

PUBLIC PROSECUTOR

v

EME TABI

Date: 25 November 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr D. Boe
Defendant – Mr E. Molbaleh & Mr J. Vohor

SENTENCE

A. Introduction

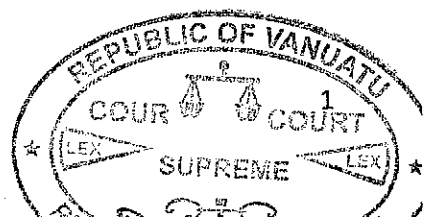
1. Mr Tabi pleaded guilty to unlawful sexual intercourse with a child under the age of 15 years but of or over the age of 13 years. I accordingly convict Mr Tabi on his own plea and the admitted facts.

B. Facts

2. At night on 26 October 2020, Mr Tabi, the 14-year-old complainant and the complainant's 2 brothers went looking for crabs. They returned and spent the night at the complainant's house. During the night, Mr Tabi entered the complainant's room and had sexual intercourse with her. Mr Tabi is the complainant's uncle.

C. Sentence Start Point and Personal Factors

3. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.
4. The maximum sentence provided in subsection 97(2) of the *Penal Code* [CAP. 135] is 15 years imprisonment.
5. The offending is aggravated by:
 - Breach of trust;
 - The offending occurred at the complainant's home – where she should have been safe;



- Unprotected sex which exposed the complainant to the risk of sexually transmitted infection and pregnancy; and
 - The psychological effect upon the complainant.
6. There are no mitigating factors to the offending.
 7. The factors set out above require a sentence start point of 4 years imprisonment.
 8. Mr Tabi pleaded guilty at the first opportunity to this charge. He has saved the complainant the ordeal of giving evidence before a group of strangers in a Court and the plea is a sign of remorse. Accordingly I deduct 25% from the sentence start point for the plea.
 9. Mr Tabi is 21 years old and married. He does not have children. He is responsible to care for his wife and elderly parents. His father is sickly.
 10. He has a mechanic qualification and makes a living from fixing trucks.
 11. Mr Tabi has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.
 12. A month after the offending occurred, the complainant's father and 5 other men carried out a group assault on Mr Tabi. They left him with a broken right arm (broken ulnar). This is confirmed by medical reports from the Bwatnapni Dispensary and Northern District Hospital.
 13. Since then, Mr Tabi is hesitant about putting weight on the arm. This has inhibited his work as a mechanic and meant that he cannot plant kava for a living, which is a common way of earning a living on Pentecost.
 14. Mr Tabi has performed an extensive custom reconciliation ceremony with the complainant and family involving 7 red mats valued at VT5,000 each and VT10,000 cash. He is stated to have accepted responsibility for his offending and is remorseful.
 15. I further reduce the sentence start point by 21 months for Mr Tabi's youth and other personal factors.

D. End Sentence

16. Mr Tabi is sentenced to 15 months imprisonment back-dated to run from 25 August 2021 as he has spent 3 months in custody.
17. The sentence is imposed to deter offending by sending the message to the community that the law prohibits sex with young girls aged 13-14 years old. The sentence is also imposed to hold Mr Tabi accountable for his criminal conduct and to protect the community.
18. I have a discretion to suspend part or the whole of a sentence. The seriousness of the offending militates against suspension of the sentence. Mr Boe cited the Court of Appeal judgment in *Public Prosecutor v Gideon* [2002] VUCA 7. However, the facts in *Gideon* can



be distinguished as that matter involved a 25-year-old defendant whereas Mr Tabi is younger, 21 years old. On the other hand, I take into account Mr Tabi's youth and immaturity. I also take into account that he has already served 3 months in custody, an effective sentence of 6 months. Further, he has suffered a group assault and personal injury as a result of the offending, which has already affected his physical capacity and livelihood prospects. He is responsible for the care of his wife and elderly parents. Finally, Mr Tabi has performed an extensive custom reconciliation ceremony and accepted responsibility for his offending. I accept that he is remorseful. I consider given his youth that Mr Tabi's prospects of rehabilitation are good and would be assisted by keeping him out of further custody. Accordingly I suspend Mr Tabi's sentence for 2 years.

19. Mr Tabi is warned not to offend in the next 2 years or he will need to serve his sentence of imprisonment in addition to any other penalty that may be imposed on him for the further offending.
20. Mr Tabi has 14 days to appeal the sentence.

DATED at Bwatnapni, Central Pentecost this 25th day of November 2021

BY THE COURT

VM Trief
Justice Viran Molisa Trief

