

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

Criminal
Case No. 21/2509 SC/CRML

BETWEEN: Public Prosecutor

AND: James Ngisa
Defendant

Date: 15th September 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mr R. Willie for the Defendant

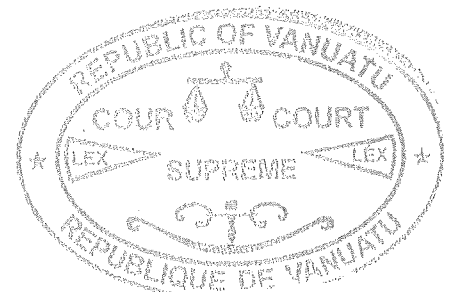
SENTENCE

A. Introduction

1. Mr Ngisa pleaded guilty to unlawful sexual intercourse (x3) and act of indecency with a young person.

B. Facts

2. In January to April 2021, RL was 8 years old, a student at Banban School. She resided at Solomon's Hill in Luganville.
3. Mr Ngisa is 33 years old, also residing at Solomon's hill. He is related to RL, who calls him "Daddy James." She lived with Mr Ngisa and his wife.
4. When RL returned home from school between January and April 2021, Mr Ngisa would pull her into a container. Once inside he would push his hands inside her trousers and touch her vagina. When RL cried he instructed her not to cry. He would remove her trousers and make RL lie down, where upon he would lick her vagina. RL cried and kicked out, but he persisted and instructed her not to tell her mother, or else he would whip her.



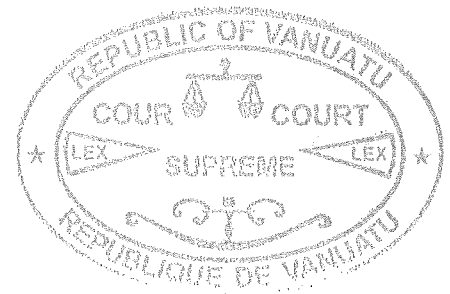
5. On numerous other occasions, Mr Ngisa would remove her trousers and penetrate her vagina with his penis. He would also roll RL over and penetrate her anus with his penis. These acts hurt RL and she cried out in pain. Mr Ngisa told her not to cry or he would beat her.
6. On one particular occasion RL recalls the family going to Mavea Island. She thinks it was around Easter 2021. There Mr Ngisa entered the room RL was sleeping in and penetrated her vagina with his penis.
7. RL was too afraid to report Mr Ngisa. However, Mrs Ngisa noticed unusual behaviour between them and so she questioned RL and found out what had been occurring. She then went to Mr Ngisa who eventually admitted his offending, and she then raised the matter with the police.
8. When interviewed by the police Mr Ngisa admitted his offending.

C. Sentence Start Point

9. The sentence start point is to be assessed by having regards to the maximum sentence available and factoring in the aggravating and mitigating aspects of the offending.
10. The maximum sentence for unlawful sexual intercourse is 14 years imprisonment. The maximum sentence for act of indecency with a young person is 10 years imprisonment.
11. There are no mitigating factors to the offending. There are however several aggravating aspects, which include:
 - the tender age of RL;
 - the fact that the offending occurred mainly at her home, where she should feel safe;
 - the repeated nature of the offending;
 - the multitude of indignities involved;
 - the threats to keep RL from protesting;
 - the threats to keep RL from reporting Mr Ngisa;
 - the skin-on-skin aspect to the indecencies; and
 - the breach of trust due to their relationship and also to his wife.
12. The sentence start point I adopt is 15 years imprisonment on a concurrent basis taking all the offending into account.

D. Personal factors

13. Mr Ngisa pleaded guilty to the charges at the first available opportunity. Given that he made admissions to his wife, the pleas were inevitable. However they have meant that RL has not had to give evidence. Accordingly I reduced the sentence start point by 33%.
14. Mr Ngisa is now 33 years old. He is married with 3 young children to support. Fortunately his wife works and earns an income. Mr Ngisa used to work for his Baptist Church, earning a small stipend. As well as he was a gardener.
15. Mr Ngisa has no previous convictions.




16. He claims to regret his actions, but he puts blame on his wife for his offending, as due to a medical complaint, she could not discharge his sexual needs. This explanation is rejected outright. It cannot in any way justify his offending.
17. Mr Ngisa also told the PSR writer that he did not know his offending contravened the law. That too is rejected. No adult in Vanuatu can be under the impression that sexual intercourse with an 8 year old child is permissible.
18. There has been no custom reconciliation ceremony although Mr Ngisa has plans to perform such.
19. For his personal factors Mr Ngisa's sentence start point is further reduce by 3 months.

E. End Sentence

20. The end sentence I imposed is 9 years 9 months imprisonment for the unlawful sexual intercourse charges and 3 years for the act of indecency charge. The sentence are all to run concurrently, and are back-dated to commence on 16 July 2021.
21. There will be no suspension of sentence: *Gideon v. PP [2002] VUCA 7*.
22. All details leading to identification of RL are permanently suppressed.
23. Mr Ngisa has 14 days to appeal.

Dated at Luganville, this 15th day of September 2021
BY THE COURT


Justice G.A. Andrée Wiltens

