

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

**Criminal
Case No. 22/94 SC/CRML**

BETWEEN: Public Prosecutor

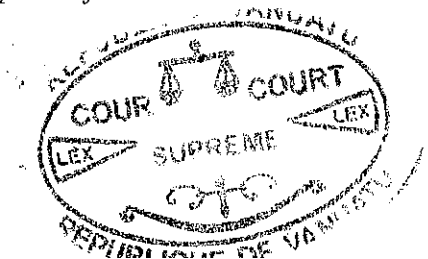
AND: Timothy Malon

Defendant

Date of Hearing: 2nd day of June 2023
Date of Oral Decision: 2nd day of June 2023
Date of Written Decision: 2nd day of June 2023
Before: Justice Oliver Saksak
In Attendance: Mrs Betina N Tamau for Public Prosecutor
Mrs Mary Nari Grace for the Defendant

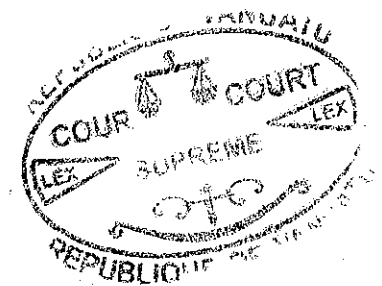
DECISION ON NO- CASE SUBMISSION

1. Mrs Nari informed that Court about her intention to make a no case submission. Counsel filed her submission on 1st June 2023 at 3:40pm.
2. Mrs Nari gave summaries of the evidence given by the Prosecution witnesses and made submissions about the elements of the two charges required to be proved in light of the evidence adduced.
3. Relying on section 164 (1) of the Criminal Procedure Code (the Act) and the case authority of PP v Suaki [2018] VUCA 23, Mrs Nari submitted it is unjust to continue the trial on discredited or unreliable evidence and that the Court should enter a not guilty verdict.
4. Mrs Tamau responded and submitted that the test to be applied on a no case submission is whether the Prosecution has established a prima facie case to require the defendant to make a defence.
5. Section 164 (1) of the Act states:
"If, when the case for the prosecution has been concluded, the judge rules, as a matter of law that there is evidence on which the accused person could be convicted, he shall there upon pronounce a verdict of not guilty."
6. Section 135 states:
" Acquittal of accused person when no case to answer. If at the close of the evidence in support of the charge it appears to the Court that a prima facie case is not made



out against the accused person so as to require him to make a defence, the Court shall dismiss the case and shall forthwith acquit him.”

7. In every criminal case the Prosecution has an onerous task of proving the guilt of the accused who is always deemed to be innocent of the charge or charges against him unless and until proven guilty. The standard is not merely that there is no doubt, it must be on the threshold of proof beyond, and not merely doubt, but beyond reasonable doubt. That is a very high threshold for the Prosecution.
8. Mrs Nari submitted in this case there is no evidence adduced to require the accused to answer to. Counsel submitted that the evidence of the main prosecution witness, Amy Kaltapau was general and not corroborated. There were no dates, times and location of each transaction that were asserted to have occurred. That there were no records of moneys paid and/or received and there were no call logs provided despite the Magistrates Court had issued specific orders. She submitted the evidence about the audio recording was contradictory and manifestly unreliable.
9. I accepted the submissions of Mrs Nari that there was no evidence sufficient or at all thus far produced by the prosecution to show that the signatures appearing on the “fake” extensions were those of the accused. I accept there was no evidence by prosecution witnesses that connected the defendant directly to (a) being in possession of the stamp numbered “ 647” and (b) that he was seen at the Immigration Office on given dates and times requesting for the stamp for his use, and (c) that he had the stamp in his possession at anytime before and after his retirement in April 2020.
10. I acknowledge there was the evidence and the only evidence by Amy Kaltapau identifying the accused at dock from the witness box, that she gave him passports and moneys. However identification is a non-issue. The offences charged were forgery (Count 1) and receiving money by deception (Count 2).
11. The issues were therefore: (a) whether the accused placed his signatures in the victim’s passports, and (b) Whether he received the moneys it is alleged he was given?
12. The relevant questions are: Has the prosecution adduced evidence that the accused signed the extended visas, and whether he received moneys as fees which should have been to the State?
13. Despite the evidence given by all the witnesses who testified orally and were cross-examined by Mrs Nari, there simply was no evidence to show-
 - a) The accused was in the possession of stamp No. 647,
 - b) That he attended the Immigration Office to request for its use,
 - c) That he placed his signatures on the approved extended visas,
 - d) That he duplicated the stamp,



- e) That he was paid any moneys that is alleged he was paid.
14. The audio recording is a mystery. Two witnesses for the prosecution said they heard it on 13 July 2021. Mr Iatika changed the story in the witness box that he had recorded before, but could not specify the date. In addition he lost his phone. His evidence is contradictory and unreliable. His evidence and the recording are inadmissible and are rejected.
 15. There was evidence of only one stamp and that stamp was always kept in the Office of Immigration. There was no evidence that it was used at any other place or that it left the office. And there was no evidence that the accused had attended the office to demand for its use at any time.
 16. None of the victims who gave their passports and cash money to Amy or Chen Ji had any documentary evidence showing the dates and the actual amounts of moneys they gave to either Amy or Chen Ji.
 17. Amy Kaltapau had no record of moneys she received from each victim and no record of telephone calls she made.
 18. The accused's assertion that he was remanded in custody on 13 July 2021 when it was asserted the recording was done which is the accepted evidence by Mr Brown and Mr Willie was not rebutted or challenged by Prosecution.
 19. The Prosecution ended its case. From the evidence they adduced, there was hardly any evidence which required the accused to make a defence. No prima facie case was established by the prosecution. There was no evidence produced by prosecution to prove the essential elements of forgery (Count 1) and of obtaining money by deception (Count 2).
 20. There is therefore no case to answer by the accused.
 21. Accordingly the two charges against him are hereby dismissed. He is acquitted of the two charges and is free to leave.

DATED at Port Vila this 2nd day of June 2023

BY THE COURT


OLIVER A SAKSAK

Judge

