

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

Criminal
Case No. 21/3790 SC/CRML

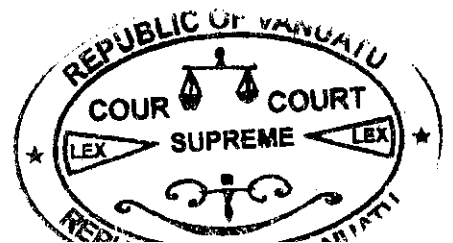
BETWEEN: Public Prosecutor

AND: Silas Kunai
Accused

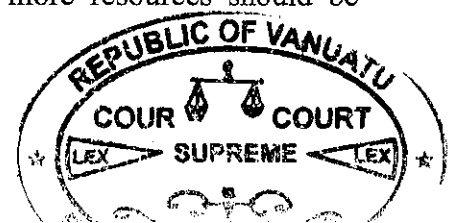
Date of Hearing: 19th July 2022
Before: Justice EP Goldsbrough
Appearances: Simeon, G for the Public Prosecutor
 Tasso, F for the Accused

DECISION

1. This matter was first listed in the Supreme Court on 7 December 2021 when it was listed for plea. The allegations arose in June 2017 and were committed for trial from the Magistrates' Court in November 2021. In December 2021 there was no information filed and so the plea hearing was ineffective. The matter was adjourned to the following plea date of 1 February 2022 when the matter was again listed for plea
2. On 1 February 2022, the Court was informed that no information had been filed and so the matter was adjourned to 23 February 2022 and, once again, listed for the plea. By 23 February 2022, an information had been filed, but it had only been filed on 22 February 2022 and had not been served on the defence. That led to the matter being adjourned to 28 February 2022 for the plea.
3. On 28 February 2022 not guilty pleas were entered and the matter adjourned to 29 March 2022 for trial. That trial was vacated as it fell within the period of COVID-19 restrictions when trials were not allowed to be held.



4. To put the matter back on schedule, a notice of hearing was issued for 12 July 2022. On that date counsel for the defendant was ill but sent another lawyer to handle the matter. No one from the Office of the Public Prosecutor attended nor was any explanation for that non-attendance offered. The office telephone went unanswered.
5. The matter was then set down for trial at a date convenient to the Court. It was not possible to hear representations as to a suitable date for the prosecution's point of view as they chose not to attend the hearing. A trial date of Tuesday 19 July 2022 was set. On 18 July 2022, an email was received from the office of the public prosecutor suggesting that the court should rearrange the trial date as it was not convenient for the particular officer from the office of the Public Prosecutor.
6. On 19 July 2022, the defendant appeared with his lawyer. The Public Prosecutor through his representative asked for an adjournment which application was refused. As no witnesses were available for the hearing, the charges were dismissed for want of prosecution.
7. 19 July 2022 was the fifth time that the defendant had come to the Supreme Court about his case. It is not known how many times he was required to attend the magistrates' court before then, but his matter took quite some time to reach the Preliminary Inquiry stage. On the other hand, the office of the Public Prosecutor sent no representative on 7 December, 23 February 2022 and 12 July 2022. A different person was sent to explain the failure to file the information on 1 February 2022. The only single time that the officer actually allocated responsibility for this case appeared was on 28 February 2022 when the plea was entered. It is without doubt that he would not have attended today, given the tenor of his email message.
8. When earlier this case was going off track, the Public Prosecutor himself was alerted, as happened again before today, to ensure that someone from his office turned up. That should not be necessary. If the same failures are repeated, there will be no warning sent, at least by this judicial officer.
9. The case is old, the parties have long separated and the defendant no longer knows where the alleged victim lives. The defendant agrees to leave this court being bound over to be of good behaviour and keep the peace for the next six months. I do not believe that the interests of justice would be served by him having to come back to court to answer this charge nor do I believe that any more resources should be



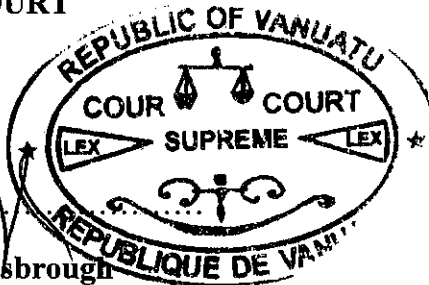
allocated to this case. It has already taken much more lawyer and court time than it warrants given its nature.

10. The Office of the Public Prosecutor should answer to the alleged victim if she feels aggrieved. Perhaps had that office being able to complete the necessary steps with a little more expedition it would not have come to this.
11. In the event the two charges are dismissed. The defendant has agreed to be bound over to keep the peace for the next six months and thereafter this matter will come to an end.

Dated at Port Vila this 19th July 2022

BY THE COURT

EP Goldsbrough
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Justice EP Goldsbrough

The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scale, the word "SUPREME" is written in a larger font. On either side of "SUPREME" are the letters "LEX" inside a triangle. At the bottom of the seal, there is a decorative flourish.