

**PUBLIC PROSECUTOR**

**v**

**KENNETH HOLIWON**

**Date of Pleas:** 22 April 2024  
**Coram:** Hon. Chief Justice V. Lunabek  
**Counsel:** Mr J. Aru for the State  
Ms B. Taleo for the Defendant  
**Date of Sentence:** 24 May 2024

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## **SENTENCE**

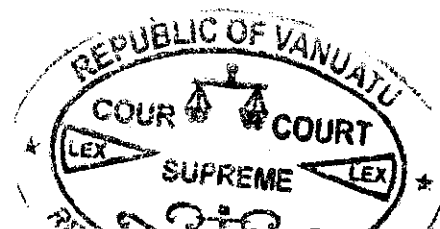
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### **I. Introduction**

1. Mr Kenneth Holiwon ("*Mr Holiwon*"), you appear for sentence today having being pleaded guilty to one count of unlawful sexual intercourse contrary to Section 97(1) of the Penal Code Act [CAP. 135] ("*the Act*") (Count 1) and two charges of Acts of Indecency With a Young Person, contrary to Section 98A of the Act (Counts 2 and 3).

### **II. Facts**

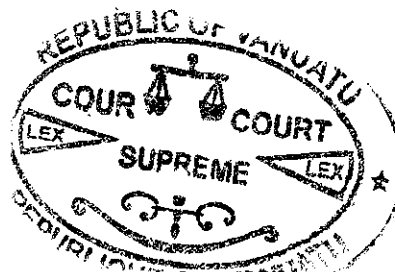
2. Mr Holiwon, you are 36 years old at the time of the alleged offending and you are from the island of Ambrym. The complainant was under the age of 13 years at the time of the alleged offending. her date of birth was 1<sup>st</sup> of January 2011.
3. You are the step father of the complainant. You all live together, in the same yard. But the victim and her grandmother live on a separate house. The offending began after you came to have a relationship with the complainants' mother and you came to live with them on the island of Pentecost.



4. The first incident occurred sometimes between December 2022 to February 2023. On those or about those months, Mr Holiwon, you would enter the house of the victim and her grandmother at night. You would open the door of the house and then woke the complainant up and removed her clothing. You would then hold (touched) her vagina and her breasts. Then you would leave the house. She stated in her statement to the police, that the indecency act occurred on her between the months of December 2022 to February 2023 on more than one occasions.
5. However, Mr Holiwon, you continued your sexual abuses on her after the month of February 2023. In March 2023, you started to have sexual intercourse with her. You had sex with her through to June 2023. She stated that you had sex with her almost every night between the months of March 2023 to June 2023. On all those nights, you would enter the house where she and her grandmother sleep. You would open the door and then forced her to remove her clothing to which she would refuse. You would then undress her, then inserted and penetrated her vagina with your penis. Then you would leave the house.
6. The matter was later revealed to the police. You were arrested, cautioned and interviewed by the police. You admitted the allegations that were made against you.

### III. Sentence Start Point

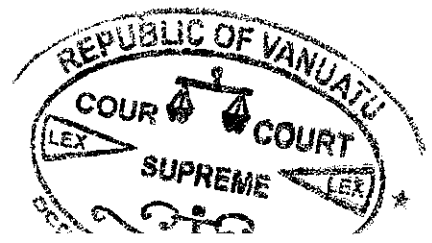
7. The sentence start point is determined by reference to the maximum sentence available under the law, by considering and taking into account of the aggravating and mitigating factors to the offending and by reference and consideration of the relevant case authorities and the comparable cases (if any) for consistency purposes.
8. In this case, the following maximum sentences are available:
  - (a) The offence of unlawful sexual intercourse with a child under 13 years of age, contrary to Section 97(1) of the Act, carries a maximum sentence of life imprisonment;
  - (b) The offence of acts of indecency with a young person, contrary to Section 98A of the Act, carries a maximum sentence of 10 years imprisonment.
9. Here, there are more than one offence, on an overall assessment, the offence of unlawful sexual intercourse is the leading offence, and the maximum sentence that is available overall is life imprisonment on concurrent basis.



10. In this case, there is no mitigating factor to the offending, but the following aggravating factors exist:
- (a) The offending occurred within the boundaries of the home where the victim girl lived where she was entitled to feel safe and secure;
  - (b) There is breach of trust because, Mr Holiwon, you are the step-father of the victim;
  - (c) The offences were repeated and on numerous occasions;
  - (d) The length of the period of the offending. The offences started back from the year December 2022 to June 2023. The period of sexual abuses extends for some 6 months;
  - (e) The victim girl was exposed to the risk of pregnancy or sexually transmitted diseases or infections;
  - (f) There is an age differential of 25 years between Mr Holiwon and the victim girl;
  - (g) There is a negative effect upon the victim including the strong fear and fright it caused her; and
  - (h) There is a high degree of planning involved.
11. The Judgment of the Court of Appeal in Public Prosecutor v Gideon [2002] VUCA 7; Criminal Appeal Case No. 03 of 2001 (26 April 2002) is the guideline judgment on the girls under 13 years of age, contrary to Section 97(1) of the Penal Code and sexual abuses of young people in the community.
12. In this case, your sentence start point is 12 years imprisonment for unlawful sexual intercourse with child under 13 years old; and 3 years imprisonment for act of indecency with a your person.

#### **IV. Mitigating Factors for the Defendant**

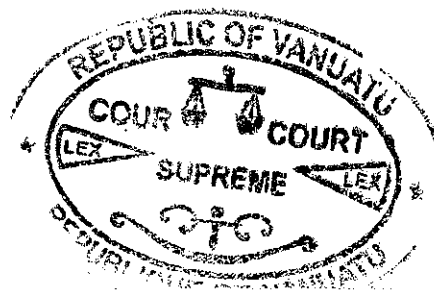
13. Mr Holiwon, you are a mature man. You do not know or remember your date of birth. You are from Launu Village on Pentecost island. You and the mother of the complainant in this case, had together three (3) children of the ages 9, 7 and 6. Your wife (Mrs Nelisa) has a daughter (GB) of her own who is the victim in this case.



14. You complete your Year 8 at Mavea School in Santo. You have some training in carpentry and you assist with building some small houses.
15. You are a first-time offender with no previous convictions.
16. You accepted you have committed the offences as you have some rubbish thought or "*rabbish tingting*" on the complainant. You knew that your actions were against the law. You said you have performed a custom compensation ceremony with the victim with the payment to the victim of VT40,000 and two (2) Pentecost red mats that worth VT10,000 each given to the victim. You said the victim and her family accepted the custom compensation ceremony and the items exchanged.
17. I give you a credit reduction allowance of 4 months for your mitigating factors.
18. I give you a further credit reduction allowance of 33% for your guilty pleas.
19. The remaining balance of your sentence is 94 months i.e., 7 years and 10 months imprisonment for unlawful sexual intercourse; and 22 months i.e., 1 year and 10 months imprisonment for the offence of act of indecency with a young person.

**V. End Sentence**

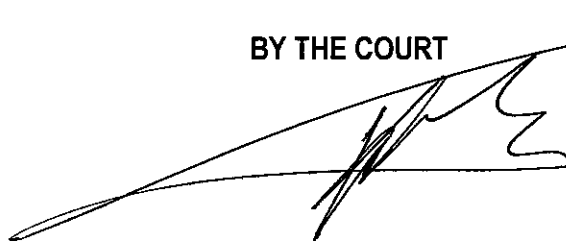
20. Your end sentence is 7 years and 10 months imprisonment for unlawful sexual intercourse, and 1 year 10 months imprisonment for act of indecency with a young person. The sentences shall be served concurrently. You are going to serve 7 years and 10 months imprisonment.
21. You have already spent time in pre-custodial period when you were remanded in custody from 11<sup>th</sup> November 2023 to 6<sup>th</sup> December 2023. So, you have already spent 3 weeks and 4 days in pre-custodial time. The time you have already spent in custody shall be deducted from your sentence.
22. The new remaining balance of your sentence is then 7 years 9 months and 5 days imprisonment. I consider the nature and circumstances of your offending, your character as the defendant, they do not justify a suspension.
23. You are ordered to serve a term of 7 years 9 months and 5 days imprisonment with immediate effect.



24. You have 14 days to appeal against this sentence if you are unsatisfied with it. The 14 days starts on the date of this sentence.

DATED at Port Vila, this 24<sup>th</sup> day of May, 2024.

BY THE COURT



Hon. Chief Justice Vincent LUNABEK \*

