

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

Criminal Case No. 160 of 2019

PUBLIC PROSECUTOR v. RICHARD JOHN WILLIAM

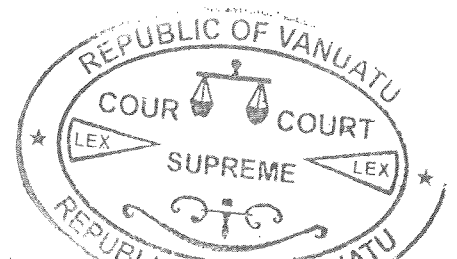
*Mr. John Timakata and Mr. Rolanson Willie for the Appellant
Ms. Betina Ngwele for the Public Prosecutor*

RULING

1. On 26 January 2019 the Defendant was arrested and charged with 4 offences including Sexual Intercourse Without Consent; Sexual Intercourse With a Child Under Care and Protection; Child Pornography, and Attempted Interfering With a Witness Contrary to Section 82 (1)(f) of the Penal Code. He appeared in Magistrate Court and was remanded in custody.
2. On 30 January 2019 the counsel for the Defendant filed an urgent application for bail invoking Section 60 (3) of the Criminal Procedure Code. The application is supported by the sworn statement of the Defendant and a nephew who has offered the Defendant accommodation and support should the application be granted.
3. Of this provision this Court observed in Public Prosecutor v Whitford [2006] VUSC 36(at para 12):

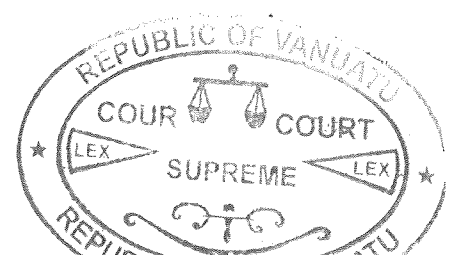
“When an application is made under Section 60 of the Criminal Procedure Code for someone who has been charged with an offence carrying a maximum term of life imprisonment, it is in my view essential that the applicant comes with good evidence to persuade the Court that his situation is special or such that the Court has to invoke Subsection 3. It is trite law that what is said from the bar table (said by lawyers) is not evidence to support a proposition or an application that is before the Court. It is the duty of the applicant to come to Court with all the relevant evidence to support his application or proposition.”

4. The Defendant who is 49 years of age deposed to being from Tongoa Island and being a chief of Bongabonga Village. He is married with 3 children. He is currently the principal of a Presbyterian Secondary School on Tongoa Island and he seeks to be release on bail so he can make arrangements for someone to take care the school in his absence I confess that this is not a good reason nor is the Court



expected to ignore the fact that the secondary school belongs to the Presbyterian Church and further that the Church would have no contingency plan to deal with the Defendant's absence.

5. Be that as it may the Defendant professes to an understanding of the seriousness of his situation and he disavows any possibility of him doing anything that would worsen his situation and the Defendant promises to return to Court on such dates and times as the Court requires.
6. Applicant's counsel referred inter alia in his written submission to the provisions of Article 5 of the Constitution which guaranties various fundamental rights and freedoms to the applicant including the presumption of innocence; the right to the protection of the law and freedom of movement. None are absolute however.
7. In **Public Prosecutor v. Winslett** [2010] VUSC this Court observed that the correct approach to a bail application is primarily to consider three (3) risk factors namely, (1) whether there is a risk of the applicant interfering with witnesses or (2) with the prosecution investigations or (3) whether there is a risk of further offending. The Court is also entitled to consider the strength of the Prosecution case so far as may be ascertained at the time of the application.
8. In this present case the Defendant has been charged with 4 serious offences that includes a charge of attempting to interfere with a prosecution witness. This latter charge is a very serious allegation and although the Defendant is presumed to be innocent of the charge, it demonstrates that the Defendant contacted a prosecution witness before he was charged and attempted to influence her to withdraw her complaint and /or police statement. Contact with the witness allegedly occurred through text messages to the witness's cell phone from the Defendant's mobile. Such strong prima facie evidence cannot be ignored in this bail application nor should the non-availability of mobile phones in prison be overlooked.
9. Prosecuting counsel says the case against the Defendant is strong and police investigations into other possible victims is continuing and requires investigators to travel to Tongoa Island. Such investigations are incomplete. Furthermore counsel submits that the police are ill-equipped to closely monitor the Defendant's movement and activities should he be released on bail.
10. I accept that it is possible to fashion bail conditions to address and/or ameliorate the various concerns of the police but, at this early stage in the proceedings, it is impossible to ignore or wholly avoid the real risk (not certainty) that the Defendant



may again seek to interfere with potential prosecution witnesses who are already known to him but as yet, to be identified by the continuing police investigations.

11. The application is accordingly refused at this early stage in the proceedings.
12. If there is a material (and I emphasize the word material) change in circumstances in relation to bail then a further application can be made in future.

DATED at Port Vila, this 18 day of February, 2019.

BY THE COURT



D. V. FATIAKI
Judge.

