

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

Criminal
Case No. 23/2447 SC/CRML

PUBLIC PROSECUTOR

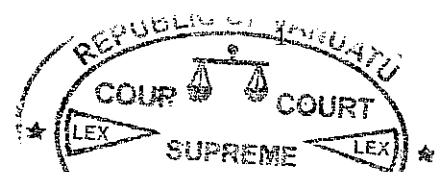
v

JUNIOR CLINTON BORENGA
DANSTAN VUTI

Date of Hearing: 18 September 2023
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Ms S. Langon
Defendants – Mr B. Livo

DECISION AS TO URGENT BAIL APPLICATION

1. At the outset, I declared that the Defendant Mr Vuti and I are related.
2. The Defendants Mr Borenga and Mr Vuti's urgent application for bail was opposed.
3. There are a number of relevant considerations.
4. The Defendants have been charged with a serious offence – intentional homicide. In opposing the application for bail, Ms Langon pointed to the seriousness of the offence charged. However, as pointed out by Fatiaki J in *Public Prosecutor v Jeajea* [2016] VUSC 159, the seriousness of the offence charged alone is insufficient to overcome the presumption of innocence that the Defendants enjoy and which is their right under the Constitution.
5. The second limb of the Prosecution's opposition to the application was that the risk of interference with the Prosecution witnesses, mainly Police officers, is high given that the Defendants are Police officers, they understand the process of investigation and the investigation is not yet complete. However, both Defendants have been suspended therefore they can no longer attend work. That mitigates against the risk



of interference with Prosecution witnesses who are Police officers. Strict bail conditions can also be imposed to further mitigate against this risk. I understand from counsel that both Defendants have been charged in the Magistrates' Court. In the circumstances, I do not accept that an incomplete Police investigation is a proper ground for refusing bail as a charge(s) should not be laid if investigations remain incomplete: see also *PP v Jeajea* at [3]-[6].

6. On an application for bail, I also need to consider the risk of non-attendance at Court. Mr Livo submitted that they will not leave Efate. I presume that submission is based on both Defendants having young children and their families reside on Efate. If granted bail, Mr Borenga will reside with his mother and Mr Vuti with his sister. I accept there is no flight risk on the part of the Defendants and consider that the risk that they will not attend Court when required is low.
7. I also need to consider the risk that the Defendants will offend whilst on bail. I take into account that the alleged offending is alleged to have occurred when the Defendants were on duty as Police officers. They have now been suspended from duty therefore can no longer attend work. In addition, they would know well the consequences if they were to offend whilst on bail or indeed, breach any condition of bail – that could lead to an application for revocation of bail and if revoked, they would be taken into custody. I consider that the risk of offending whilst on bail is low.
8. It was advanced as a ground of the application that the Defendants are concerned about their safety at the Correctional Centre amongst detainees that they have arrested. Ms Langon submitted that equally, there is also a concern for the Defendants' safety if they were released on bail vis-à-vis the deceased's family. Mr Livo submitted that in the 2 and more weeks from the alleged offending to their arrest, there is no evidence of any threat to the Defendants' safety from the deceased's family.
9. I must assume that the Defendants have taken into account their likely safety if they are released on bail and have chosen to seek bail on the basis that they will feel safer if released on bail than being held in custody.
10. In the circumstances, having weighed the factors outlined above, I **granted** the application for bail.

DATED at Port Vila this 18th day of September 2023
BY THE COURT


Justice Viran Molisa Trief

