

SUPREME COURT OF THE

REPUBLIC OF VANUATU

(Criminal Jurisdiction)

Criminal Case No: 186 of 2014

PUBLIC PROSECUTOR

VS

NOMBUS HUBERT

Coram: Justice Aru

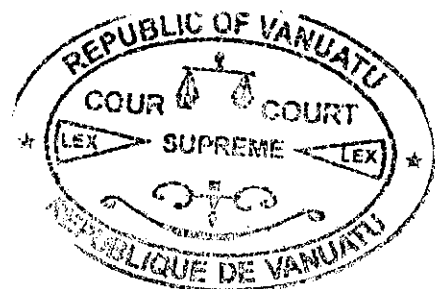
Counsel: Mr Ken Massing for the Prosecution

Ms Jane Tari for the Defendant

RULING

NO CASE SUBMISSION

1. At the end of the Prosecution case , Defence Counsel now makes a submission of no case to answer .
2. The defendant was charged with 2 counts of unlawful sexual intercourse contrary to 97 (2) of the Penal Code [CAP 135] which states:



"No person shall have sexual intercourse with any child under the age of 15 years but of or over the age of 13 years

Penalty: imprisonment for 5 years."

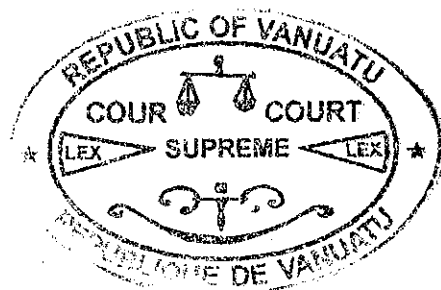
3. The essential elements of the offence that must be proved by the prosecution in relation to each count are that :

- i) the defendant had sexual intercourse with the complainant; and
- ii) the complainant was under 15 years but of or over the age of 13 years .

4. In any criminal case, the prosecution bears the burden of proof and section 8 of the Penal Code requires that the prosecution must prove its case beyond reasonable doubt. It must prove all the elements of the offence beyond reasonable doubt .

5. Before the trial hearing, the following facts were agreed by the parties and filed as agreed facts on 9 June 2015:

- i) that the defendant did have sexual intercourse with the complainants Mosa Amon and Hanson Amon on the island of Vanua Lava ;



ii) that the defendant did have sex on the month of February 2014 with the complainant Mosa Amon;

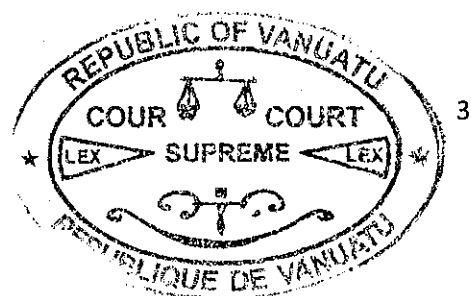
iii) that the defendant did have sex on the month of March 2014 with the complainant Hanson Amon .

6. Of the two elements of the offence that are required to be proved by the prosecution, the first element that the defendant had sexual intercourse with the two complainants is admitted. The second element that the complainants were under 15 years but of or over 13 years at the relevant time is not admitted and must therefore be proved by the prosecution through evidence given by his witnesses.

7. In Koroka v Public Prosecutor [2007] VUCA 3 the Court of Appeal accepted that the test to be applied on a no case submission is:

“On the strength of the evidence so far laid before the court , whether a reasonable court could convict the accused person , as a matter of law on the strength of such evidence.”

8. At the end of the prosecution case, the prosecution had called three witnesses. The first witness was Mosa Amon. In examination in chief she told the court that she was 16 years old in 2014. Under cross



examination she was asked the following questions and responded as follows:

Q. refer to exhibit "P1" what is your age in your statement ?

A. 16

Q. You were asked about your age earlier and you said 16.

A. Yes

Q. You told the court your date of birth is 1999 November 18.

A. Yes

Q. In 2014 you said in your statement to the Police that you are 16.

A. Yes

Q. Today in 2015 you said you are 16 years old.

A. Yes

Q. You agree today 9 June 2015 your age is no longer 16.

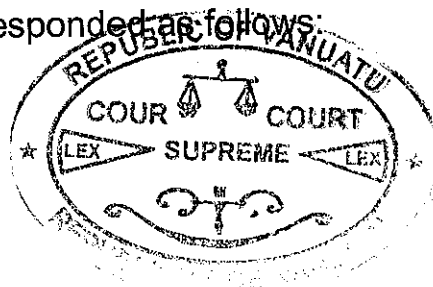
A. I don't know

Q. You agree that you don't know your age .

A. Yes

9. She was not re-examined on this part of her evidence .

10. Mary Majere was called as the second witness. She is the mother of the two complainants . Under cross examination she was asked the following questions and responded as follows:



Q. When Mosa was born you did not know her date of birth.

A. Yes

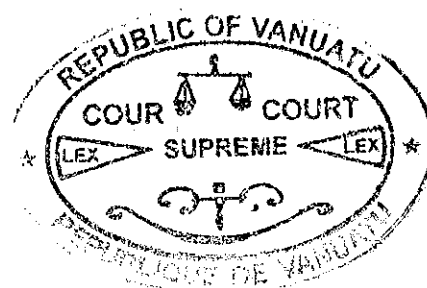
Q. When Hanson was born you did not know her date of birth as well.

A. Yes

11. She was not re-examined on her evidence .

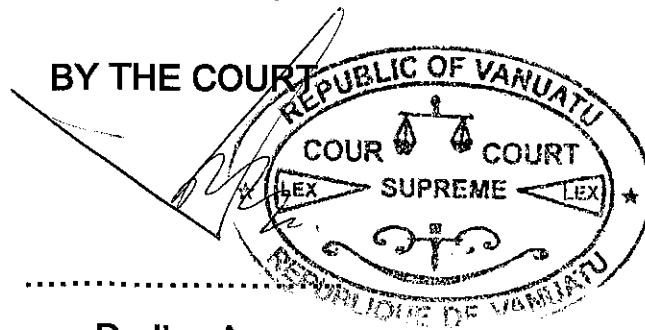
12. The second complainant Hanson Amon was not called by the prosecution as a witness .

13. Roger Quarani the Police investigating officer was called as the third and final witness for the prosecution. Under cross examination he confirmed that the defendant admitted to him that he (the defendant) had had sex with the two complainants. He agreed that the only two things in the defendant's statement which was tendered as exhibit "P2" is the defendant's admission that he had had sex with the two complainants and the custom reconciliation he performed to the families of the complainants. This witness was not re-examined on his evidence .



14. No other evidence was adduced by the prosecution to show that the two complainants were under 15 years of age but of or over the age of 13 years .
15. At the end of the prosecution case only the first element of the offence is made out as it is admitted that the defendant had sexual intercourse with the two complainants.
16. On the strength of the evidence laid before the Court I am not satisfied that a reasonable Court could not convict the defendant as a matter of law on the strength of such evidence. The prosecution has not made out a case against the defendant so as to require him to make his defence. For this reason I find no case to answer against the defendant. The charges are therefore dismissed and the defendant is hereby acquitted.

Dated at Sola, this 11th day of June 2015



Dudley Aru
Judge.