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

Criminal Case No. 16/ 1758 SC/CRML

PUBLIC PROSECUTOR

V

JOE YHAKOWAIE NATUMAN AND
ARU MARALAU

Date of Trial: ***December 6th, 7th and 8th 2017.***

Date of Submissions: ***December 8th and 11th, 2017***

Date of Judgment: ***December 12th, 2017.***

Before: ***Justice JP Geoghegan***

Appearances: ***Mr Naigulevu and Mr Karae for the Public Prosecutor***
Mr Morrison and Mr Nalyal for the Accused

JUDGMENT

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1. Mr Natuman and Mr Maralau stand trial on three counts of obstructing or interfering with the execution of a criminal process pursuant to section 79 (c) of the Penal Code [Cap. 135]. There are two counts against Mr Natuman and one against Mr Maralau as follows:-

   a) On September 19th 2014 when Mr Natuman was then the Prime Minister of Vanuatu and the Minister of the Vanuatu Police Force, Mr Natuman obstructed and interfered in the execution of a criminal process by issuing a letter September 19th 2014 instructing the police to stop all criminal investigations in a case known as the *"mutiny case"*.

   b) that sometime in 2014 Mr Natuman as the Prime Minister of Vanuatu and Minister of the Vanuatu Police Force obstructed and interfered in

the execution of a criminal process when he verbally instructed the then Police Commissioner Mr Arthur Caulton to stop all criminal investigations in the mutiny case.

c) That on or about September 19th 2014, Mr Maralau as the Acting Police Commissioner aided Mr Natuman in obstructing and interfering in the execution of a criminal process when he counselled or instructed members of the police investigating team to stop all police investigations in the mutiny case.

2. This judgment is to determine an application by the accused at the close of the prosecution case that there is no case to answer and that accordingly I should pronounce a verdict of not guilty in respect of both accused.

THE EVIDENCE

3. The *"mutiny case"* referred to is a case which involved the laying of charges of conspiracy to pervert the course of justice against a number of members of the Vanuatu Police Force which included the accused Aru Maralau. The charges were laid in November 2014 by the Public Prosecutor but were the subject of a nolle prosequi in July 2015.

4. The events surrounding and leading up to the laying of charges are well known and a matter of public record. The charges had their origins in a period of instability and conflict within the Vanuatu Police Force and in particular conflict between the then Police Commissioner Joshua Bong and the Deputy Police Commissioner, Arthur Caulton.

5. Mr Caulton was appointed as the Commissioner of Police on December 6th 2012, replacing Commissioner Bong.

6. In February 2014, Commissioner Caulton appointed an investigation team to be headed by Chief Inspector George Twomey to investigate the affairs and conduct

of former Commissioner Bong and a number of other police officers including Mr Maralau in respect of allegations of mutiny.

7. An investigation was duly undertaken. The investigation continued through to August 2014 when, on August 5th 2014, the investigating team referred its case file to the Public Prosecutor's Office for vetting and the filing of charges against various officers.

8. It is alleged that on May 28th 2014, the accused, Mr Natuman who at that time was the Prime Minister of the Republic of Vanuatu convened a meeting at his office at 9 am. Attending that meeting were the Police Commissioner Mr Caulton, Mr George Iapsen and Mr Toko Mara. The subject of discussion at that meeting was the mutiny case. Mr Caulton gave evidence that Mr Iapsen was a political advisor to the Prime Minister at that time and he believed that Mr Toko Mara also worked for the Prime Minister and that he was also the brother of the accused Mr Maralau. Mr Caulton stated that at that meeting Mr Natuman asked him whether or not there was an investigation into the mutiny and that he advised the Prime Minister that there was such an investigation. Mr Natuman then enquired as to whether or not the matter could be settled outside Court to which Mr Caulton replied that he would look into that matter as he wanted unity in the Police Force. Mr Caulton advised him that there had been an attempted reconciliation ceremony to which Mr Natuman replied that he wanted Commissioner Caulton to make sure that the case did not go to Court. Mr Caulton made a record of the meeting his diary which recorded the words *"need some stability in the force. Not to go to the Court".*

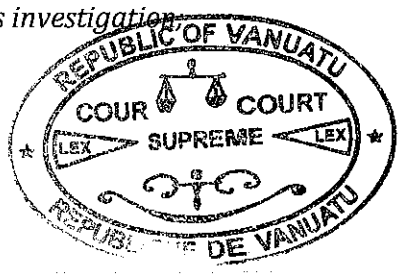
9. Under cross-examination, Mr Caulton, in answer to a question, *"Would you agree that the Prime Minister was asking you whether there was a way out rather than telling you?"* Mr Caulton replied *"I agree with that."* Evidence given regarding subsequent comments by Mr Natuman are capable of placing the *"request"* in a very different light.

10. Mr Caulton stated that he had a further meeting with Mr Natuman prior to Mr Natuman's departure on a trip to China. At that meeting Mr Natuman again enquired of Mr Caulton as to whether he had done anything to prevent the case going to Court. Mr Caulton at that time advised the Prime Minister that he had no power as Police Commissioner to interfere with the investigation as the matter had gone to the Public Prosecutor's Office at that time. Mr Natuman advised Mr Caulton that Mr Natuman was leaving on an overseas trip but would talk to him upon his return.

11. It is not entirely clear when that meeting took occurred however other evidence establishes that the file had been referred to the Public Prosecutor on August 5th, 2014 and that Mr Natuman was overseas on August 14th. It must therefore have occurred sometime between those dates.

12. On August 14th 2014, Mr Caulton received an email from Mr Iapsen which directed Mr Caulton to stop the current investigation into the case. The email from Mr Iapson, sent on Thursday August 14th at 11:42 am was addressed to Mr Caulton and copied to a number of other persons including the accused Mr Maralau and the then Attorney General, Mr Ishmael Kalsakau. The email stated:-

> *"Dear Commissioner,*
>
> *The Rt. Hon. Prime Minister has been made aware of new investigations of the Mutiny case or in investigation aimed at supporting new claims. In your discussion with the Prime Minister not long ago, he gave you clear instructions on the way forward to resolve once and for all the issues of alleged division within VPF. If the information received is true, what is recently commenced under your direction will only create more friction and division, not heal. And it may lead to further wastage of time and resources/money that VPF does not have.*
>
> *PM has instructed me to issue (from Hong Kong) these clear instructions to you:-*
>
> *1) Cease and put on hold any new investigation into the mutiny case or carry out any investigations to support your and any member's claim;*
>
> *2) Disband any unit set up for carrying out this investigation;*



3) *Not to use any VPF vehicles and other resources in the above investigation.*

4) *Not make any payments or commit funds to this investigation because it is not been budgeted for.*

5) *Prepare and briefing report to brief PM and Police Service Commission on his return from China.*

Following your briefing, the Commission may issue further instructions.

In light of the latest Financial Report, which shows that if VPF pays more than Vt7 million next week, you will have around Vt 1,000,000 left for operations until the end of the year. You are there urged to stop all uncessary (sic) expenditure, particularly activities that have not been budgeted for, and instead engage yourself in VPF and finding ways to ensure that the Force is able to operate until the end of the year.

I trust the instructions are clear enough for you.

George P Iapsen
1st Political Advisor to the Prime Minister
Republic of Vanuatu".

13. Mr Caulton stated that he replied that the matter was now transferred to the Court and that he understood that the Prime Minister would speak with Mr Caulton upon his return. Mr Caulton's response to Mr Iapsen which was sent to Mr Iapsen on August 14th at 3:35 pm stated:-

"Dear Mr Iapsen,

I note your advice and instructions. I wish to say that there was no new investigation to establish or support any claims whatsoever in the Court. I understand that this is an ongoing investigation from a long standing case. I gathered from the discussion with the Prime Minister when he took office, that any investigation or matter before Court should continue.

I understand from the Public Prosecutor that this matter is now with his office. It may be that we advise his office accordingly. My office will not commit any police resources in this matter since it is not within my jurisdiction."

14. On August 21st 2014 Mr Caulton had a meeting with the Acting Prime Minister the Honourable Ham Lini. In that meeting he advised the Acting Prime Minister that Mr Caulton had no powers to interfere with the process before the Court and was assured by the Acting Prime Minister that he would brief the Prime Minister on the matter upon his return.

15. What occurred however was that Mr Caulton was suspended from his position as Police Commissioner by way of an instrument of suspension dated September 15th 2014 and signed by the then President of the Republic of Vanuatu. Mr Caulton expressed the view in his evidence that he strongly believed that he was suspended because of his refusal to prevent the mutiny case from proceeding to Court. He stated that he had refused to follow the direction because of the provisions of section 6 of the Police Act which sets out the general powers of the Commissioner which was subject to the provisions of the Police Act and to *"the general directions of the Minister"*. It was the view of Mr Caulton that the powers of the Minister of Police did not extend to influencing or terminating police investigations.

16. The person appointed to replace Mr Caulton as Acting Commissioner of Police was the accused Mr Aru Maralau. That appointment could only be described as astounding given the fact that Mr Maralau was, at that time, the subject of the very investigation into the mutiny charges which had given rise to these discussions.

17. On September 19th, only 4 days after Mr Maralau was appointed as the Acting Police Commissioner. Mr Natuman wrote a letter to Mr Maralau. That letter stated as follows:-

"Re: Instruction to stop investigation.

It has come to my knowledge that despite my instruction to the suspended Commissioner of Police, Lt. Colonel Arthur Caulton to stop the investigation towards a court case (Commissioner of Police v. Joshua Bong) currently with the Public Prosecutor's Office, the CID officers continues to pursue the exercise.

With regard, I am strongly reiterating my INSTRUCTION to you as the Acting Commissioner of Police, to stop the investigation by the CID officers immediately. My government is working endlessly to make sure the Vanuatu Police Force is united and that the different groupings within the force to patiently await a time and date to be sent by the Government to carry out the exercise of Uniting the VPF again. Thank you in advance for your swift attendance to this matter.

Yours sincerely,

Joe Y Natuman
Prime Minister".

18. The letter was copied to the Chairman of the Police Service Commission, the Attorney General, the Acting Public Prosecutor and the Commander of the Vanuatu Mobile Force.

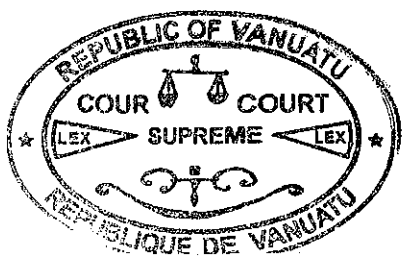
19. It is alleged that as a result of that meeting Mr Maralau directed that a meeting be held between Mr Maralau a number of other individuals consisting of Chief Inspector Twomey, the Commander of Police District South, Superintendent Willie Ben, Mr Job Esau and the members of Mr Twomey's investigating team. The meeting, which took place on September 9th was held in the Police Commissioner's meeting room. Detective Inspector Twomey stated that Mr Maralau told those gathered at the meeting to stop the investigation into the mutiny case and to leave the matter for Commissioner Caulton to pick up upon his return.

20. In addition to the evidence of Chief Inspector Twomey, the court also heard evidence from Sergeants Tony Berry and Donald James who attended the meeting. Sergeant James took an audio recording of the meeting which was later transcribed, that transcript having been introduced into evidence by consent. That transcript clearly records Mr Maralau stating that he had been directed by the Prime Minister to stop the investigation and that while Commissioner Caulton could re-open the investigation upon his return if he wished, Mr Maralau as *"being responsible with all authority"* had decided to stop the investigation.

21. Detective Inspector Twomey gave evidence that Mr Maralau was, at that meeting, advised by the Commander of Police District South that the investigation was with the Public Prosecutor's Office.

22. On September 30th Chief Inspector Twomey and the other members of the investigation team received by email a copy of the letter written by the Prime Minister to Acting Commissioner Maralau on September 19th 2014. That was accompanied by an email from Acting Commissioner Maralau which stated the following:-

> *"We were assured before that there was never anything. Those assurance are but lies. We need to be truthful and honest, starting from the Commissioner's office. We all need to stop this in the effort of bringing harmony in the work place: seeing that all case pertaining to mutiny investigation in 2012 is no longer a public interest. Any continuance of this will be dealt with seriously. The GOV is serious and we better be.*
>
> *Even though this is surfacing, I am assuring everyone that no revenge will be taken but charges of disciplinary may be raised for disobeying lawful order from the Prime Minister who is the Minister of Police; should this be furher(sic) entertained.*
>
> *Thanks all. Continue with your good work and serve our citizens. This should not be any fear and apprehension from any member".*



23. Chief Inspector Twomey subsequently met with the Public Prosecutor at that time, Mr Leon Malantugun and understood from his enquiries with the Public Prosecutor that the matter had been placed before the Court. The prosecution of the case was subsequently taken over by Mr Christopher Griggs, a lawyer specifically engaged to prosecute the case who gave Detective Inspector Twomey instructions to obtain more statements including statement from the Chairman of the Police Services Commission who at that time was Mr Sam Dan Avock. Detective Inspector Twomey gave evidence that he and Sergeant Tony Berry endeavoured to obtain a statement from Mr Avock but were met with threats of retribution from Mr Avock.

24. Following that meeting Detective Inspector Twomey received a letter from Mr Maralau. The letter was dated October 15th 2014 and stated as follows:-

"Chief Inspector George Twomey,

WARNING

In accordance to section 6 of the Police Act, CAP 105: I have ordered the disband of the investigation team of which you and others whom the Commissioner of Police has appointed for the investigation of Aru Maralau and Others and for George Songi and Others pertaining to allegation in relations to the infamous mutiny and counter mutiny of 2012.

You are ordered earlier this month to resume work at your own departments: as you are not all from the CID, but serious crime and CRO. However, intelligence reveal that you are all yet using one same vehicle doing some jobs and conducting sorties together as if you are not disbanded.

All Departments under police commander south has vehicles and there is no need for your individuals to continue to use one same vehicle at any one time; therefore being seen as a group. You have already disobeyed the instruction of the Prime Minister issued in around 14th August this year. You have also disobeyed my instruction twice this month to furnish my office with a copy of your investigation instrument.

Should you continue in this attitude; I will have no choice but to deal with you with determination.

You are hereby warned in accordance to section 73 of the Police Act, [CAP 105].

Signed.

Aru Maralau,
Acting Commisioner of Police."

25. The Honourable Ham Lini was the Deputy Prime Minister at the time Mr Natuman went to China. He gave evidence that while the Prime Minister was in China it came to Mr Lini's notice that there was a division within the Police Commissioner's Office and accordingly he called a meeting attended by Mr Toko Mara, Mr Chris Tavoa from the State Law Office and Mr Ham Bulu who was at that time Mr Lini's Private Secretary but who was also a former Attorney General and Supreme Court Justice of the Republic of Vanuatu. Mr Caulton also attended that meeting. Mr Lini stated that he requested that Mr Caulton brief him about the case and that Mr Caulton advised him that the issue was before the Court and he could not brief him about it. Mr Bulu agreed with the view expressed by Mr Caulton and also expressed the view that the instruction from the Prime Minister dated August 14th should be revoked. Mr Lini gave evidence that it was resolved at the State Law Office would write a letter accordingly but he could not recall subsequently signing such a letter. In his evidence Mr Lini confirmed that he had not seen the document purportedly from the Prime Minister, however I consider having heard the evidence that it was the email sent by Mr Iapsen to Mr Caulton on August 14th. Mr Lini also gave evidence that while the Prime Minister was away he had a meeting with Acting Police Commissioner Mr Maralau and asked Mr Maralau to step down as he was implicated in the investigation into the mutiny. Mr Lini gave evidence that Mr Maralau did step down accordingly.

26. Mr Bulu gave evidence that *"around"* August to October 2014, he was employed as an advisor to the Honourable Ham Lini who was then the Minister of Trade but who was also Acting Prime Minister in the absence of the then Prime Minister Mr Natuman. While not being able to recall the date of the meeting which Mr Lini had referred to he gave evidence that he was informed that the Prime Minister had written a note to the Public Prosecutor requesting that proceedings which had reached the Public Prosecutor's office were not to proceed. His recollection was that the matter involved police officers. He did not see what was written by the Prime Minister but he recalled seeing something from the Public Prosecutor's office requesting that the Prime Minister's request be withdrawn failing which the Public Prosecutor would issue proceedings against the Prime Minister. The letter had been signed by a prosecutor employed temporarily in that position and who was from overseas. In his evidence, Mr Bulu confirmed that the letter which he saw at that meeting was a letter from Mr Christopher Griggs, State Prosecutor pro tem dated December 2nd 2014. The letter was addressed to the Attorney General and stated:-

"Dear Sir,

Public Prosecutor v. Joshua Bong and Others.

I am writing to you on the instructions of the Acting Public Prosecutor, concerning the above mentioned Criminal Case ("the Bong Case") and, in particular, the conduct of the Prime Minister relating to it. You may recall that this is the second time I had written to you about this matter, the first being on 18 November 2014.

Since I wrote to you on 18 November, the Acting Commissioner of Police has interdicted from duty five members of my VPF investigation team. He did this by letters dated 21 November 2014, which are attached. Then the Prime Minister personally interdicted the leader of my investigation team, Chief Inspector George Twomey by letter dated 2 December 2014. This is

also attached. There are no possible grounds for these interdictions, except that the named officers had been assisting the office of Public Prosecutions with the prosecutions of the Bong case.

Frankly, I am appalled by the conduct of both the Acting Commissioner and the Prime Minister in this matter. As you are well aware, Article 55 of the Constitution of the Republic provides that the Public Prosecutor "shall not be subject to the direction or control of any other personal body in the exercise of his functions". Furthermore, section 22 (1) of the Leadership Code Act [CAP 240] provides that a "leader must not exercise undue influence over, or in any other way bring pressure to bear on, a person who is.... another leader .... so as to influence, or to attempt to influence, the person to act in a way that .... improper... or illegal".

With all respect due to the Prime Minister of the Republic , in my view his actions in respect of the Bong Case are in clear violation of both the Constitution and the Leadership Code Act. I urge you to advise him again to cease any further inference in the matter. I expect the Prime Minister to withdraw or direct a withdrawal of the interdictions against my investigation team and to make it clear (in writing) that he respects the judicial process and will take no further part in this matter, except as ordered by the Court. If I do not receive written notice that he has done so by 5 pm on Friday 5 December 2014, the Acting Public Prosecutor will have no alternative but to file a civil proceeding in the Supreme Court to protect his constitutional independence. That is a step which we are most reluctant to take, out of respect for the dignity of the Prime Minister.

There will be a preliminary enquiry in respect of the Bong case in the Magistrates' Court this morning, with a view to the accused being remanded for trial in the Supreme Court.

Yours sincerely,

REPUBLIC OF VANUATU
COUR COURT
LEX SUPREME LEX
REPUBLIQUE DE VANUATU

Christopher Griggs,

State Prosecutor – Pro tem"

27. Mr Bulu gave evidence that he advised Mr Lini that the letter from the Prime Minister would be contrary to law under Article 55 of the Constitution and the Public Prosecutors Act. He also advised Mr Lini that in the light of the letter from the Public Prosecutor the letter should be withdrawn. He advised that it was for the State Law Office to prepare that letter. What is clear is that while I have no doubts as to the evidence of Mr Bulu regarding the nature and content of the meeting, it is clear that the meeting could not have taken place until some time after December 2nd , 2014 being the date of Mr Griggs letter.

28. Mr Bulu gave evidence of a second meeting which he attended at the Prime Minister's office concerning the police but that that meeting discussed the prosecution of the Acting Commissioner of Police Mr Maralau. That meeting was attended by Acting Commissioner Maralau, Acting Prime Minister the Hon. Ham Lini and another person from the Prime Minister's Office. Mr Bulu proffered advice to the Acting Prime Minister that the charge laid against Acting Commissioner Maralau was a private matter and accordingly Mr Maralau should seek his own advice. He also proffered advice that given that the Acting Police Commissioner was a leader under the definition of the Leadership Act it would be appropriate for him to stand aside pending the outcome of the criminal proceedings so that the office of the Commissioner of Police would not be brought into disrepute. He stated that sometime later he was advised that the Acting Commissioner had stood aside.

29. The Court also heard evidence from the Honourable Ishmael Kalsakau, the current Leader of the Opposition who was the Attorney General at the time of the events the subject of these charges.

30. Mr Kalsakau gave evidence that, as Attorney General, he had received a copy of the letter from the Prime Minister to Mr Maralau dated September 19th 2014 instructing him to stop the investigation. He also referred to the temporary

Prosecutor Mr Griggs attending his office on a number of occasions with the Acting Public Prosecutor Mr Malantugun expressing concern regarding what was seen as an attempt by the Prime Minister to interfere with the mutiny investigation. Mr Kalsakau directed them to meet with the Solicitor General.

31. Mr Kalsakau stated that he met with the Prime Minister's Private Secretary and 1st Political Advisor giving them clear advice that the Prime Minister should desist and refrain from involving himself with a police investigation. He stated that Mr Griggs constant attendances at his office suggested that the Prime Minister was still in some way trying to influence the case.

32. He confirmed that he received Mr Griggs' letter of December 2nd which set out Mr Griggs' concerns. Mr Kalsakau stated that he and the Solicitor General would have met with the Prime Minister and he confirmed that he had written to the Public Prosecutor and to the Prime Minister regarding the matter. Those letters were tendered to the Court by consent. Both letters were dated December 3rd, 2014. The letter to the Public Prosecutor simply stated:-

"I have taken instructions from my client the Prime Minister.

My client appreciates that this is a matter for the Public Prosecutor and he will not be involved".

33. The letter to the Prime Minister simply stated:-

"Please find attached letter sent by the Public Prosecutor.

Prime Minister it is extremely crucial that you are not to be seen to be interfering with the independence of the Public Prosecutor or any proceeding commenced by him.

My advice to you is to remain natural (sic) from here on".

34. Mr Kalsakau confirmed that the word *"natural"* in his letter to the Prime Minister should have read *"neutral".*

SUBMISSION OF NO CASE TO ANSWER

35. The submission that there is no case to answer is made pursuant to the provisions of section 164 of the Criminal Procedure Code which provides:-

> *"(1) If, when the case of the prosecution has been concluded the Judge rules, as a matter of law that there is no evidence on which the accused person could be convicted, he shall there upon pronounce a verdict of not guilty.*
>
> *(2) In any other case, the Court shall call upon the accused person to his defence and shall comply with the requirement of section 88".*

36. Although counsel have referred to different authorities there is really no argument as to the approach which the Court is required to take in respect of an application under section 164.

37. Mr Morrison and Mr Nalyal referred to the test as being that set out by the Australian High Court in May v. O'Sullivan[1]:-

> *"When, at the close of the case for the prosecution, a submission is made that there are "no case to answer", the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted. This is really a question of law".*

38. Mr Naigulevu referred to the decision of the Chief Justice in PP v. Samson Kilman and Ors.[2] where the Chief Justice adopted the pronouncement of Lord Cane CJ in R v. Gailbraith[3] where it was stated:-

> *"(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty the Judge should stop the case.*

[1] (1955) 92 CLR 654:
[2] [1997] VUSC 21
[3] (1981) 1WLR 1039

(2) The difficulty arises where there is some evidence but it is of tenuous character, for example, because of weakness of vagueness or because it is inconsistent without the evidence.

(a) Where the Judge concludes that the Prosecution case taken at its highest is such that a jury properly directed could not properly convict on it, it is his duty on a submission being made, to stop the case.

(b) Where, however the Prosecution is such that its strength or weakness depends on the view to be taken or the witnesses reliability or other matters which are generally speaking within the providence of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to a conclusion that the defendant is guilty then the Judge should allow the matter to be tried".

39. In support of a no case to answer submission counsel for the accused advanced the following:-

a) That the prosecution case did not establish that there was any criminal intent to obstruct and interfere with the criminal process. This submission is based on what is referred to as the "consistent evidence" that Mr Natuman had expressed a wish to unite the Vanuatu Police Force and that that was the motivation for his actions.

b) That the alleged obstruction/interference was directed to persons who no longer had control of the legal process in train. This is based on the fact that the evidence reveals that when Mr Natuman spoke to Commissioner Caulton the matter was already in the hands of the Public Prosecutor. In addition, at no time did Mr Natuman write to the Public Prosecutor. When Mr Natuman wrote to Mr Maralau on September 19th 2014, the matter had been with the Public Prosecutor for some six weeks.

c) That section 79 (c) of the Penal Code *"is not consistent"* with what is seemingly intended by this prosecution. In that regard counsel referred to the decision of Chetwynd J in PP v. Natuman[4] where the Chief Magistrate referred a question of law to the Supreme Court by way of

[4] [2016]VUSC 49

case stated, that question being described by Chetwynd J *"as asking what are the essential elements necessary for there to be conviction under section 79 (c)?"*. At paragraph 14 of his decision Chetwynd J stated:-

"What the prosecution must prove is that Mr Natuman did something which made more difficult the execution of legal process or, which to his knowledge interfered with the execution of legal process. In relation to Mr Maralau it must be proved that he was complicit, (that is he aided, counselled or procured Mr Natuman) in his (Mr Natuman's) obstruction of or knowing interference in the execution of legal process. In both cases the questions need to be asked: what execution and what legal process? Given what is said above, it must be bourn (sic) in mind that legal processes is not the same as the course of justice. The prosecution must also establish that the defendants had an intention to obstruct or interfere with the execution of legal process and that intention must be something more than merely intending to do something which obstructed or interfered with the execution of legal process. If it is establishes that the defendant's intention were something more than mere intention for example "something in the nature of criminal intent" then their motives for doing what they did is irrelevant. That is the answer to learned Magistrates' question."

40. Counsel have also referred to the observations of Chetwynd J at paragraph 10 where, after referring to the definition of the *"course of justice"* he stated:-

"Legal process on the other hand seems to refer to actual proceedings in a civil action or a criminal prosecution. There is a strong case to say the phrase contemplates a narrower definition and is referring to a summons, warrant or complaint in criminal proceedings or a claim, petition or a writ in civil cases. There is some strength to the argument for adopting this latter meaning because section 79 (c) refers to interfering with or knowingly preventing the execution of legal process not merely the legal process itself. The section seems to be aimed at preventing, for example, the obstruction of or interference what of summons".

41. As to the first submission, namely that the prosecution case did not establish that there was any criminal intent to obstruct and interfere with the criminal process, it is submitted by the Public Prosecutor that the defence has effectively failed to distinguish between motive and intent, motive referring commonly to the emotion which gives rise to the intention. The expressed motive of Mr Natuman was to unite the Vanuatu Police Force. While there may be question around whether that was the genuine motive or not there is ample evidence that Mr Natuman intended to achieve that goal by bringing a halt to a criminal investigation and/or prosecution. I accept the submission of the Public Prosecutor that there is a very significant difference between the two. What is required in this case is an intent to *"obstruct", "or in any way interfere with", "or knowingly prevent"* the execution of any legal process. Accordingly the actus reus is obstruction, interference or knowing prevention while the mens rea is an intent to obstruct, interfere with or knowingly prevent.[5]

42. This issue was also discussed in a decision of the New Zealand Court of Appeal in McMahon v. R[6] where at paragraph [62] the Court stated:-

> *"Where an accused knows a crime has possibly been committed and/or knows of an investigation into a possible crime and there is an attempt to destroy possible evidence or to influence witnesses, an intention to affect proceedings could be readily inferred. As no one is obliged to talk to a police officer, however, merely hindering a police investigation by helping a person (including a suspect) to avoid speaking to the police is unlikely to suffice. At the least, a person would have to know that the police intended to arrest someone or know or suspect the crime has been committed and take positive steps to help another person avoid arrest. In that case, it could well be inferred that a person contemplated Court proceedings might follow and that the person's actions were designed to interfere with (or stop or delay) those proceedings".*

[5] See R v Rogerson (1992) 174 CLR 268 at 279
R v MBB and APP [2017] NZCA 314 at paragraph 28
[6] [2009] NZCA 472

43. In this case I consider that there is ample evidence that the Prime Minister knew not just that there was a police investigation, but that the matter had been sufficiently advanced to be placed in the hands of the Public Prosecutor. Despite that, Mr Natuman has proceeded, for whatever motive, to make the clearest direction that the police should cease to take any further steps in respect of the matter.

44. There is also ample evidence of such a direction being made to Commissioner Caulton on May 28th , 2014, before the matter had been referred to the Public Prosecutor. In that regard the true nature of the direction of May 28th could be said to be supported by Mr Natuman's subsequent instructions which included reference to previous "clear instructions".

45. As to the submission that the alleged obstruction/interference was directed to persons who no longer had control of the legal process I consider that there is no substance to that submission. What is clear, is that the Public Prosecutor would still require the assistance of police officers, namely those involved in the investigation team in making further enquiries if such enquiries were necessary. There is evidence that this indeed was the case with Mr Griggs having directed Chief Inspector Twomey to undertake further enquiries with the Chairman of the Police Service Commission. There is clear evidence that the direction given by the accused may be said to have had a clear tendency to obstruct or interfere with the prosecution of the case.

46. As to the submission that section 79 is inconsistent with what is intended by this prosecution, section 79 is a curiously worded section which provides as follows:-

*"**79. Conspiracy to defeat justice etc.***

No person shall –

(a) conspire with any other person to accuse any person falsely of any offence or to do anything to obstruct, prevent, pervert, or defeat the course of justice;

(b) in order to obstruct the due course of justice, dissuade, hinder or prevent any person lawfully bound to appear and give evidence as a witness from so appearing or giving evidence, or endeavour to do so; or

(c) obstruct or in any way interfere with or knowingly prevent the execution of any legal process civil or criminal.

Penalty: Imprisonment for 7 years."

47. I agree with the observations of Chetwynd J that *"the course of justice has long been held to mean something more than just criminal proceedings already in being"*[7]. However, section 79 (a) appears to be directed towards conspiracy involving two or more people. I am of the view that the requirement to *"conspire with any other person"* is an essential element of any offence under section 79 (a). It would follow therefore that unless there is a conspiracy involving two or more persons, charges could not be laid under section 79 (a). No conspiracy has been alleged here and accordingly it is difficult to see how, in the particular circumstances of this case, appropriate charges could be laid under section 79.

48. Section 79 (b) refers also to *"course of justice"* but refers to the specific actions of dissuading, hindering or preventing any person lawfully bound to appear and give evidence as a witness from so appearing or giving evidence. Clearly that is not what happened here.

49. As I have said, section 79 (c) is curiously worded in so far as it does not refer to the *"course of justice"* but to *"the execution of any legal process civil or criminal"*.

50. It was submitted on behalf of the accused that the term "legal process" refers to actual proceedings. They also placed considerable reliance on the judgment of Chetwynd J and his Lordship's observation that the section seemed to be aimed at preventing an action such as the obstruction of or interference with the service of a summons.

[7] Ibid 4 at paragraph 9

51. Counsel for the accused filed additional late submissions addressing the issue of the definition of *"process"* or *"legal process"* and referred to a number of judgments which determined the meaning of the term. One such decision was the decision of Re Selkirk[8]. In that judgment the Court stated:-

> *"... the word "process" viewed as a legal term is a word of comprehensive signification. In its broader sense it is equivalent to "proceeding" or "procedure" and may be said to embrace all the steps and proceedings in a case from its commencement to its conclusion. "Process" may signify the means whereby a Court compels a compliance with its demands. Every writ is of course a process, and in its narrower sense the term process is limited to writs or writing issued from or out of a Court under seal of the Court or returnable to the Court".*

52. Therein lies the difficulty in a comprehensive definition of the term *"legal process"*. The term may be given a broad or narrow definition depending on its context, the objects and purpose of the legislation it is contained in and the mischief which the legislation or provision seeks to address. I consider within the context of section 79 the words *"legal process"* should be interpreted broadly and if, in that sense, it is equivalent to a "procedure" then there can be no question that there was a criminal procedure in train at the time of Mr Natuman's actions. That criminal procedure in its broader sense is one which may be considered as commencing with the laying of a complaint and continuing through a criminal investigation by the police, the lodging of the file with the Public Prosecutor, the laying of an information and the subsequent judicial process which follows, although that judicial process might be considered as being separately dealt with under the provisions of sections 74 to 78 of the Penal Code which refer to a *"judicial proceeding"*. Even then however, it is probable and even likely that the provisions of section 79 also apply to judicial proceedings.

53. The authorities referred to in the additional submissions filed by counsel for the accused are therefore of very limited assistance as they have considered the term

[8] (1961) 2070LR615 (2d)

"legal process" within the specific context of the matters that those judgments were dealing with.

54. Accordingly while I certainly accept that section 79 (c) could apply to such matters as preventing a police officer from serving a subpoena or a summons charging a person with an offence or a warrant to arres, I see no good reason to interpret section 79 (c) in the narrow way which is submitted by counsel for the accused.

55. Considering the provisions of section 79 as a whole I am of the view that it could not have been the intention of Parliament to restrict the application of section 79 (c) in the way that has been suggested on behalf of the accused. In that regard I respectfully disagree with the views expressed by my brother Judge Chetwynd J as to the scope of section 79(c). While the use of the words *"legal process"* may certainly contemplate circumstances which are narrower than those contemplated by the phrase *"the course of justice"*, I consider that they contemplate circumstances covering, in the case of criminal proceedings, any point from the commencement of a criminal investigation onwards and that accordingly the information laid by the Public Prosecutor has been laid under the correct subsection.

56. For these reasons I dismiss the accused's application pursuant to section 164 and now call upon the accused for their defence.

Dated at Port Vila this 12th day of December 2017

BY THE COURT

JP GEOGHEGAN

JUDGE

REPUBLIC OF VANUATU COUR COURT LEX SUPREME LEX REPUBLIQUE DE VANUATU