

PUBLIC PROSECUTOR -v- FABIANO BULEURU

Coram: Chief Justice Vincent Lunabek

Counsel: Ms Viviane Laumae for the Public Prosecutor
Mr Jacob Kausiama for the Defendant

JUDGMENT

This is the judgment in this case. The Defendant, Fabiano Buleuru, was charged with one count of sexual intercourse without consent, contrary to Section 91 of the Penal Code Act and one count of sexual intercourse with girl under care or protection, contrary to Section 96(1) of the Penal Code Act [CAP.135].

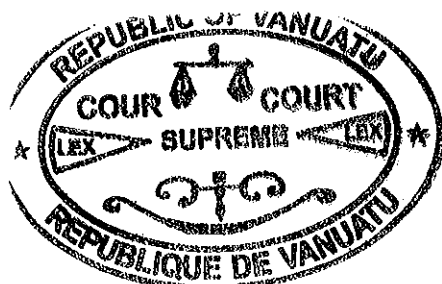
On 2 February 2010, the Accused Fabiano Buleuru plead not guilty on the two (2) counts of offences charged against him in the Information dated 2 February 2010.

The trial was listed for 3 days commencing today 8 March 2010 at 9.00AM o'clock.

Before the prosecution counsel begins the prosecution case, section 81 of the Criminal Procedure Code [CAP.136] was read and explained to the Accused. The Accused Fabiano Buleuru understands his right contained in that section.

The prosecution says they will call 7 witnesses. The first prosecution witness is the girl complainant.

The prosecution provides the following brief of facts:



Melanie Alphonse is 17 years of age. She comes from Efate. She resides at Fresh Wota 4 in Port-Vila, Efate, with her parents, Mary and Buleuru Fabiano, known to be the Defendant in this matter.

Buleuru Fabiano is 67 years of age. He comes from the Island of Pentecost. He resides at Fresh Wota 4 in Port-Vila, Efate.

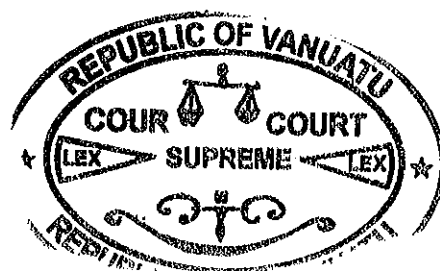
Buleuru Fabiano is Meleanie's step-father. Mary is Melanie's biological mother. Melanie's biological father is Alphonse.

INCIDENT

Buleuru Fabiano started sexually abusing Melanie since 2005. Melanie was 13 years old at that time. He kept on sexually abusing her until last year 2009.

On or about the 11th or 12th December 2009, at Fresh Wota 4 in Port-Vila, Efate, Fabiano went inside Melanie's bedroom. Melanie saw him and wanted to leave the room but Fabiano blocked her from leaving. He then hi her and stepped on her with one of his feet. As a result, she fell onto the floor. He then removed her trousers and panty and penetrated her vagina without her consent. Melanie did not want to have sex with him but he forced her to.

The complainant girl is the first prosecution witness. She was having difficulties in giving her evidence in chief. An artificial wall was created with a board to block the eye contacts with the Defendant and the girl complainant while she gave her evidence. The 2 correctional officers in Court are asked to leave the Courtroom as the complainant's request. No members of the public apart from the counsel, the Court Clerk and the Judge. Still she took plenty of time to give her evidence in chief. It was difficult to extract evidence from her. She was confused about what happened to her in 2007 and December 2009. She gave evidence that her step-father had sexual intercourse with her on 5 January 2009 but not December 2009. There was no sexual intercourse occurring between her father and her in 2007. He only touched her breast and body.



When she was cross-examined, she admitted that in 2007, she made a complaint against her step-father but it was withdrawn. She signed a letter to withdraw the complaint against her step-father because her mother and her uncle told to do so. She said this morning before the trial, her mother and uncle told her what to say to the Court before she gave her evidence. She says she does not willingly give evidence.

When she was re-examined, she confirmed that she gave evidence in Court on what her mother and uncle told her to say this morning.

She confirmed also the statement she made to the police was not her statement but she told the police what they told her to say. She said she did not go to the police station and put a complaint against her step-father but her mother and uncle forced her to go and made the complaint.

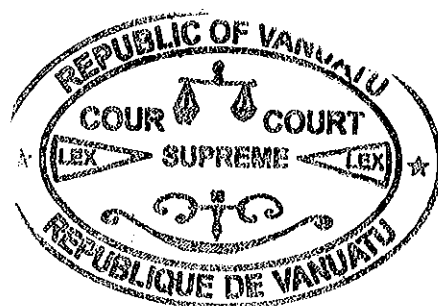
In her re-examination, she confirmed that the stories she told the Court was made-up stories. She finally said her step-father had never had sexual intercourse with her.

That is the end of the evidence of the complainant.

The prosecution counsel applies under section 29 of the Criminal Procedure Code [CAP.136] for a nulli prosequi to be entered by informing the Court that she intends that proceedings shall not continue.

DECISION and VERDICT

1. A nulli prosequi is entered under section 29 of the CPC [CAP.136]. The proceedings in the case of PP v. Fabiano Buleuru, Criminal Case No.06 of 2010, shall not continue.
2. Defendant, Fabiano Buleuru, is discharged of the following offences:



- (a) Sexual intercourse without consent, contrary to Section 91 of the Penal Code Act and Penal Code Act [CAP.135]; and
 - (b) Sexual intercourse with girl under care or protection, contrary to Section 96(1) of the Penal Code Act [CAP.135].
3. Defendant, Fabiano Buleuru, shall be released from custody forthwith.
 4. Defendant, Fabiano Buleuru, is acquitted of same offences charged against him in the Information dated 2 February 2010.

RECOMMENDATION

It is recommended that the Public Prosecutor examine all evidence (including notes of evidence contained in the Court file record) with a view to assessing whether there are reasonable prospects of securing perjury or conspiracy convictions.

DATED at Port-Vila this 8th day of March 2010

BY THE COURT

**Vincent LUNABEK
Chief Justice**

