

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Criminal
Case No. 18/2594 SC/CRML

BETWEEN: Public Prosecutor

AND: Prosper Buletare

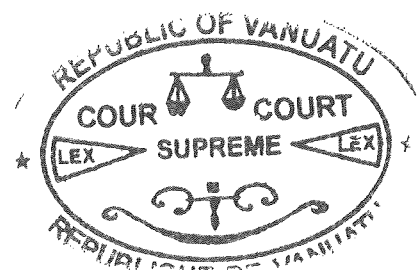
Defendants

Date: 26 – 27 February 2019
By: Justice G.A. Andrée Wiltens
Counsel: Mr K. Massing for the Public Prosecutor
Ms J.T. Aru for the Defendant

VERDICT

A. Introduction

1. The complainant maintained that she was sexually abused by a superior male officer at her workplace on a number of occasions in 2015. The allegations were denied.
2. The complainant will be described as "DN" in this judgment. Her husband is said to be a violent person who is still unaware of this matter. Accordingly, although it may be futile, I am ordering suppression of name and all particulars which might lead to the identification of the complainant; for her protection.



B. The Charges

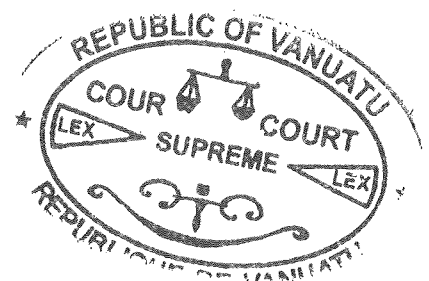
3. The 2 charges allege acts of indecency without consent on a number of occasions in 2015. The first charge alleged that Mr Buletare had forced the complainant "DN" to masturbate his penis; the second charge alleged that Mr Buletare had used his right hand to touch both DN's breasts.
4. The legal ingredients that are inherent in the two charges are the same; namely that Mr Buletare had deliberately committed indecent acts on DN, that he had done so without her consent, that he knew at the time that DN was not consenting, and that he knew the nature of each of the acts was indecent.

C. Onus and Burden of Proof

5. The prosecution has the burden of proving each of the charges against Mr Buletare. Mr Buletare had no onus of proving anything – he is considered innocent unless it is proved otherwise.
6. The prosecution must prove each of the legal ingredients that make up the charges to the criminal standard of proof, namely beyond reasonable doubt. In other words, I needed to be sure that every legal ingredient had been proved before I could convict Mr Buletare of either charge.

D. Witness Assessment

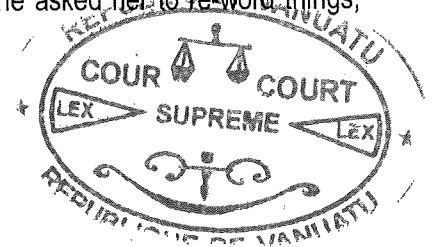
7. It is natural to think that one can tell when someone is telling the truth or otherwise. However, such things as body language and witness demeanour are a poor method to ascertain witness accuracy and reliability. A better way of undertaking the task is to focus on consistency. It is more likely a witness is telling the truth if he/she is consistent within their evidence, consistent with previous accounts they have provided, consistent with other witnesses accounts, if their evidence fits in with proved other facts and exhibits, and if it is inherently credible as something most people would accept. I applied those parameters to all of the witnesses who gave evidence in this trial in assessing whether it was safe to rely on what he/she said.
8. I reminded myself, that as the fact-finder I was entitled to accept some of what a witness had said, all of what a witness had said, or none of what the witness told me – depending on how I assessed that particular person. The question of what weight to attach to any proven facts was also entirely within my province.
9. As well as what the witnesses told me, I also reminded myself that inferences could be drawn to widen the scope of the evidence to be considered. There are 2 constraints to that. Firstly an inference cannot be a guess or speculation. It must be something that can readily be inferred from other proven facts. Secondly, an adverse inference can only be drawn against Mr Buletare if it is



the only available inference. Where there is more than one inference available, the inference most favourable to Mr Buletare must be drawn.

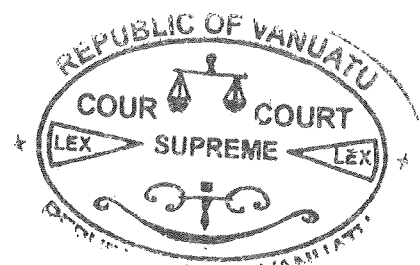
E. Evaluation of the Relevant Evidence

10. DN told me that Mr Buletare worked in the same building as her in 2015. He was a superior officer to her in the Sanma Provincial Government building – he was in Planning and had an office upstairs; she worked as a Disability Officer and her office was downstairs for easier access by clients.
11. In 2015, on numerous occasions, DN told me that quite unexpectedly, Mr Buletare would enter her office, close and lock her office door, and go around to her side of her desk. He would sit on her desk, facing her and ask for sex. She always refused, but he would then reach out with his right hand and grope both her breasts. He would then take her right hand and force her to masturbate his penis to the point of ejaculation. DN demonstrated to the Court how this was achieved. DN said she tried to resist, but Mr Buletare was stronger than her. DN also said that Mr Buletare put his hand over mouth if she tried to shout out.
12. DN said that he would tell her that everything was under control when she panicked about family members or clients wanting to enter her office; and he would not listen to her saying she did not want him to do those things and wanted him to leave. DN was of the view that Mr Buletare would avail himself of the opportunity of sexually abusing her in this way when he was on his way from his upstairs office to go downstairs to the Secretary-General's office, which was close to her office.
13. DN drew a sketch to show the office layout – EX 1. After a number of questions it became apparent that what DN had initially described as transparent curtains were actually not that, but thin curtains. Further, it eventually became clear that the only windows to DN's office faced out onto the street – no one in her office building could see what went on in her office unless the door was open.
14. DN did not tell the police about the abuse she suffered until August 2018. However, she was in tears after every episode and would tell her friend the Front Desk Officer, Marina Moli. She often asked the Secretary-General for time off after such an episode, and would not return until late in the day. Later she made an arrangement with Marina Moli that when Marina saw Mr Buletare heading downstairs to the Secretary-General's office she would immediately call DN, so that DN could close and lock her office door and thereby prevent another episode.
15. DN accepted that she was suspended from duty for a period of some 7 months in late 2017. While an investigation into her conduct was on-going, DN went to see Mr Buletare (as Acting S-G) in his office to see what was happening and why it was taking so long. She had with her a resignation letter dated 24 August 2018. She did give it to Mr Buletare, but he asked her to re-word things,

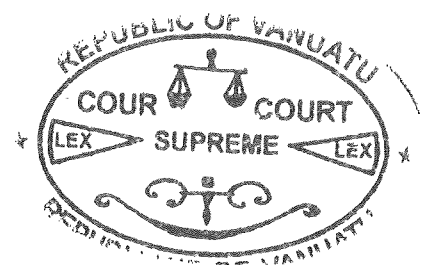


and so she tendered a different resignation letter instead. DN admitted that there was no mention of sexual abuse in her resignation letter – EX 2. She explained that there was too much embarrassment involved to put the real reason. DN later received a re-instatement letter but DN telephoned Mr Buletare and confirmed that she had already resigned.

16. DN admitted she did not cry out during the alleged abuse. She did not report the matter to the police until late 2018. She was closely questioned about why it took her so long to complain officially. She provided a string of explanations which ranged from embarrassment, concern for her job as she had a large loan to pay off, concern for public reaction and her reputation, doubts about whether there was sufficient evidence to be able to make a case, and doubts about her legal rights. DN told me her husband was a violent man, that the defendant lived close to her family, that her husband and the defendant were friends who drank kava together, that both families were community leaders and on the Board of the Catholic Church. DN was concerned people would not understand that this was sexual abuse, and would merely think she was in a relationship with Mr Buletare.
17. There was cross-examination also about when DN had first discovered the allegations which had led to her suspension, and her anger when she learnt of the reasons. DN explained that she considered the suspension unnecessary as the whole matter could easily have been dealt with by discussions within the Office. She was frustrated at the length of time the suspension investigation took.
18. DN also confirmed in cross-examination that she has filed a civil suit claiming VT 20.5 million damages from Mr Buletare – the cause of actions remains unclear to me. She was marginally tested about her lack of specificity regarding dates considering she had been involved with calendars at work for many years. If I understood her response correctly, DN claimed to be too upset and embarrassed at what had transpired to bother with such things. There was also cross-examination as to her knowledge of the Women's Crisis Centre and the fact she could/should report such matters to the police – which DN candidly admitted.
19. The defence, namely a total denial, was hardly put to DN in cross-examination. Given that the prosecution counsel had also hardly elicited the full extent of DN's evidence, I was left with concerns regarding the fairness of the trial and the Court's overall duty to do justice if at all possible. Accordingly, I asked a series of questions – to get DN to give more details of her allegations and to allow the defence to be more properly put to her. The questions I asked were not designed to achieve a conviction or an acquittal – I simply wanted to better understand what she was saying to the Court, what her allegations actually were. Once greater details had been elicited, I asked counsel to further cross-examine and to put the defence squarely to DN.



20. Sakaraia Daniel was the Secretary-General of the Sanma Provincial Council at the relevant time. He has known Mr Buletare since 2007 or so, when they worked together in Planning; and he has known DN since about 2010 after she began working at the Council as the Disability Officer.
21. In 2015, Mr Daniel received complaints from DN regarding Mr Buletare – that Mr Buletare had “fiddled” with her breasts and forced her to masturbate him. Mr Daniel was concerned about possibly losing a significant senior management resource, and so he attempted to move DN to another office location and thereby remedy the problem - rather than deal with the issue using the more traditional disciplinary action. DN wanted to move away immediately, but unfortunately senior management needed to be first consulted, so the move did not occur until sometime in late 2016.
22. When DN complained to Mr Daniel, he described her as frustrated and pink in the face, almost in tears. Although Mr Daniel cannot recall exactly when DN complained, it was after Cyclone Pam and therefore after March 2015. He recalled that she complained to him about Mr Buletare's conduct on at least 2 occasions.
23. Ms Marina Moli told me she had known DN for almost her entire life, as their parents had worked together. Ultimately Marina had ended up working in the same office as DN, even though they had undertaken quite different educational routes. Marina and DN were close – they shared common family problems and work issues.
24. The first time DN made a complaint about Mr Buletare to Marina she was pink, upset and in tears. She appeared scared and had a shaky voice. DN told Marina that she would confide all the details to her at a later time. When she did, DN alleged that Mr Buletare had touched her breasts and forced her to masturbate his penis. DN was crying at the time and Marina advised she go home. Marina recalled that was in 2015. Marina told me DN had complained several times in that year – more than 5 times. Marina said that every time DN was upset, and complained of the same things. On some occasions Marina forestalled a complaint by seeing DN come to her distraught and Marina would say “Oh no, not again”, before DN left the office.
25. Marina reported that DN was concerned her family or clients would walk in, but DN had told Marina that Mr Buletare had defused those concerns saying: “Don't worry, everything is under control”. Marina confirmed she had discussed reporting the case to the police with DN, but it was for DN to report it, not Marina.
26. It was put to Marina that she was trying to help out her friend by giving evidence, but that what she had told the police and the Court was untrue. Marina was emphatic that was not so – she said simply: “It is true”. She was questioned about why she did not assist DN to report the matter to the police, and replied that she had personal issues that restricted her desire to reach out more. It was

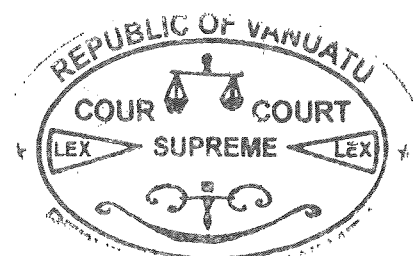


put to her that she had not seen DN crying on any occasions, but Marina disagreed with that suggestion.

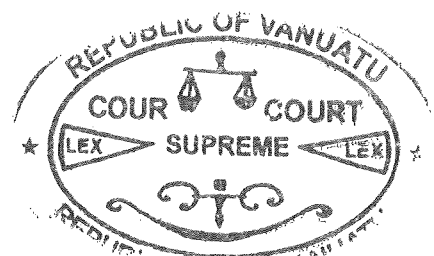
27. To ensure fairness, I felt obliged to ask Marina about one part of DN's evidence which she might be able to comment on, and which counsel had not touched. This was DN's evidence of setting up an arrangement whereby Marina would warn DN that Mr Buletare was going towards her office. Marina confirmed that there was such an arrangement, but confessed that sometimes she was too slow to stop him getting in. I allowed Ms Aru to further cross-examine, but this only elicited further evidence that it was DN's idea to set up the warning arrangement.
28. Mr Buletare gave evidence on his own behalf. He essentially said that while he worked with DN and had known her for a long time, he was really at a loss to explain why she was making these allegations against him, as they were totally untrue. Without being able to say why they did so, he believed that both Mr Daniel and Ms Moli gave incorrect evidence to assist DN.
29. While I can summarise his evidence in this way, that is not to denigrate it. After all, if these things did not occur, what more can Mr Buletare say other than they did not occur? He did go on to confirm DN's suspension, and her resignation letter – but he had not heard of DN wanting to shift offices. He said he would go to DN's office about 3x per month, to talk about work matters. Mr Buletare did confirm that he knew DN's husband – they are best mates, and they drink kava together. They are also both involved with the Catholic Church.
30. Mr Buletare was rather critical of Mr Daniel – he considered Mr Daniel should have instigated disciplinary proceedings against him, as the allegations involved serious misconduct.

F. Evaluation of the Evidence

31. I consider first the total denials by Mr Buletare. I reject his evidence as unconvincing. He gave evidence as if discussing a mundane picnic some staff had enjoyed. I was expecting some righteous indignation at being wrongly named as a sexual pervert, but there was none. In my assessment of him, he was unable to adequately explain away the strengths of the prosecution case.
32. The defence theory Mr Buletare and his counsel advanced, was that DN was seeking retribution for being suspended; but it was obvious that the Council had determined that approach. Further, DN was aware it was the Council's doing as she presented her resignation to Mr Buletare for him to pass onto the Council. I challenged also the fact that Ms Aru had not put this theory to the only prosecution witness properly able to address it, namely DN. Ms Aru accepted that it had not been clearly put. I reject this theory of the case.



33. The reality is that such a defence theory is inadequate in any event. The theory, if it is to have any credence, must be that that all 3 prosecution witnesses have formed a criminal conspiracy to wrongly implicate an innocent person, namely Mr Buletare, of very serious criminal offending for no obvious reason. They must have frequently rehearsed their evidence to be able to tell such a unified account, and they must have done so to deliberately convince the Court to accept a pack of lies. I can see no signs to justify such a preposterous theory.
34. I accordingly put to one side the vast majority of what Mr Buletare had told me, and all his denials.
35. I looked next at the prosecution evidence, so see if that was sufficient to prove either charge.
36. I accept completely the evidence of Mr Daniel and Ms Moli. Mr Daniel was not questioned by the defence as if he was making up evidence, or why he would do that. His confirmation of DN's complaints to him is very strong evidence. Ms Moli appeared to me to be doing her best to give honest and accurate evidence. Her evidence was challenged on the basis of bias, but I reject that. In effect what was suggested was that Ms Moli had attempted to pervert the course of justice by giving false evidence, without that being properly put to the witness – my impression of her was she was not capable of any such thing. Her denials of suggested inaccuracies were compelling and believable.
37. I accept the vast majority of what DN had to say, despite the valid criticism of her vagueness regarding exact dates/times. I accept DN's explanation for not making notes of dates as reasonable in the circumstances. While there is perhaps an inconsistency between what DN and Mr Daniel said regarding a letter requesting to change offices, I place no great weight on that inconsistency.
38. I also do not accept DN's claim that Mr Buletare blocked her mouth when she tried to scream/call out. Mr Buletare's hands at that stage were either forcing DN to masturbate his penis or grope her breasts or both. But I don't see how realistically Mr Buletare could perform all 3 acts at the same time, or know when DN was about to yell out. That piece of evidence, in my view, arose due to DN's frustration at being questioned about what steps she had not taken that might be seen as reasonably obvious steps to stop what Mr Buletare was doing. Out of her frustration, I consider DN just added that piece of evidence. As I don't accept it, I have placed that evidence to one side and considered only the remainder.
39. I am aware of what is described as "counter-intuitive" evidence. The cross-examination of DN went into some detail as to why she did not complain to the proper authorities immediately. The reality is that complainants are all unique. Some complain only years after truly traumatic events; some never complain. Others complain of some of the offending against them; others may do so incrementally. The reasons for either late, partial, incremental or no complaint at all being made



are infinite and do not necessarily include the assumption frequently made that therefore the complaint is untrue.

40. DN has given numerous reasons for her delay and reluctance to make her allegations – each of which is reasonable. Her delay in reporting this case is not a satisfactory basis for me to conclude that she was lying.
41. One of the most compelling aspect of DN's evidence was her demonstration of how she was forced to masturbate Mr Buletare. This was entirely credible, and it would be hard to conceive how anyone could make that up. I particularly noted that there was no challenge to her evidence in relation to this.

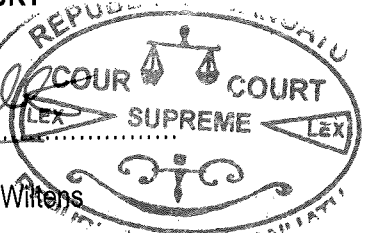
G. Result

42. I find it proved beyond reasonable doubt that the defendant did enter DN's office on numerous unexpected occasions in 2015 and lock the door behind him. He initially flirted with DN and requested to have sex with her, and when that was declined, to later sexually abuse DN by groping at her breasts and forcing her to masturbate him.
43. DN did not consent to this behavior. She did what she could to resist, and went to considerable efforts to attempt to avoid repetition. There is no doubt that Mr Buletare was well aware that DN did not consent to his acts; and further that he was well aware that the acts would be seen as indecent by right-thinking members of the community.
44. The necessary elements of each charge have been satisfactorily proved.
45. Mr Buletare is found guilty of the 2 charges of committing indecent acts without consent by forcing DN to masturbate his penis and by his groping both DN's breasts.

DATED at Luganville this 27th day of February 2019

BY THE COURT

Gardie Williams
Justice G.A. Andrée Williams

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "SUPREME COURT" is written along the bottom inner edge. The word "LEX" appears on both the left and right sides of the seal, flanking the central scale.