

(Criminal Jurisdiction)

PUBLIC PROSECUTOR -v- ROY MATARIKI

JUDGMENT

Introduction:

The defendant Mr. Roy Matariki is charged with one count of Failure to Maintain Family contrary to section 1 (a) of the Maintenance of Family Act. At the first calling of the case, Mr. Matariki denied the charge and pleaded not guilty.

Prosecution called one witness: Mrs. Saline Matariki, the complainant in the case and the wife of the accused. The accused testified on his own behalf.

Evidence:

Mrs. Saline Matariki gave evidence for the prosecution that she is legally married to the accused. Exhibit P.1 show a copy of their registration of marriage. Exhibits P.2, P.3, P.4 and P.5 show the registration of birth certificates of the four (4) children of the union. Two of the children were born before the solemnizing of the marriage in January 1991 on Emae Island. Evidence largely uncontroverted, show that Mr. Matariki left his wife and their four (4) children about April 2000. The children lived with their mother until the first two attended boarding schools.

In his defense, Mr. Matariki testified that since April 2000, he has paid some money towards rent, school fees and miscellaneous items for the children.

The law:

The Maintenance of Family Act section 1 provides:

“Any –

- (a) man who for a period exceeding 1 month fails to make adequate provision for the maintenance of the woman to who he is legally married or his legitimate children being under the age of 18 years; or
- (b) mother who for a period exceeding 1 month deserts her children being under the age of 18 years;

Shall be guilty of an offence and on conviction thereof shall be liable to a fine not exceeding VT20, 000 or to a period of imprisonment not exceeding 3 months or to both such fine and imprisonment:

Provided that no offence shall be committed under paragraph (a) by a person who is rendered financially incapable of making such provision by reason of –

- (i) illness or injury
- (ii) incarceration in prison; or
- (iii) any other circumstances beyond his control.”

The prosecution has the following elements of the offence to prove beyond reasonable doubt:

- (i) that the accused did not make provisions for a period exceeding 1 month
- (ii) that if there was provision made, it was inadequate
- (iii) that the maintenance was for his legal wife
- (iv) that the maintenance was for his legitimate children under 18 years old.

The law also provides for 3 scenarios when the accused could not be found to be guilty of the offence under this section as he would have been rendered financially incapable of making the required provisions.

Application:

From April 2000 to about June 2001, the defendant did not make any financial provisions or otherwise for the maintenance of his wife and children except for the direct deduction of his salary towards rental for the government owned house they are using. The automatic deduction of salary stopped when the defendant was dismissed from his public service post. I cannot find that the payment of rent was "adequate provision" for the maintenance of his wife and children. The defendant had a job as the Head of the Rural Water Supply section. He was drawing a regular salary of about VT45, 000 per fortnight. Does the defendant's lose of employment qualify him for the third statutory exception? He lost his job and thereby his salary only about 1 year later. For the full year before he found himself unemployed, Mr. Matariki did not make any realistic attempt to satisfy his parental obligation towards his wife and children. I find the prosecution have discharged the burden of proof in relation to the first, second and third elements of the offence as I have identified above. On the last element, the definition of "legitimate" becomes important as two of the children. Again I will not dwell on this issue as it was not argued to any extent. However, I will take the advice of the prosecution and check the dictionary definition of the word. I have done so and find that it is wide enough to cover, in the present case, the two children born before the marriage between the parents and subsequently legitimated by the solemnizing of the union of the parents. I therefore find that the prosecution has also discharged their burden in relation to the last element of the offence.

Having so ruled, I find you, Mr. Matariki guilty of the charge of Failure to Maintain Family and convict you of the same.

Sentence:

I will not sentence you under section 1 but will invoke section 2 of the Act which provides that:

"Where a man is convicted under the provisions of section 1 the court may in such manner as it may think fit order him to make adequate provision for his wife or children being under the age of 18 years."

I accordingly make the orders that:

1. Mr. Matariki make maintenance payments of VT2, 000 for each child per week for their welfare and upbringing on the Monday of every week commencing 24th December 2001.
2. Mr. Matariki make payment sufficient to cover 50% of school fees and associated costs for the education of each and every child.
3. All payments must be made to Saline Matariki's Westpac Bank Account number : 01622 971 50
4. Saline Matariki and the Defendant can apply to vary these orders depending on the financial standing of the defendant improves.
5. In default of Orders 1,2 and 3 the defendant will be immediately arrested and brought before the Court.
6. All these orders will be made null and void only after two (2) month when the defendant returns to his wife and children, on a real and truthful basis, and Saline Matariki agrees that the orders be made so.
7. The defendant reserves the right to appeal within 14 days of the date of these orders.

DATED AT PORT VILA this 19th day of December 2001.

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John Obed Alilee
Magistrate

