

**PUBLIC PROSECUTOR**

**v**

**JOSEPH MALVANU**

*Date:* 13 October 2023  
*Before:* Justice V.M. Trief  
*Counsel:* Public Prosecutor – Mrs B. Tamau  
Defendant – Ms L. Bakokoto

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**SENTENCE**

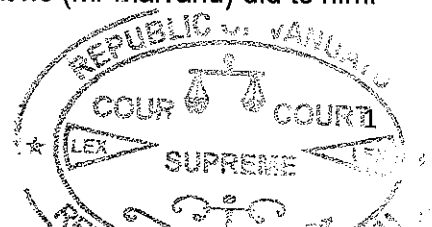
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A. Introduction

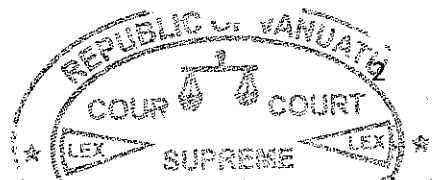
1. The defendant Joseph Malvanu pleaded guilty to unlawful sexual intercourse with a child under the age of 13 years contrary to subs. 97(1) of the *Penal Code* [CAP. 135]. He is convicted on his own plea and the admitted facts.

B. Facts

2. Mr Malvanu and the complainant FM are relatives and live in the same area at Walarano, Malekula.
3. At the time of the offending, Mr Malvanu was 15 years old and the complainant was 8 years old.
4. In 2020, the complainant was playing with his toy car on the road when Mr Malvanu approached him and told him to follow him to a relative's house to get lemons.
5. However, when they arrived at the house, Mr Malvanu removed the complainant's trousers, made him lie down on the floor on his stomach and pushed his penis into the complainant's anus and had sexual intercourse with him until he ejaculated outside the complainant's anus. The complainant was very scared and tried to run away from Mr Malvanu's sexual assault but Mr Malvanu held him tightly against him. Mr Malvanu told the complainant not to tell anyone what he (Mr Malvanu) did to him.



6. Mr Malvanu admitted his offending to the Police.
- C. Sentence Start Point
7. The sentence start point is assessed having regard to the offending, its aggravating and mitigating features and the maximum sentences set by Parliament.
  8. The maximum sentence provided is life imprisonment.
  9. There are no mitigating aspects to the offending however, it is aggravated by the following:
    - a. Breach of trust;
    - b. The 7-year age differential;
    - c. Pre-meditation and planning on the part of the defendant;
    - d. The defendant lured the complainant to a location where the sexual intercourse took place;
    - e. Skin-on-skin contact;
    - f. The physical and mental effect on the complainant including the fear and harm suffered including the pain felt as a result of the anal sexual intercourse; and
    - g. The defendant told the complainant not to tell anyone what the defendant had done to him.
  10. Taking these matters into account, I adopt a sentence start point of 6 years imprisonment.
- D. Mitigation
11. I reduce the sentence start point by 33% for Mr Malvanu's early guilty plea which has saved time and saved the need for the complainant to give evidence.
  12. Mr Malvanu is 18 years old. He completed only one year of schooling. He is a gardener and also raises livestock. He has part-time informal employment with his brother. He takes care of his mother. He has the support of his family and community. He has no previous convictions although in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence. Mr Malvanu and his family performed a custom reconciliation ceremony with the complainant and his family involving a bucket of kava juice and VT5,000 which was accepted. He is remorseful including as stated by the pre-sentence report writer.
  13. The delay which has elapsed since Mr Malvanu's arrest in September 2020 to his sentencing today is unreasonable: *Williams v Public Prosecutor* [2015] VUCA 29.



14. I further reduce the sentence start point by another 33% for Mr Malvanu's personal factors and the unreasonable delay which has occurred.
- E. End Sentence
15. The end sentence I would have imposed is 2 years imprisonment.
16. However, subs. 54(1) of the *Penal Code* provides that a person under 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate. Mr Malvanu is now 18 years old, but I shall treat him as a young offender as he committed the offending when he was only 15 years old.
17. The Court of Appeal stated in *Herromanley v Public Prosecutor* [2010] VUCA 25 that the need for reform and rehabilitation is paramount when sentencing young offenders. I consider that imposing a sentence of imprisonment on Mr Malvanu with the inevitable consequence of exposing him to long-term hardened criminals would be counter-productive and inappropriate. His prospects of rehabilitation are better served by keeping him out of imprisonment, and this is practicable and consistent with the safety of the community given the family support that Mr Malvanu has and his insight into and taking of responsibility for his offending.
18. Taking all of those matters into account, the end sentence imposed is as follows:
- i) 150 hours of community work; and
  - ii) 12 months supervision including attendance at the rehabilitation programs organised by the Department of Correctional Services.
19. Mr Malvanu has 14 days to appeal the sentence.
20. All details leading to the identification of FM are permanently suppressed.

**DATED at Lakatoro, Makula this 13<sup>th</sup> day of October 2023  
BY THE COURT**

  
Justice Viran Molisa Trief

