

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

Criminal
Case No. 24/3804 SC/CRML

PUBLIC PROSECUTOR

V

MICAH JONAH & OBED HIWA

Date of Ruling: 12th March 2025
Before: Justice Josaia Naigulevu
Counsels: Acting Public Prosecutor – Mr. Christopher Shem
Public Solicitor – Mr. Harrison Rantes

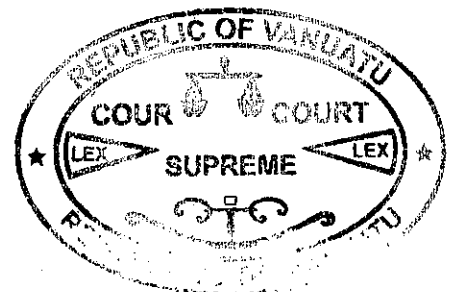
RULING

The Submission

1. At the close of the prosecution case in the trial of Micah Jonah and Obed Hiwa, Mr Harrison Rantes, the counsel defending the two accused persons presented a motion stating that there was no case to answer for his two clients that required them to present their evidence. This motion was made pursuant to section 164 (1) of the Criminal Procedure Code.
2. The prosecution at that point had called the lone witness Alvin Jimmy, the complainant to testify. Earlier three other statements, those of Douglas Jason, Jimmy Jason and Fred Naura had been admitted as evidence on the basis of a Memorandum of Agreed Matters filed on the 11th March 2025. We shall refer to those statements later.
3. Mr. Shem chose not to respond to the defence motion.
4. The submission did not cover count 2, a count relating to the offence of domestic violence against Obed Hiwa alone. That count is being dealt with separately after an early guilty plea by Hiwa.

The Law

5. Section 164 (1) of the Criminal Procedure Code provides:



- b) The complainant did not consent to the sexual intercourse with the accused persons;
- c) The accused persons could not have reasonably believed that the complainant was consenting to the sexual intercourse.

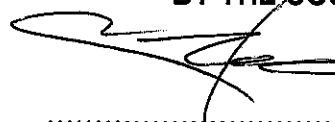
Assessment of the evidence

- 12. During the course of the trial the complainant was asked whether anything happened in the presence of the two accused persons separately on the night of the 5th September 2024. In relation to the first accused Micah Jonah, she said that whilst in his room, the accused person did not have sex with her.
- 13. In relation to Obed Hiwa, her evidence pointed to the fact that nothing significant occurred after they returned from town. They did not enter the bush as suggested to her. The prosecutor did not press the point after that.
- 14. Having heard the evidence of Alvin Jimmy during her examination by the prosecutor, the Court concludes that the prosecution has not led any evidence, to prove any of the three essential ingredients of the offence of sexual intercourse without consent.
- 15. The three recorded statements that were exhibited earlier by agreement did not help advance the prosecution's case.

Findings

- 16. In light of the terms of section 164 (1) of the Criminal Procedure Code, and applying the test pronounced by the Court of Appeal in the Suaki appeal to the entire evidence adduced by the prosecutions, I accept the submission made on behalf of the two accused persons in relation to the offence of sexual intercourse without consent.
- 17. There is no evidence upon which they could be convicted. I must accordingly pronounce a verdict of not guilty for the two accused persons in relation to that charge.
- 18. They are accordingly acquitted of the charge of sexual intercourse without consent. The effect of this ruling is that Micah Jonah will be released from prison today, whilst Obed Hiwa must remain in custody until the count of domestic violence is resolved.

DATED at Port Vila this 12th day of March 2025
BY THE COURT



Hon. Josaia Naigulevu
Justice

