

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

**JOHNNY BULE
FREDERICK BOLENGA
BATIST MELTEN
PETER NAMBO
ANDREW TABI PAUL
ROBERTSON MELTEN**

**Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk**

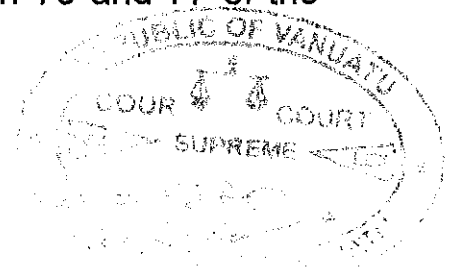
**Ms Kayleen Tavoia – Public Prosecutor
Mr Hillary Toa – Public Solicitor for the Defendants**

Date of Hearing and Decision: 13th July 2006 (at Pangi, South Pentecost)

DECISION

These defendants were initially represented by Mr John Timakata. They entered 'not-guilty' pleas in Luganville on 17th March 2006. They were remanded in custody pending trial. Trial was fixed for 13th July 2006 to be held at Pangi, South Pentecost. The Court issued Notices of Trial on 3rd July 2006.

I am told by the Public Prosecutor that the summons was served on the complainant Emma and her husband on 21 June 2006 at Lonorore Airport. However the Public Prosecutor informs me that upon checking on the complainant and her husband yesterday at their house they found out that she and her husband have left for Port Vila. Under the circumstances, Ms Tavoia applies for two things: Firstly that a warrant be issued to bring the complainant and her husband before the Court to explain why they did not comply with a summons issued by the Court pursuant to section 76 and 77 of the



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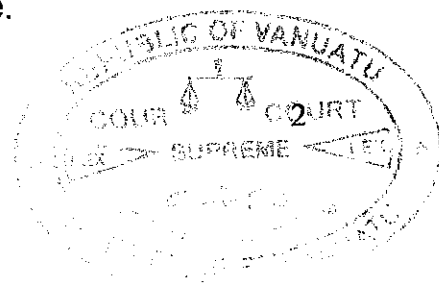
Criminal Procedure Code Act CAP. 135 (the Act). And secondly that the matter be adjourned and the complainant and her husband be compelled to attend as witnesses by issuing fresh witness summons.

Mr Toa who took fresh instructions from the defendants and entered appearance on their behalf argued strenuously against the applications made by the Public Prosecutor. He submitted that it was apparent by their actions that the complainant and her husband had absconded from the jurisdiction of the Court in total disregard for the Court summons without any explanation whatsoever. He submitted that the actions of the complainant and her husband were deliberate. Mr Toa urged the Court to do the right thing by dismissing the case at this stage as it would cost the state further unnecessary expenses to bring the Court and witnesses back on another date.

The Court agrees with Mr Toa's submissions. In respect of the two applications the Court decides as follows –

1. To punish the complainant and her husband for disobedience of a court summons, the court has powers to punish summarily acts of contempt of court under section 32 of the Judicial Services and Courts Act No. 54 of 2000. The application is accepted however as the complainant and her husband are not present, the Court will defer the matter and issue further summonses requiring them to attend either at Luganville or in Port Vila to be dealt with accordingly.
2. As to whether or not the case be adjourned and a new summons issued for trial on another date, the application is refused.

Complainants must be serious about prosecuting their complaints. Here, it is obvious that the complainant does not wish to go through the pain and embarrassment of retelling to story of her ordeal in front of her husband and other people who attend the trial. Even if the case was adjourned, it is highly likely that the complainant and her husband would still not turn up. It is my view that they have made up their minds that they have abandoned the prosecution of this case. And the state cannot be made to incur further unnecessary expenses by adjourning the trial and fixing it for an other date.



In the circumstances of the case the Court now dismisses this case for want of prosecution. All the defendants are accordingly discharged of the offence of rape for which they have been charged.

The Court wishes however to remind all the defendants and the members of the public in attendance today that this decision to dismiss is not and must not be taken or seen as an encouragement by the Court to other men to continue with this unacceptable behaviour of a pack-rape on a woman. The Court in no way condones or approves of this action and must now warn and reprimand the defendants in the strongest terms that they must not repeat their actions, as they may not be fortunate next time.

PUBLISHED at Luganville this 18th day of July 2006.

BY THE COURT



OLIVER A. SAKSAK
Judge

