



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

Criminal Case No. 94 of 2010

**PUBLIC PROSECUTOR –VS- ROBERT REEMAN**

*Coram: J. Weir*

*Counsel: Mrs L. Matariki for the Public Prosecutor  
Mr Nigel Morrison for the Accused*

**JUDGMENT**

19<sup>th</sup> April 2011

The accused, Mr Reeman faces 1 charge of unintentional harm causing death – contrary to section 108(c) of the Penal Code Act which says:

*No person shall unintentionally cause damage to the body of another person through recklessness or negligence or failure to observe any law.*

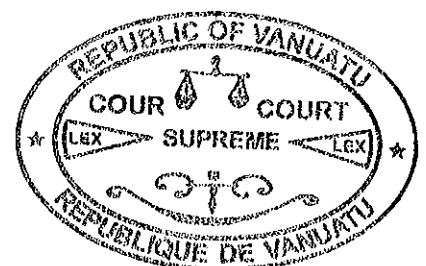
*Penalty*

*(c) If the damage so caused results in death, imprisonment for 5 years.*

The charge arises out of an accident which occurred at approximately 5:30 a.m. in the morning of the 21/5/10 on the main road heading towards No.2 Lagoon. A young man who was running along the road in the same direction as a bus driven by the accused veered across the road and was hit by the accuseds bus resulting in his death.

At the conclusion of the prosecutors case, counsel for the accused made a submission that a prima facie case had not been made out against the accused.

The gravamen of the prosecutions case appears to be based on the evidence of 2 police officers, constable Joseph Marae and Atis Yosef.



### The evidence of PC Marae

He was called to the scene of the accident immediately after it happened. He made 1 sketch of the accident at the scene and another one back at the office which was simply a neater version of the original. His evidence in chief was to the effect that the point of Impact (POI) was 1 metre off the seal on the left hand side of the road, which if indeed that was the case, would cause considerable difficulty for the accused.

His conclusion about this was based on where he said he observed slid marks belonging to the bus driven by the accused. The difficulty with that evidence however was that he conceded in cross examination that he had not mentioned this in his own statement. He furthermore conceded in cross examination the following points.

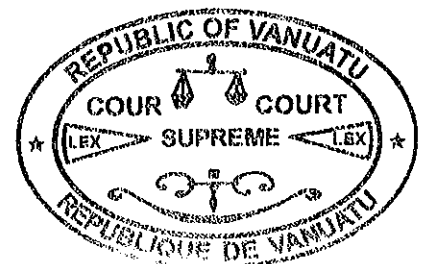
1. he did not check anywhere else (for example the middle of the road) for the POI.
2. there was no evidence of skid marks at his estimated POI in the photographs produced of the accident scene.
3. He had not spoken to any of the eye witnesses who were available before making his own assessment.
4. he confirmed there was no evidence of any blood at his estimated POI.

Significant doubt was therefore cast on the accuracy of his assessment.

### The evidence of P.C. Atis Yosef

Constable Yosef attended the accident scene and took photographs which he produced to the Court. He confirmed that there was no evidence of skid marks at the estimated point of impact in his photographs. He further confirmed that the road was wet at the time and there was no blood at the estimate POI.

Their evidence needs to be contrasted with other prosecution witnesses.



Bruno Leingkone

He was of little assistance to the prosecution case. He gave some evidence of the accused passing him at speed shortly prior to the accident but he was some distance away when the accident happened, he saw nothing and only heard a bang.

Paul lou

Mr lou said that he had finished work at 5 a.m. and was walking along the road to catch a bus when he saw the deceased came running along the road in the same direction as him. He said that he saw the bus driven by the accused and in his view it was driving too fast. He said he saw it collide with the deceased who was in the process of crossing the road. He said he saw the bus veering to the left and not keeping to his side of the road and cutting across the road.

In cross-examination Mr lou confirmed that the deceased was still running as he crossed the road and in answer to the question *"Did he stop and look before he crossed the road?"* he replied *"I just saw him running and running across the road"* In re-examination he confirmed that it was still quite dark at that time of the day.

Serah Sam

She was a passenger in the bus driven the accused. In her evidence in Chief she said that just before the accident some 2 metres ahead of the bus she saw a man crossing the road. She said that the deceased did this "all of a sudden", that the accused tried to brake but by then it was too late. In cross-examination she confirmed that when she made her statement to the police officer she told that officer that the accused had not been speeding.

Julian Sam

His statement was produced by consent. Mr. Sam was sitting in the front passenger seat of the bus and therefore in the best position to see what happened. He said it was half light and half dark and the bus had its headlights on. He said he saw a man running in the same




direction as the bus on the wrong side of the bus. He said the driver was driving about 60 kilo metres per hour – not that fast – and all of a sudden, when the deceased was about 2 metres away he ran across the road in front of the bus. He said the deceased did not turn around to look and see if there were any cars coming, he just crossed the road in 1 fell swoop. He said the driver swerved to the left to try and avoid him but collided with him and the deceased had hit the window in front of where he was sitting. He said the POI was close to the middle of the road.

The difficulties in the evidence of the 2 police officers have therefore been significantly compounded by the evidence of the eye witnesses. The burden of proof of course is on the prosecution to establish beyond reasonable doubt each and every element of the charge. In my view the prosecution has failed in that task without even the accused given evidence. It has failed to make out a prima facie case against the accused. The charge is accordingly dismissed.

**DATED at Port Vila this 21<sup>st</sup> day of April, 2011.**

**BY THE COURT**



**J. WEIR**  
Judge

