

BETWEEN: Public Prosecutor
Appellant
AND: Mike Uyor Jacky Thomas
Defendant

Date: Friday, 8 June 2018
By: Justice G.A. Andrée Wiltens
Counsel: Mr L. Young for Mr S. Blessing for the Public Prosecutor
Mr W. Kapalu for the Defendant

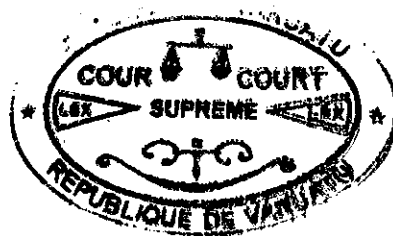
JUDGMENT

A. Introduction

1. The Public Prosecutor appeals the decision of the Magistrate's Court, ruling there was insufficient evidence to establish a prima facie case at the preliminary inquiry stage and dismissing the case.
2. The charge Mr Thomas faced was obtaining a valuable thing by deception, contrary to section 130B of the Penal Code [CAP 135]. The thing allegedly obtained was a title to land, said to be obtained by fraud.

B. The Appeal Grounds

3. There are two aspects of the learned Chief Magistrate's decision which were the focus of argument.
4. Firstly, Mr Kapalu persuaded the learned Chief Magistrate to accept his submissions that land was not a valuable thing.



5. Secondly, he persuaded the learned Chief Magistrate that because Mr Thomas was the declared "custom owner" of the land in issue, and a challenge to that was dismissed by the Chief Justice in Civil Case no. 13/108, the present prosecution was an abuse of process.

C. Discussion

(i) Is land a valuable thing?

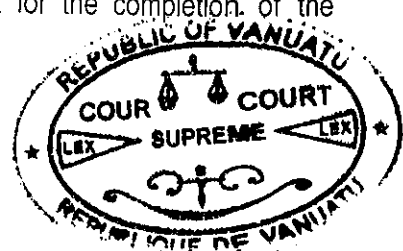
6. The learned Chief Magistrate ruled that the term "valuable thing" as it is used in section 130B of the Penal Code does not include land. I can only assume he was considering the analogous authorities that deal with the definition of what is capable of being stolen – and land is most probably outside that concept.
7. However, the real question here did not involve land, it involved the title to land – a quite different matter altogether.
8. There can be no dispute that a title to land is a valuable thing. Indeed, Mr Kapalu had to accept as much when I challenged him as to this.
9. Mr Kapalu attempted to argue that my proposition was correct only if the holder of the title is the genuine owner; but of course a stolen title may still be transacted for value as if genuine.

(ii) Was there an abuse of process?

10. The civil challenge to ownership of the land was not a decision based on the merits of the case. The Chief Justice ruled the claim was out of time, and he dismissed the case on that basis. The learned Chief Magistrate has recorded that the claim was time barred, but also that "...there was no clear cause of action". As the merits of the claim were not examined at all, I find it hard to see where this statement derives from.
11. However, even if the Chief Justice had given a judgment based on the merits, that cannot possibly preclude a criminal prosecution being undertaken essentially dealing with the same issue, as the standards of proof are quite different, and the rules as to admissibility of evidence in the two types of proceedings are different.
12. There is no abuse of process discernible. The Public Prosecutor is well within his rights to commence a prosecution for alleged fraudulent conduct, if he is satisfied there is sufficient evidence to establish that and that it is in the public interest to proceed. The earlier civil case has no bearing on the Public Prosecutor's discretion, although some relevant evidence may flow from it. Whether the Public Prosecutor succeeds or not, will depend on the evidence produced.

D. Result

13. In relation to both points on appeal, I find for the appellant.
14. Accordingly, I direct the matter back to the Magistrate's Court for the completion of the preliminary inquiry.

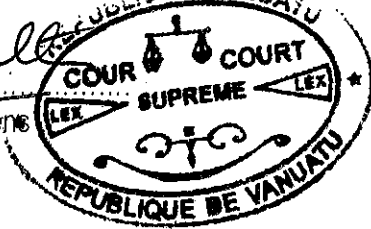


15. There will be no order for costs at this stage of the proceedings.

Dated at Port Vila this 8th day of June 2018

BY THE COURT

Janchei Ullat
Justice G.A. Andree Wiltenis

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The words "REPUBLIQUE DE VANUATU" are written along the top inner edge, and "REPUBLIC OF VANUATU" along the bottom inner edge. The words "COUR SUPREME" are written across the center, with "COUR" on the left and "SUPREME" in the middle. The word "COURT" is written on the right side. The word "LEX" is written in two small boxes on either side of the central emblem.