

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

**Criminal
Case No. 19/1883 SC/CRML**

BETWEEN: Public Prosecutor
Prosecutor

AND: John William
Accused

Coram: *Justice Aru*

Counsel: *Ms. M. Tasso and Mrs. S. Mayhew for the Public Prosecutor*
Mr. N. Morrison and Ms. Cyrel for the Defendant

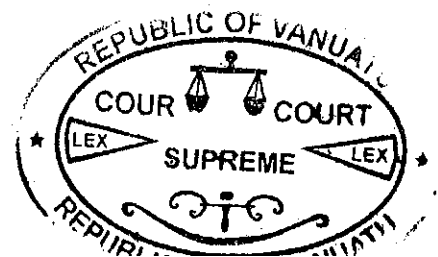
RULING
[NO CASE SUBMISSION]

1. The accused is charged with one (1) count of sexual intercourse without consent contrary s90 (b) (i) and s 91 of the Penal Code [CAP 135]; one (1) count of domestic violence contrary to s 4 (1) a) and s 10 of the Family Protection Act No 28 of 2008 as amended and three (3) counts of breach of protection order contrary to s 21 (1) of the Family Protection Act.
2. The prosecution called two witnesses. The complainant and Sergeant Sandrina Bila. The complainant who was 45 years old told the Court that on several occasions she had informed parties by letter that due to her failing health she had forgiven the accused (her husband) and wanted him at home to help her care for their children and grandchildren who live with them. She was very emotional and said several times that she did not want to proceed against her husband.
3. Sergeant Sandrina Bila said she was the investigation officer and she served the accused with the protection order after explaining the contents to him.
4. At the close of the prosecution case defence counsel made a submission of no case to answer invoking s164 (1) of the Criminal Procedure Code [CAP 136]. It states as follows:-

"164. Procedure after close of prosecution

(1). If, when the case for 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 thereupon pronounce a verdict of not guilty. "

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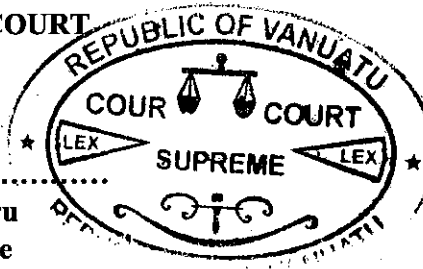
5. This is a submission of no case to answer and I adopt the test as set out by the Chief Justice in **Public Prosecutor v Verlili** [2017] VUSC 166 where he said that in a no case submission:-

*“the test is not proof beyond reasonable doubt but rather as a matter of law whether the accused person **could** be convicted on the evidence presented thus far. The test is whether a finding of guilt **could** be made by a reasonable judicial officer sitting alone on the evidence thus far presented.”*

6. Following the submission of no case to answer the prosecution informed the court that they will not be making a response. When considering the evidence, the no case submission must be upheld. In accordance with section 164 (1) the accused is found not guilty and is to be released forthwith.

DATED at Port Vila this 20 day of March, 2020

BY THE COURT



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D. Aru
Judge