

**IN THE MAGISTRATES COURT  
OF THE REPUBLIC OF VANUATU**  
*(Criminal Jurisdiction)*

Cr. Case No. 3507 of 2016

**PUBLIC PROSECUTOR**

**V**

**JAMES LEE & BRAD CHOI**

**Coram:** Moses Peter

**Court Clerk:** Florina Ephraim

**Appearances:** Wycliffe Tarilenga for the State

Rollanson Willie Takaro for defendants

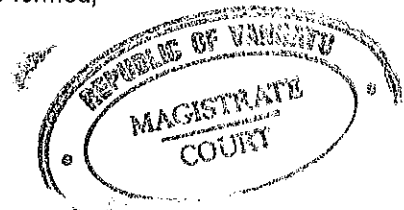
Defendants in person

**DECISION ON NO CASE TO ANSWER**

1. At the end of the Prosecution's case, Mr. Rolandson applied under section 164 (1) of the Criminal Procedure Code to have the charges dismissed against the named defendants on ground that evidence of the State falls short of proving the elements of the offence on the standard of proof.
2. The defendants are charged with the offence of False Statement by Promoter contrary to section 129 (c) of the Penal Code Act [CAP 135].
3. **Particulars of Offence**

*'JAMES LEE you are of 70 years and BRAD CHOI SYNN you are of 50 years and both are residing in Port Vila, on or about 27<sup>th</sup> September 2016 in Port Vila, you both got into Bank South Pacific, [BPS] with intent to induce the bank officers to advance the Molvatu Trading Bank statements and accounts for your own benefits.'*

4. The elements of the offence would be:
  - a. Defendants;
  - b. Being either promoter, director, manager, or officer of any company or company corporate;
  - c. Company or company corporate is either existing or intended to be formed;



- d. shall make, circulate or publish or concur in making, circulating or publishing any prospectus, statement or account which he knows to be false in any material particular;
- e. Such with intend to:
- (i) Induce any person or persons, whether ascertain or not, to entrust or advance any property to the company or company corporate; or
  - (ii) To enter into any security for its own benefits.
5. The Prosecution evidence confirms Molvatu Trading Company to be owned solely by Nono Ligo. This is confirmed by Mr. Ligo himself and Mr. George Andrew as Registrar of the Vanuatu Financial Services Commission. Mr. Ligo also tendered to court as exhibit P1 account statement created under his name at Bank South Pacific. In exhibit P4 the account statement printed by Philan Kalmanu at Bank South Pacific to the defendants has the name of Nono Ligo as the Manager of Molvatu Tradings.
6. Whilst it is clear in the evidence of the Prosecution that Mr. Nono is the sole owner and director of Molvatu Trading, we need to ascertain on the evidence the capacity of the defendants when they approached the bank officer at BSP Bank.
7. They have to be either a promoter, director, manager or officer of any company or company corporate that is existing or intended to be formed.
8. The fourth witness for the Prosecution said in examination in chief that the defendants presented themselves with a card identifying themselves as directors of Molvatu Trading. There is no evidence of the card in court however, that assertion is strongly denied by Mr. Nono Ligo.
9. Mr. Ligo confirms defendants are his friends but are total strangers to his Molvatu Trading business.
10. In examination in chief, Mr. Nono Ligo said he knew Mr. James Lee as a Missionary. He accommodated him and financially assisted him overtime. With regard to Mr. Brad Choi, he said Mr. Choi used to import vehicle from Korea but now he works with National Housing Corporation.
11. Other than these mere introductions, there is barely any documentary evidence to prove that these defendants are either a promoter, director, manager or officer of any company existing in intending to be formed.
12. The evidence of the Prosecution falls short in proving that the defendants upon obtaining the bank account statements from Bank South Pacific enter into security for their own benefit.
13. In *Reg. v Galbraight (CA) (1981) WLR 1039* the court sets out a guideline as to how a Judge should approach a submission of no case to answer.
1. The test is ***"whether the court could convict the accused person on the strength of the evidence before the court."***
14. I answer the question in the negative.



15. Before Mr. Rolandson is to make a submission on no case to answer, Mr. Tarilenga applied under section 139 of the Criminal Procedure Code to amend the charge by substituting section 129 (c) with Section 130 (b) of the Penal Code Act.
16. I reject the application on grounds that section 139 (2) of the Criminal Procedure Code allows amendments to be made at any stage of trial before the close of the case for the prosecution. When Mr. Tarilenga made the applicant, the prosecution case has closed.
17. By poorly considering the appropriate charge that fits the offending of the defendants, the defendants shall be accorded the benefits of it.
18. Therefore, pursuant to section 164 of the Criminal Procedure Code [CAP.136], I rule that there is no evidence on which the Defendants could be convicted and I pronounce a verdict of not guilty on Defendants James Lee and Brad Choi respectively.
19. The Defendants are thereby acquitted of the charge.

**DATED at Port Vila this 18<sup>th</sup> day of September 2017**

**BY THE COURT**

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**MOSES PETER**  
Senior Magistrate

