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**IN THE COURT OF APPEAL**  
**THE REPUBLIC OF VANUATU**

*(Criminal Appellate Jurisdiction)*

Criminal Appeal Case No. 17 of 2008

**SAM KOILO**  
**-V-**  
**PUBLIC PROSECUTOR**

**Coram:** *Hon. Chief Justice V. Lunabek*  
*Hon. Justice O. Saksak*  
*Hon. Justice J. Mansfield*  
*Hon. Justice M. O'Regan*

**Counsel:** *Mr. J. Kausiama for the Appellant*  
*Mr. L. Tevi for the Respondent*

**Date of Hearing:** 19 October, 2009

**Date of Decision:** 30 October, 2009

**FURTHER INTERIM JUDGMENT**

1. The history of this appeal is set out in the Interim Judgment of the Court of Appeal given on 16<sup>th</sup> July, 2009.
2. The appeal against sentence remains to be decided. For the reasons given in the Interim Judgment, that appeal was adjourned to the October session.
3. The present position, as we were advised by counsel and as confirmed in part by the documents filed, is that -
  - (1) There is still no information about what the Government intends to do about the request for a Commission of Inquiry to investigate the alleged attacks on a number of prisoners by members of the Vanuatu Mobile Force, including an alleged attack on Mr. Koilo;
  - (2) Mr. Koilo has instituted a Constitutional Application under Articles 5 and 6 of the Constitution, seeking orders that the Government has infringed his constitutional rights to security and freedom from inhuman treatment, and that it is liable for injuries allegedly inflicted on him in March 2009 and August 2009 by members of the VMF.

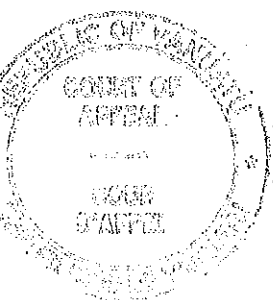


The Constitutional Application alleges two occasions when he suffered serious injuries whilst in custody, by unlawful violence by the VMF, on about 18 March 2009 and on about 3 August, 2009.

The Constitutional Application is presently being considered by a judge of the Supreme Court, and is expected to be heard (if it is not otherwise resolved) before the next session of the Court of Appeal.

Two medical reports about Mr. Koilo's injuries dated 15 July, 2009 and 15 October, 2009 have been provided to the Court of Appeal; and

- (3) There has been no appeal, and there apparently will be no appeal, by the Public Prosecutor against the sentence of 12 months imprisonment imposed on Mr. Koilo for escaping from lawful custody, to be served concurrently with the sentence of imprisonment which is the subject of this appeal.
  
4. The Court of Appeal in its Interim Judgment said that the appeal could not be finally determined until after the Constitutional Application has been dealt with. Counsel for Mr. Koilo and the Public Prosecutor agreed, and sought the appeal, again, be stood over to the first session of the Court of Appeal in 2010. It is very unsatisfactory that the appeal should again be stood over, but having regard to the length of the sentence Mr. Koilo is serving there will be no direct detriment to him by doing so.
  
5. Accordingly, we again stand over the appeal, but we do so in the expectation that his Constitutional Application may be finalized by then.
  
6. On the next occasion, the Court of Appeal may also hear evidence from Mr. Koilo about the alleged second assault in August 2009. Those he has implicated may be on notice that may occur so that they can attend and have the opportunity to hear that evidence and respond if they wish. So, too, may the Commissioner of Police, the Director of Correctional Services and the Commander of the VMF be present at that time.
  
7. We also repeat the remarks of the Court of Appeal in its Interim Judgment. The evidence of Mr. Koilo about the assault on him in March 2009 whilst in



custody presently stands unchallenged. To the extent that such conduct, if proved, may be relevant to how his appeal against sentence is dealt with, the Court of Appeal may make findings about it when dealing with the appeal. In addition, as the Court said:

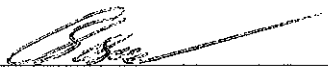
*"Sam Koilo's appeal raises serious issues with regard to the administration of justice and the integrity of the penal system which demand close and anxious attention of all who have an interest in these important aspects of life in the Republic of Vanuatu."*

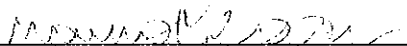
8. The appeal is further stood over to the first session of the Court of Appeal in 2010.
9. We direct the Registrar to serve a copy of this Interim Judgment on the Commissioner of Police, the Director of Correctional Services and the Commander of the VMF. We also direct that they be notified of the date on which the matter will again come before this Court, when that date has been fixed.

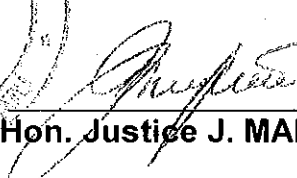
Dated at Port Vila, this 30<sup>th</sup> day of October, 2009

BY THE COURT

  
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Hon. Chief Justice V. LUNABEK

  
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Hon. Justice O. SAKSAK

  
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Hon. Justice M. O'Regan

  
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Hon. Justice J. MANSFIELD

