

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

**Criminal
Case No. 18/2300 SC/CRML**

PUBLIC PROSECUTOR

V

BILL IAPSON

Coram: Chief Justice Vincent Lunabek
Counsel: Mr. Simcha for Public Prosecutor
Mr. Daniel Yawha for the Defendant

Dates of Hearing: 25th July 2019
Date of Ruling: 25th July 2019

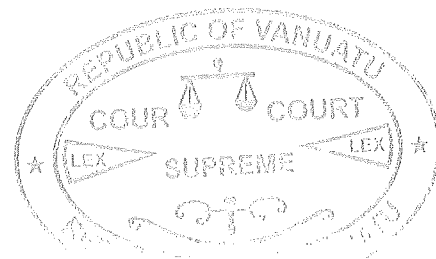
**RULING ON NO PRIMA FACIE CASE MADE OUT AS THERE IS NO EVIDENCE ACCUSED COULD BE
CONVICTED AND A VERDICT OF NOT GUILTY PRONOUNCED**
(Section 164 (1) of the Criminal Procedure Code [CAP 136])

Introduction

1. Defendant Bill Iapson is charged with one count of sexual intercourse without consent, contrary to section 90 and 91 of the Penal Code Act [CAP 135]. He pleaded not guilty to the charge. A trial proceeded on 25 July 2019 on that basis.
2. The Prosecution applied and the Court granted his application for the complainant (E.S.Y) to give her evidence in close Court and that her name be suppressed.

Onus and Standard of Proof

3. The onus of proof rests on the prosecution and never shifts. The standard of proof is that the prosecution which lays the charge must prove it beyond a reasonable charge. If there is a reasonable doubt that exists at the end of the trial, I must acquit the Defendant.

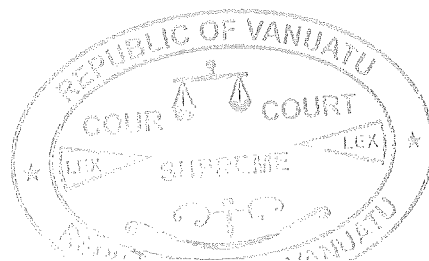


Elements of offence

4. The prosecution must prove each and all essential elements of the charge beyond a reasonable doubt before the Defendant could be convicted:
 1. That the Defendant had sexual intercourse with the complainant in the house of the Defendant on 21 August 2014;
 2. That the complainant did not consent for sex with the Defendant in his house on 21 August 2014;
 3. That the Defendant did not have a reasonable belief that the complainant consented for sex with him at his house on 21 August 2014.

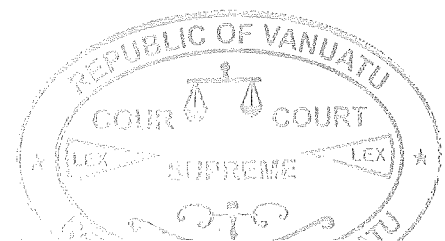
Prosecution evidence

5. The prosecution called two witnesses: The complainant herself and Evlyn Naru Peter, the Nurse Midwife at the Lenakel Hospital.
6. The evidence of the prosecution witnesses are tested and challenged under cross-examination by the defence.
7. I now refer to the evidence adduced by the prosecution more particularly, the evidence relating to the elements of the crime the Defendant has been charged with. Here the complainant (E.S.Y) gave her evidence in close Court. She is 21 years old. She is from Laukatai village, Tanna. She now lives in a de facto relationship with a man at South West Bay, at Lapo village, Malekula. She did her primary school at Laukatai village, and she attended her secondary school at Tafea College. Defendant Bill Iapson began teaching at Tafea College in 2014 and was also the principal of that college in 2014. She knew him and started to talk to him in the second term when her parents told her that he was a member of their family and she called him tawian. She went to his house from time to time.



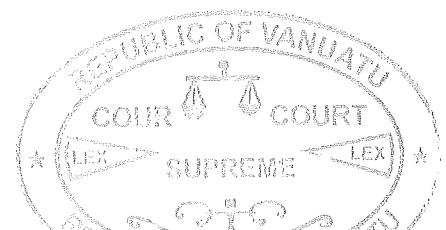
Defendant told her if she needs anything she could ask him for help. He gave her money and food as he was the principal of the school and also a family member.

8. In July 2014, she was still at Tafea College. She recalled in July 2014, she asked the Defendant to transport her with her family to attend a celebration organized by the Iauko group at Middle Bush, Tanna. The Defendant came and took them in his truck to Middle Bush, Tanna at the celebrations. Defendant asked her to follow him to charge his mobile phone. He asked her to follow him to the toilet. The toilet was on the other side of the road where the celebrations took place. The Defendant urinated and asked to kiss her. She refused. They went back to the celebrations. He told her they will drop off some school staff but they had already left. He told her to go with him to the volcano. It was just him and her. They went and they arrived at a place called "Nose blong Pig." She told him she wanted to go to the toilet. She went and after she returned, he opened the door of the truck and asked her for sex. She said she refused. He tried to pull the zipper of her clothes but could not as it was broken. She went back in the truck and took a plate of food and capsized it on the Defendant. They returned back to the celebrations. They watched boxing shows and the Defendant drove her back with her parents into her village.
9. At the place where the toilets were located, it was dark. People who were at the celebrations could not see them. There were trees that blocked the toilets. The toilets were in the bush.
10. When and after the Defendant wanted to kiss her, she did not call out. She was afraid he was the principal of the school and a big man she was afraid he would kill her. She did not tell her mother of what the Defendant did to her. She was afraid her mother will talk to her and she was afraid to tell as the Defendant held a high position.
11. In July before the incident of 21 August 2014, she went to see the Defendant in his house (Principal residence) and asked him permission to go and see her mother in the village. He told her he did not hear what she said. He invited her in the house. She opened the door and went inside and told him she wanted to go and see her mother. He tried to pull her

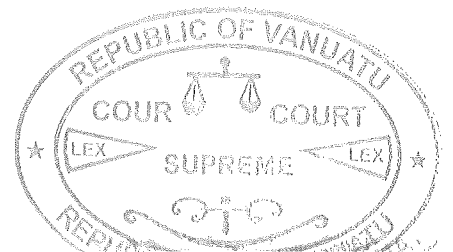


hand to have sex with her. She told him she was afraid as there were girls outside. She removed her hands from his and went back to the dormitory. The house of principal was about 80-100 meters from the school dormitory. There is no other person in the house. She did not call out as he was a mature man. She is just a child. She did not tell her mother what the Defendant did to her.

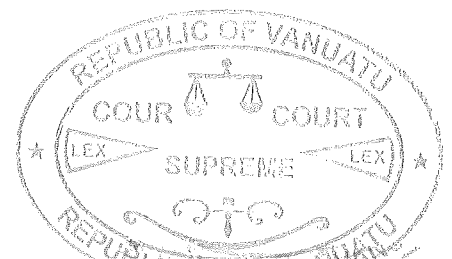
12. On 21 August 2014, she and Angelina went to the principal's house. He told them to go to his house. He invited them to go and ate corn. He asked them what they cooked in the school hall. They replied kumala. He told them he had just boiled white rice and there was no meat. They told the Principal, they were going to have the rice. He told them to get a can of meat at the store and mark it on credit to his name. They ate rice and tuna. After they ate, Angelina took the plates and washed them in the kitchen. She was in the sitting room with the Defendant. The Defendant told her that after they returned to the dormitory she will come back by herself to see him. She said she told Angelina that the Principal said she will go back to his house.
13. She went back to the Defendant's house. She knocked and opened the door. He pulled her in the house. He held her hand and pulled her inside his room.
14. She said there is no other person in the Defendant's house. He asked her to have sex with him. He told her to remove her clothes. She told him she was afraid as he has a woman and she did not want. He insisted she removed her clothes. She was afraid. He told her to lay on his bed. She removed her clothes and lay on the bed. He laid on top of her. He tried to have sexual intercourse with her. He tried to penetrate her vagina. His penis penetrated her vagina. During the sex, the Deputy Principal knocked at the door of the Principal and call for the truck. The Defendant wore his trousers and went to speak to his Deputy outside. She was in the room. The Deputy Principal did not see her.
15. After the Deputy Principal left, the Defendant gave her 1, 000 vatu and told her not to tell any person of what happened.



16. She said she forced herself to take that note of 1, 000vt as she was afraid. She returned to the dormitory and told Angelina the Defendant gave her 1, 000vt as he had sex with her and he told her she should not tell any person. Three days after she told the Deputy Principal of what happened on 21 August 2014. She came to the police station to lodge her report against the Defendant and she went to the Lenakel Hospital.
17. She said she was not in a boy-girl friend relationship with the Defendant. She did not like him. He is a mature man. He has children. She was a student and he was the principal of her school.
18. The complainant was cross-examined. She was asked and she confirmed that when the Defendant asked her to lay on the bed, she went and laid on the bed. She was asked and she accepted she took off her clothes. She was asked and she confirmed the Defendant was on top of her. She was asked and she confirmed and accepted she laid on the bed ready to have sex with the Defendant. She was asked she accepted she saw the Defendant removed his trousers. When he tried to have sex with her, he took time as his penis is big. She accepted he managed to penetrate her vagina. She was asked she accepted she removed her clothes herself. She was wearing a black skirt she could not remember. She was asked she said she knew she took off her skirt, bra and underwear herself by force not with her consent. She was asked she said the Defendant had no weapon at that time. The room is big between 3-4 meters. The Defendant was with her in the room. He did not threaten her when she took off her clothes and climbed the bed. She did not call out when she climbed on the bed. The Defendant did not grab her and put her on the bed. But sex was not with her consent.
19. During the time the Defendant tried to penetrate her she was asked if he tried for a long time. She answered "*ino long time tumas.*" She did not call out. When the sexual intercourse happened she did not call out. When the Defendant tried to have sex it was quiet as it was dark. During sexual intercourse, he put his hands on each side of her when he had sex with her. He did not hold or block her mouth.

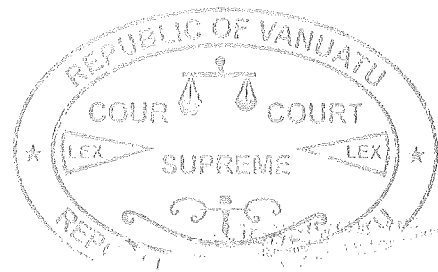


20. It was suggested to her that when he asked her for sexual intercourse she accepted she was afraid. She accepted he insisted to have sex with her. She was asked she was afraid because of his position as the principal of school. She accepted because he is a big man as the principal of school.
21. She was asked after the Defendant insisted to have sexual intercourse with her, she accepted and decided to take off her clothes and had sexual intercourse with him.
22. She was taken back to Yauko celebration at Middle Bush, Tanna. It happened on 22 July 2014. She accepted she called the Defendant by phone when she was in her village at Laukotai. He is the principal and her tawian. As the principal he told her that if she needed anything she could ask him.
23. It was suggested the Defendant will say they had a boy-girl friend relationship. She denied. She sat with the Defendant in the front passenger seat. It is a faraway distance. She denied they communicate as boy-girl friend relationship. She could not remember what they were talking about.
24. At the Middle Bush, she could not remember Digicel made promotion of their new brand mobile phone. She was asked if she could remember she asked the Defendant to purchase her a Digicel Touch Screen mobile phone. She said she could no longer think about.
25. At the drop off at Middle Bush, she accepted she followed the Defendant to watch the celebrations. They went to the stalls. She accepted just the two of them.
26. She was asked one of them wanted to go to the toilet – she said the Defendant. She was asked she also wanted to go to the toilet. She said she could not remember. She accepted they had to cross the road on the other side, it was a bit far to the toilet. It was put to her they went to the toilet together as they have a relationship. She said there was no other person with her so they went to the toilet. She accepted she had urinated too and she accepted the Defendant was not too far from her. When she finished, the Defendant asked her for sex. She said he asked to kiss her. It was put to her that the Defendant kissed her.

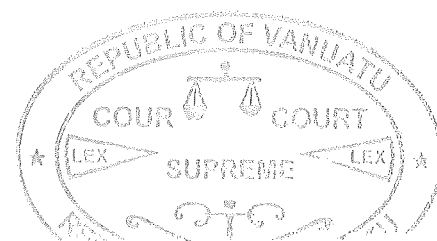


She said no. It was suggested to her that the Defendant will say that they had sex standing together. She did not remember. She accepted when asked that after the sex at the toilet, they went into the truck. She accepted they went to a place called "Ksu Coffee Iken" at the road to the way to the White Sands. She accepted they stopped next to the trees because she wanted to go to the toilet. She accepted the Defendant was in the truck when she urinated. He was viewing her while she urinated at that time. She was asked she could not remember when she returned to the truck, whether they had talked. It was put to her that the Defendant took a mat from the truck and they had sex on it. She said no. She denied the communication between them all that night was intimate. It was put to her she denied they came far away to have sex that night away from the public. They returned again to the celebrations. They watched the boxing show. The Defendant drove them back with her parents to the village.

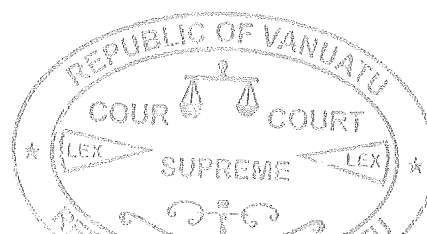
27. It was put to her that on another time in July 2014, the Defendant called her in the night when she was at Isiny. She confirmed. She told the Defendant she was with her boyfriend Noah Roger. She denied the Defendant took her to the village. She saw her boyfriend at that time only. It was suggested to her that the Defendant took her in the truck to his house and slept with her at his house. She could not remember. It was said they had sex and the Defendant dropped her again on the road near Laukotai Village as they did not want people to see them at that time. She could not remember.
28. On 21 August 2014, Defendant invited her and Angelina to his house. Angelina washed the plates. She was with the Defendant in the room. She was asked the Defendant told her that the mobile phone she asked him to buy he had it with him. She said no. She was asked if she remembered she told the Defendant not to give her the mobile phone as Angelina will see. She said she remembered – she forced herself to take the mobile phone.
29. It was put to her she did not want people to know of her relationship with the Defendant. She said no.



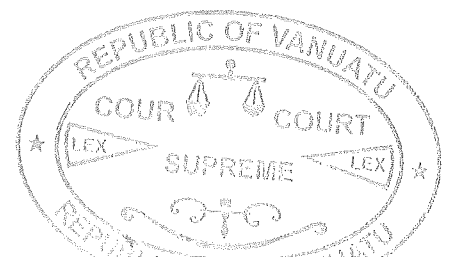
30. It was put to her she accepted that the reason she came back to the house of the Defendant was to take the mobile phone – she said yes. She accepted she and Angelina went into the dormitory first and she came back alone to take the mobile phone.
31. She was confronted with what she said in her additional statement to the police dated 5 February 2015 whether she came back to the house of the Defendant to take a parcel or to take the mobile phone. She answered she signed the additional statement but she did not write it. Then she accepted that it was true she came back to the house of the Defendant to take the mobile phone. Her statement that she came back to the house of the Defendant to take a parcel sent by her mother is not true.
32. It was put to her that at that time she went with Madeline Louis to the house of the Defendant. She accepted she went back to the house of the Defendant with Madeline. Madeline went into a different room of the house of the Defendant. She accepted Madeleine is her friend and she is from Lomkai, she is now in Port Vila.
33. She accepted that after the sexual intercourse, the Deputy Principal of the school came and knocked at the door and asked the Defendant for the truck to transport a sick student in the hospital.
34. The Defendant opened the door and met with the Deputy Principal Alexis Kapalu at the main door. She was in the room. The Defendant changed and took the sick student to the hospital. She could not remember when the Defendant came back. She could not remember the Defendant came back to see her in the room.
35. She accepted she stayed with the Defendant in the room until 4.00am O'clock in the next morning.
36. When she was with the Defendant in his room, Madeleine was sleeping in another room of the Defendant's house.



37. She denied when the Defendant came back from the hospital she had sex again with him. She accepted the Defendant took about 2 hours to return from hospital. It was put to her she said she decided not to go to the dormitory but she went to see Madeleine who was sleeping in the other room. She did not tell Madeleine that the Defendant had sexual intercourse with her without her consent. She was afraid Madeleine will reveal the secret. She did not ask Madeleine to follow her to the dormitory. She was afraid she will know.
38. She accepted another girl was with her at the time of sexual intercourse with the Defendant at the house of the Defendant. She also agreed that she did not mention her presence to the police because she was afraid Madeleine would know.
39. She accepted she hid the presence of Madeleine to the police and as a result Madeleine did not make a statement to the police. She also said because of what she did she did not want they also spoilt Madeleine's name.
40. She accepted that after the incident of 21 August 2014, Madeleine revealed the incident. She also accepted that after Madeleine revealed the incident, the teachers came and interviewed her.
41. She accepted that the school rules do not allow relationship between student and teachers.
42. It was put to her that when Madeleine reported her to the teachers she did not want the school to sack her from the school, she alleged that the Defendant raped her, she said no.
43. Sometime in January 2016, she was in Tanna and she accepted she called the Defendant on the phone. It was put to her she asked the Defendant money to pay for her fares back to Vila. She said she was drunk with some friends when she called the Defendant.
44. She accepted the Defendant and his wife told the pastor to tell her to stop. She said in 2016, her friends forced her to call the Defendant.
45. When she was re-examined, she clarified that she went back to the house of the Defendant to take the phone she said she was afraid to tell Angelina about it.



46. The Defendant told her to wait for her. She was afraid to tell anyone.
47. Evelyn Naru Peter gave evidence that she is a Midwife at Lenakel hospital over 21 years. She examined the complainant. She could not examine her on 8 September when she came with her parents because she had her menstruation. She examined her on the 12 September 2014 instead. On 8 September 2014, she did pregnancy and serology tests when the patient said she had sex. They were routine checks. She checked the complainant's vagina on 12 September 2014. She got infections but she said it was not from sex. She got syphilis. Syphilis can be contracted through sex. She examined her hymen there is nothing to prove recent tear. She saw the hymen was loose. She wrote down what the complainant told her of how she felt. Hymen loose is indictable of previous intercourse.
48. When she listening to the history of the complainant, she gave her different versions of what happened to her. The complainant was not sure of what happened to her. When the hymen was loose, she cannot say the sex was forced. The complainant said her anus was painful when touched. She said it could be related to the sex or it could be related to something else.
49. All the test in Exhibit P1, P2, P3. P4, P5 and P6 were made on what the complainant and her parents told her.
50. In her cross-examination, she said the complainant came and told her different version of what happened to her. The complainant did not tell her of a consistent version of event the first time she told her different thing. The second time she told her a different thing again. She gave an example that the first sexual intercourse was said to be with violence she was no sure. The first time the complainant said she came because of sexual violence. The second time the complainant cannot say the sex was violent. She cannot say that she has syphilis from the incident of 21 August 2014 as syphilis took a long time to appear about 1, 2 or 3 years. It was in the blood. Syphilis is transmitted through sex but started a long time to come out. Syphilis can came from multiple sex-partners.



51. This is the end of the prosecution evidence and case.

Assessment of whether or not a prima facie case is made out based on a finding that a verdict of guilt could be made by me as a reasonable judge in this case on the evidence thus presented

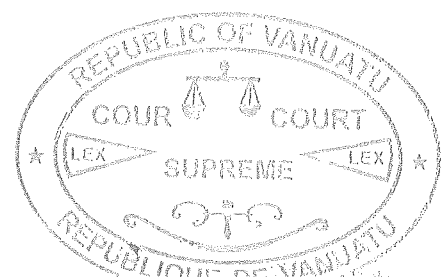
52. The prosecution evidence in chief through the evidence of the complainant is to the effect sexual intercourse occurred between the Defendant and the complainant on 21 August 2014. There was no violence by the Defendant. The complainant said she was not consented to that sex.

53. In her cross-examination she accepted the Defendant insisted more than once to have sex with her. She was afraid however she accepted to have sex with him. She removed herself her skirt, bra and underwear. She was naked when she climbed on the bed in the room of the Defendant. She laid on the bed after her clothes were off. She laid on the bed in the position to have sex with the Defendant. The Defendant was on top of her. He took some time to penetrate her vagina as his penis was big. He did not hold her mouth. She did not shout. He managed to penetrate her vagina.

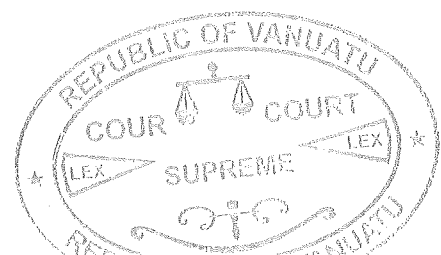
54. When the Deputy Principal knocked on the door of the Defendant because a student was sick and needed to be taken to the hospital, she was afraid to be seen by the Deputy Principal so she hid in the other room of the house of the Defendant. She did not shout or came and complain to the Deputy Principal.

55. Also she did not tell all the truth to the police officers. She actually returned to the Defendant's house in the evening of 21 August 2014 just before the sex with her friend Madeleine who slept in the house of the Defendant. Madeleine was in a room at the Defendant's house when the Defendant had sex with the complainant in his room on 21 August 2014.

56. The complainant knew this as she went with Madeleine in the Defendant's house that evening.



57. The complainant did not tell Madeleine of what the Defendant did to her. The complainant was afraid that Madeleine knew the Defendant had sex with her. Because the complainant did not reveal the presence of Madeleine at the time of sex in the house of the defendant, Madeleine did not make a statement to the police of what she knew of the allegations.
58. Further, the complainant filed a first statement to the police that the Defendant told her when she was with him in the sitting room while Angelina washed the plates in the kitchen, that after Angela and her would return in the dormitory, she would come back alone in his house to see him.
59. That statement was partly true as the Defendant told her to come to take the mobile phone she asked him to purchase when the Defendant drove her and her parents at Yauko group celebrations in the Middle Bush, Tanna in July 2014. She did not want the Defendant to give her the mobile phone in the presence of Angelina as Angelina would suspect something so she accepted to come back to see the Defendant in his house to take the mobile phone.
60. Finally, the complainant filed an additional statement on 5 February 2015, to the effect that the Defendant asked her to go to his house alone to take a parcel sent by her mother. Again, she lied about the parcel in her additional statement. She accepted the mobile phone was true she admitted in her cross-examination.
61. I find that the evidence of Evelyn Naru Peter and her medical findings are not conclusive. Evelyn's evidence cannot corroborate or cannot sustain the complainant's evidence. I find also that the complainant gave contradicted or inconsistent evidence of the crime. The complainant was not consistent with the history of what happened to her. She further lied in her statement. She finally lied to the police by hiding to reveal the presence of a person she knew she was present in the house when and where the crime was alleged to have been committed on 21 August 2014. The complainant might be truthful in her evidence that the sexual intercourse happening on 21 August 2014 was made without her consent,



however, the totality of evidence is against her version of what she said happened between her and the Defendant on 21 August 2014.

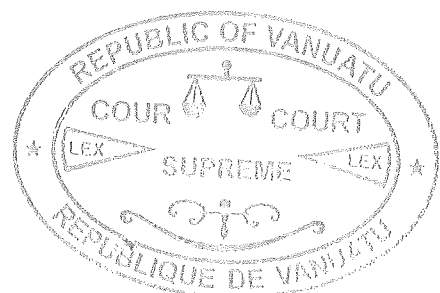
Application of law on whether or not a prima facie case is made out

62. At the end of the prosecution evidence and case, I invite the Defence counsel (Mr. D. Yahwa) if he wishes to make an application. He responded instead for the Court to make a ruling pursuant to section 164 of the Criminal Procedure Code Act [CAP 136]. That section provides:

- 1) *"If, when the case for the prosecution has been concluded, the judge rules, as a matter of law that there is no evidence on which the accused person could be convicted, he shall thereupon pronounce a verdict of not guilty.*
- 2) *In any other case, the Court shall call the accused person for his defence and shall comply with the requirements of section 88."*

63. Following cases provide the guideline to follow in such situation: **PP –v- Samson Kilman & Ors [1997] VUSC 21; No.5 of 1997** sets out the guideline judgment for the Court when faced with a case of no submission or a ruling as a matter of law to stop the case there and then which there is no evidence that the crime alleged has been committed by the Defendant. In Kilman's case, the Court adopted the pronouncement by Lord Cane CJ in **Reg v. Gailbraith (CA) (1981) 1WLR 1039**. The relevant passage reads as follows:-

- 1) *"If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty the judge should stop the case.*
- 2) *The difficulty arises where there is some evidence but it is of tenuous character, for example, because of weakness or vagueness or because it is inconsistent with other evidence-*



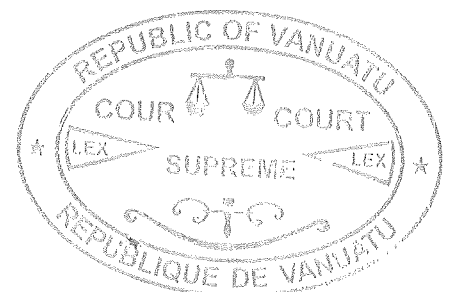
- a) *Where the judge concluded that the Prosecution case taken at its highest is such that a jury properly directed could not properly convict on it; it is his duty on submission being made to stop the case.*
- b) *Where however the prosecution case is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where there is evidence on which the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty then the judge should allow the matter to be tried."*

64. In **PP –v- Noal [2016] VUSC 177, criminal case No.1487 of 2016 (2 September 2016)**, Geoghegan J adopted the test as stated by Speight J in **Auckland City Council –v- Jenkins** when the Court stated:-

"A tribunal deciding whether or not there is a case to "answer" must decide whether a finding of guilt could be made by a reasonable jury or a reasonable judicial officer sitting alone on the evidence thus far presented. He is ruling in fact whether it is 'prima facie' – a well understood phrase."

Conclusion

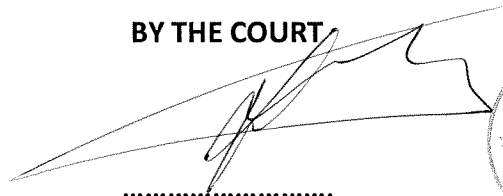
- 65. I have the test in mind and adopt it in this case under section 164 of the Criminal Procedure Code [CAP 136]. The test is not proof beyond reasonable but rather as a matter of law whether the accused person could be convicted on the evidence presented thus far.
- 66. In deciding whether or not there is a case to "answer", I must decide whether a finding of guilt could be made by me as a reasonable judicial officer sitting alone on the evidence thus far presented.
- 67. In this case, I conclude as a matter of law that the prosecution case taken at its highest is such that a reasonable judicial officer could not properly convict on it, it is my duty on submission being made to stop the case.



68. A verdict of not guilty is pronounced in favour of the Defendant Bill Iapson.

DATED at Isangel, Tanna this 25th day of July, 2019

BY THE COURT



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Vincent Lunabek
Chief Justice

