

PUBLIC PROSECUTOR

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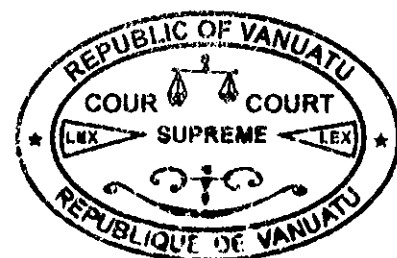
JOSHUA TOVOR

Hearing: 14 September 2011
Before: Justice Robert Spear
Appearances: Gregory Takau for the Public Prosecutor
Jack Kilu for the Accused

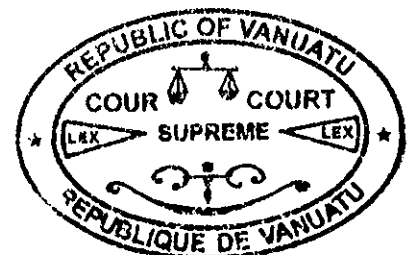
JUDGMENT OF THE COURT

Nolle Prosequi

1. This case was set down for a two day trial to commence today.
2. This morning, when the court convened, I was informed by Mr Takau that the Public Prosecutor offered no evidence in respect of this case and entered a *nolle prosequi*. Of course, this Court has no option in those circumstances but to discharge the accused.
3. Mr Takau explains that the reason why no evidence is offered is that there has been a customary reconciliation process undertaken with the families concerned and the complainant now no longer wishes to give evidence in Court against the accused. The Public Prosecutor is prepared to accept that as an appropriate resolution of the case.
4. I must say that while that may achieve some of the ends of justice, it most certainly does not address the significant need for the criminal justice system to hold those who commit serious criminal offences fully and publicly accountable for their actions.
5. These case involved allegations of serious sexual offending which include the rape of a young woman. While the interests of justice must have regard to the interests of the complainant (as the alleged victim) and the accused (as a person charged with serious criminal offences), they must also have regard to the interests of the Vanuatu community which, indeed, the Public Prosecutor represents. It is of fundamental importance that the Vanuatu community has confidence that those who are alleged to have committed serious criminal offences are brought to justice.



6. A reconciliation ceremony is central to custom in Vanuatu as it is similarly important in many other countries. It can be considered a form of or a part of (what is known as) restorative justice. However, it should not be permitted to be a means in itself by which serious criminal offending can be completely diverted from the criminal justice system of Vanuatu. There may be cases where reconciliation provides the best outcome having regard to the overall ends of justice. In most cases, however, while a private reconciliation ceremony (private, that is, in the sense that it is not public and through the criminal courts) may achieve peace and redress between the families involved, it will not provide the degree of personal and public accountability that the criminal justice system of Vanuatu is designed and required to provide. It will not permit the wider Vanuatu community to have confidence that serious criminal offending in Vanuatu is dealt with fairly, impartially and evenly across all those within the jurisdiction of the Republic.
7. Custom reconciliation is taken full account of by the Courts when dealing with the sentencing of a person who has pleaded guilty or who has been found guilty. It is an important factor in the sentencing process. However, that is quite different to permitting reconciliation to become a complete answer to such serious criminal offending as rape and murder whereby that the prosecution does not take the case to trial.
8. It is not uncommon for a complainant to indicate, before the trial, that he or she does wish to give evidence. That may be because of fear or nerves or even because pressure has been applied not to give evidence. Additionally, such pressure can be quite insidious – for example, the shame of the family at being involved in criminal proceedings, the reserved way in which the complainant is treated in his or her family or community – the possibilities are endless. This usually requires some appreciation of what support, if any, the complainant received after making her complaint, whether she had someone outside the family she could discuss this issue with in confidence, whether this is indeed what she really wants, is she bowing to pressure not to proceed, and suchlike. Experience tells us that a complainant, who has expressed a wish not to give evidence close to the time of the trial, if informed that she must attend court and will be required to give evidence, often does so and gives compelling evidence. I mention this because a person summonsed to give evidence (including a complainant) is required to give evidence otherwise they may find themselves in contempt of court.
9. While I can express my dismay at the course that this prosecution has taken, I can do nothing about it because, in the end, the decision as to whether to offer evidence in support of a case is entirely one for the Public Prosecutor. Where the Public Prosecutor offers no evidence or, more correctly, enters a *nolle prosequi*, the Court is bound by law to discharge the accused pursuant to s. 29 of the Criminal Procedure Code [CAP 136]



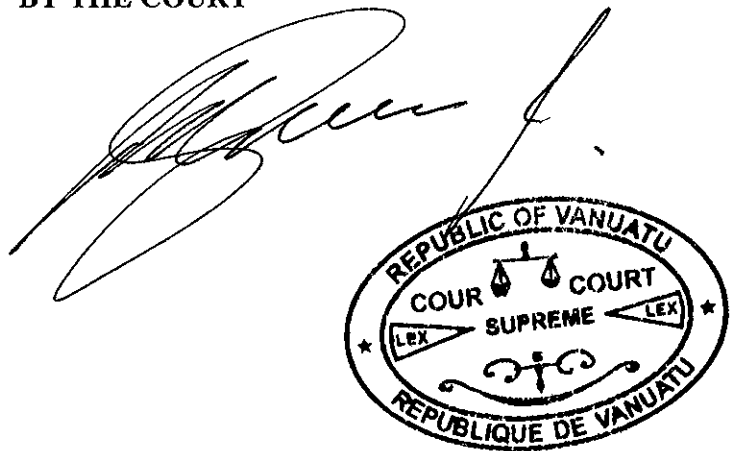
29. Nolle prosequi

(1) *In any criminal case and at any stage thereof before verdict or judgment, the Public Prosecutor may enter a nolle prosequi by informing the court that he intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released; such discharge of an accused person shall operate as a bar to any subsequent proceedings against him on account of the same facts and he shall be treated in all respects as though he had been acquitted.*

(2) ...

JOSHUA TOVOR, a nolle prosequi having been entered by the Public Prosecutor, you are accordingly discharged on all counts.

BY THE COURT



The image shows a handwritten signature in black ink, which appears to be 'Joshua Tovor'. Below the signature is the official seal of the Supreme Court of Vanuatu. The seal is circular and contains the text 'REPUBLIC OF VANUATU' at the top and 'REPUBLIQUE DE VANUATU' at the bottom. In the center, it says 'COUR SUPREME' and 'COURT SUPREME'. There are also two scales of justice and the word 'LEX' on either side of 'SUPREME'. The seal is stamped in black ink.