts are simple. The complainants are 2 expatriate tourists of Italian origins. They visited Vanuatu on 12th October 2017 residing in room 409 at the Nasama Resort. The offences occurred around 12:00 mid night of 16th October 2017. The complainants had gone out and returned about 10:00pm and were watching TV whilst in bed. You then entered the front door and opened the screen door. You approached the complainants sleeping in the bed. You stood close to Laura Angeuni with your trousers down. You held your penis in your hand and was masturbating in front of her. Laura Angeuni woke up and saw you doing this in front of her and her friend Veronica Minghelli. Laura asked you who you were and told you to leave. You did not leave. Laura tried kicking at you but could not reach you as you were some little distance away. She moved over the Veronica's side. Veronica then yelled loudly at you to go away. Both complainant then ran out of the room and called out for help. You followed them. They alerted security officers who chased after you but you



away. You were eventually caught by Nazario Fakaifonu who took you to the Police station.

4. What you did was really bad and you should be really ashamed of yourself. Your actions has had great and negative impact on one of the victims namely Veronica Minghelli. Her impact statement was filed on 21st May 2018. Your actions have had physical, emotional, social and financial impacts on this victim that she is unable to cope with and get over . I take this as a aggravating feature of your offendings.
5. You had very clear intentions that night and you had absolutely no excuse to be in their room that night. The only intention you had was to commit sexual acts on the visitors.
6. The Court must therefore impose an appropriate punishment that will-
 - a) Mark the seriousness of your offendings,
 - b) Mark the Court's disapproval of your actions,
 - c) Be a deterrence for you and other like-minded persons,
 - d) Protect girls, women and the weak and vulnerable members of the society,
 - e) Be an adequate punishment for you.

7. The cases referred to by the Prosecution were PP.v. Sur [2005] VUSC 13 , PP.v. Livae [2014] VUSC 16 and Wenu.v. PP [2015] VUCA 51 are all different from yours in their facts and circumstances. In those cases there were instances of touching or physical contacts with either the victim's breasts or vagina. Your cases topped far short of that. But the indecent act you did happened in the presence of another victim. The victims were tourists who may not have expected to see such behaviour in Vanuatu. It happened at midnight when they were sleeping. You had intruded into their Resort room, disturbed their peace and of the Resort. And your actions have tarnished the reputation of Vanuatu as a tourist destination.



8. Taking those factors into account, together with the seriousness of the two offences charged, I consider that the appropriate sentence for you is to be a custodial sentence. And the Court convicts and sentences you as follows:-

- a) For unlawful entry- Count 1- A starting sentence of 4 years imprisonment.
- b) For Act of Indecency without consent- A starting sentence of 3 years imprisonment to be served concurrently with the penalty for the offence in Count 1.

9. Altogether, you are sentenced to 4 years imprisonment as a concurrent and starting sentence.

10. In mitigation I consider your personal history and character in your pre-sentence report, and the mitigating factors submitted by defence counsel. But I will allow deductions only for the following-

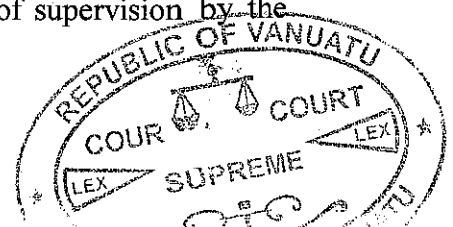
- a) Being a first-time offender with clean past record,
- b) Cooperation with the police during investigation and interview,, and
- c) Pre-custodial period from 17th October 2017 to 20th April 2018 (7 months)

I therefore deduct your 4 year sentence by 1 year, leaving the balance at 3 years imprisonment.

11. Finally for your guilty plea at the earliest opportunity you are entitled to 1/3 reduction which is another 12 months (1 year). The balance and end sentence is therefore 2 years imprisonment.

12. For your young age and medical condition I order that your sentence of 2 years be suspended on good behaviour under section 57 of the Act. This means that you do not have to go to prison today. You will remain with your parents but must behave yourself for a period of 2 years. If you commit these offences again or any other offences within the 2 years your sentence is suspended, and you are charged and convicted, you will go to prison to serve your 2 years sentence.

13. And because your young age, to reduce the likelihood of your offending I impose also under Section 58 F and Section 58 H of the Act a sentence of supervision by the

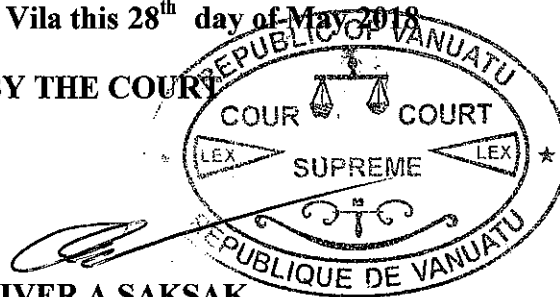


Probation officer. One of the conditions you will abide by is to be monitored closely by a Mental Health Team and be required to attend every medical appointments that you will required to attend for your treatment and rehabilitation. You may be required by your Probation officer to attend any other relevant rehabilitation programs to help you rehabilitated for your re integration back into the community.

14. That is the sentence of the Court. You may appeal against this sentence within 14 days if you do not agree with it.

DATED at Port Vila this 28th day of May 2018

BY THE COURT



OLIVER.A.SAKSAK

Judge