

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

Criminal Case No. 146 of 2012

PUBLIC PROSECUTOR

-V-

MERIAM SILAS

Trial: 10 April 2013
Before: Justice R. L. B. SPEAR
Appearances: Leon Malantugun for the Public Prosecutor
Jacob Kausiama for the Defence

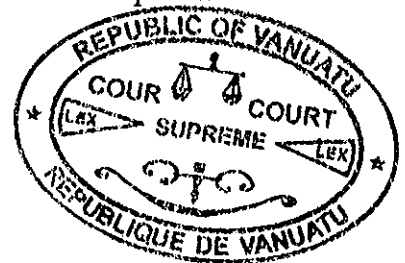
JUDGMENT

1. The defendant is charged under section 107(d) of the Penal Code with the serious offence of committing an intentional assault which resulted in death. This offence is alleged to have occurred on 17 October 2012.
2. The defendant was first arraigned in this Court on 18 December 2012 and she pleaded not guilty to this charge. I was informed by the prosecutor who appeared that day (Ken Massing) that the prosecution intended to call 8 witnesses. Mr Kausiama felt able to indicate at that stage that the defence would be one of self defence and that there would likely be only 1 witness for the defence. The case was then set down for trial to commence at 9 am today with 3 days set aside for it.
3. The case was called this morning for the trial to commence. No indication had been given to the court that the trial would not proceed. Mr Malantugun appeared for the prosecution. The defendant was present and represented by Mr Kausiama. The court had arranged for an interpreter to be present.
4. Just after I started to read out the s. 81 statement to the defendant, Mr Malantugun applied orally for the trial to be adjourned. an adjournment of the case. He said that he had only just being passed the file by Mr Massing a few minutes before coming to



court. Furthermore, that it was a case that had been allocated to another prosecutor (Gregory Takau) to prosecute but he was out of Port Vila on tour. Mr Malantugun unsurprisingly acknowledged that he knew very little about the case and that he was unable even to say whether any witnesses had or had not been summonsed. He was able to say that the prosecution was unable to proceed today and emphasised the application was for an adjournment.

5. This is a serious case involving the death of the defendant's husband allegedly as a result of her stabbing him on the leg with a knife during a domestic dispute. It is a case that should have been given significant priority to recognize the seriousness of the charge arising from the death of the victim and that the defendant was in custody. However, it is clear that it has not been treated with such recognition by the Public Prosecutor's Office.. I am quite astonished that no effort has been apparently made to prepare this case for trial today notwithstanding that it was set down for trial back on 18 December 2012. Furthermore, the defendant has been in custody since 18 October 2012 being the day that she was arrested for this matter.
6. If I was to accede to Mr Malantugun's application for an adjournment of the trial it will mean that the defendant would need to spend at least another 3 months in custody. There is simply no free time for about 3 months to hear this case.
7. Furthermore, to delay the trial in these circumstances would amount to a breach of the defendant's constitutional right to be tried within a reasonable time as guaranteed by the Constitution of this country. Article 5(1)(d) provides that everyone within the jurisdiction of the Republic of Vanuatu has the fundamental right to the protection of the law. Article 5(2)(a) provides that the protection of the law includes the right to be tried within a reasonable time.
8. That breach would arise solely because the prosecution has not been able to organise itself even to the most fundamental level of having witnesses summonsed for the case and a prosecutor briefed to present the case. To allow the case to be adjourned for 3 months purely because of prosecutorial misconduct would mean that the defendant would not have been tried within a reasonable time. This constitutional provision is to be construed as requiring a satisfactory or reasonable explanation from the



prosecution for delaying a trial date reached in the usual course; as was the case here. The reasonableness of the time to try the case is not just a consideration of the actual months involved but all the surrounding circumstances including any prejudice to the defendant. Here, that would mean that she would remain in custody for about another three months.

9. No satisfactory or reasonable explanation has been provided or even attempted.
10. The application for an adjournment is refused.
11. Mr Malantugun acknowledges that he has no evidence to present to the Court today. Accordingly, this prosecution is dismissed for want of prosecution.

TO THE DEFENDANT You are discharged.

BY THE COURT

