

PUBLIC PROSECUTOR

V

PAUL TUNAT

*Trial:* 13 November 2012  
*Before:* Justice Robert Spear  
*Appearances:* Ken Massing for the Public Prosecutor  
Jessica Palo for the Defence

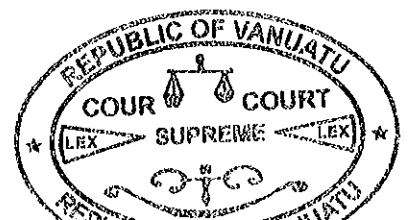
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JUDGMENT

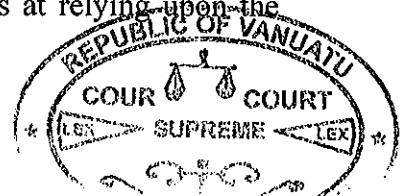
No Case to Answer

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1. We have just completed the prosecution evidence. This stage of the trial has been reached somewhat unexpectedly for reasons that I will now recount.
2. At the commencement of this case Mr Massing informed me that there would be 4 witnesses called for the prosecution. The first witness would be the co-defendant, Joshua Mark who has already pleaded guilty, been convicted and sentenced for these two charges for which he and the abovenamed defendant were jointly charged. There was then to be Sano Tovo who was to give evidence that he received one of the stolen army uniforms from Joshua Mark. The third witness was to be Constable Kalsal who was to give evidence that he received the stolen uniform from Sano Tovo. The fourth witness was to be the police officer in charge of the case, Rael Mesek.

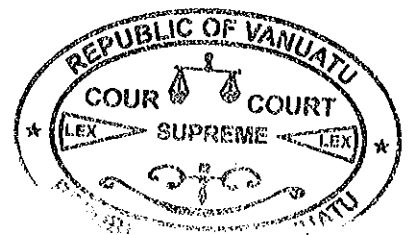


3. The co-defendant Joshua Mark gave evidence implicating the defendant as the other offender - as the person who was with him when he unlawfully entered the VMF Engineering workshop and stole various items from it. This is not a case where there would be any question as to identification given that the defendant Paul Tunat is indeed Joshua Mark's uncle. Joshua Mark has given evidence and acknowledged that he made conflicting statements to the Police. He states that the first statement he made did not implicate Paul Tunat but that was essentially what the Paul Tunat told him to say.
4. At the conclusion of Joshua Mark's evidence, I enquired what evidential value the evidence of Sano Tovo and Constable Kalsal could possibly have given that their evidence did not implicate the defendant Paul Tunat at all but related entirely to Joshua Mark. Of course, he is already been convicted and sentenced for that offending. Mr Massing agreed and sensibly elect not to call those two witnesses which of course saved some time. Their evidence could not have contributed or assisted his case in any way.
5. The fourth witness was to be Constable Rael Mesek. Mr Massing informs the Court that Constable Mesek is not now available as he has an infected leg. Clearly Mr Massing did not know this at the commencement of the case but, in any event, how could an infected leg stop a police officer from giving evidence at a trial. It may be inconvenient and uncomfortable but there is no reason at all why that police officer was not here to give evidence.
6. Mr Massing then informed me that it was proposed to call one Marilyne George who gave a preliminary statement at the Magistrate's Court. I was informed a summons was currently being prepared for Marilyne George but again he or she is not available at this time to give evidence.
7. Essentially the prosecution has run out of witnesses.
8. I propose to dismiss the charges against Paul Tunat on the basis that there is no case to answer. While the evidence of Joshua Mark implicates the defendant Paul Tunat, it must always be borne in mind that the Court must be cautious at relying upon the



evidence of an accomplice or a co-offender. Special care is required when considering the evidence from a co-offender. This is notwithstanding that Joshua Mark has already been convicted and sentenced. There is also the concern that he made conflicting statements of accounts to the police particularly relating the involvement by the defendant Paul Tunat.

9. I could never be brought to the point of being left sure of guilt solely on the evidence of Joshua Mark. He was not an impressive witness and, indeed, I found him somewhat devious in the way in which he responded to the questions put to him. Accordingly, I would not have accepted his evidence without some additional support even if he was not the co-offender.
10. It may be that Rael Mesek could have provided some support for Joshua Mark's evidence but he is not here apparently for reasons relating to his own sense of comfort.
11. This Court is under serious pressure to advance cases and it cannot be played with by witnesses who decide when or if they are to come to Court.
12. So the only evidence I am left with, in respect of this case, is the evidence of Joshua Mark and that is not sufficient to bring me to the point where I would be left sure of guilt. The defendant Paul Tunat should not be left having to decide whether to give evidence in this case or not as Mr Massing rightly said at the commencement of this case the onus of proving each charge is on the prosecution and the defence has nothing to prove at all.
13. This is a decidedly unsatisfactory resolution of this case and it would appear that responsibility for that should be visited primarily on Rael Mesek who has apparently, and quite unilaterally, decided that his infected leg would be an inconvenience to him attending Court today. There is no medical report that supports this assertion and I am frankly appalled that a police officer has made that decision himself. It does not appear that the prosecutor Mr Massing was aware of this infected leg issue at the commencement of the Court today.



14. In all these circumstances, I do not consider that there is a case that the defendant Paul Tunat should be called upon to answer and for those reasons these two charges are dismissed.

**BY THE COURT**

