

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

**Criminal
Case No. 20/1907 SC/CRML**

BETWEEN: Public Prosecutor

**AND: Martin Mahe
Defendant**

Coram: Justice Aru

**Counsel: Mr. T. Karae for the Public Prosecutor
Mr. N. Morrison for the Defendant**

**VERDICT
(Reasons)**

Introduction

1. An oral verdict was given on 30 April 2021. I now provide my reasons.
2. On the 4 April 2020 in the evening the complainant Mr Jackson Noal, who is the Assistant Police Commissioner and Commander South was having dinner with two of his friends from Korea at Joe Restaurant opposite the Digicel Flagship store in town. Around the same time he alleges that he saw Mr Mahe walking into the restaurant very drunk and disorderly without a shirt. He alleges that when Mr Mahe saw him Mr Mahe walked towards him and assaulted him.

The Charges and elements

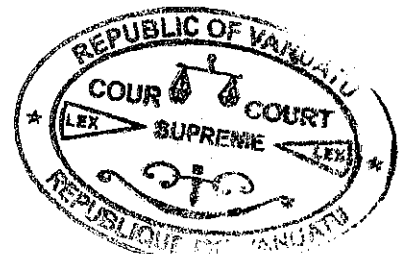
3. Mr Mahe was charged with four (4) counts:-
 - Count 1 – [s107 a) Penal Code [CAP 135] Intentional assault causing no physical injury.

The particulars are:

That Martine Mahe on 4 April at Joe Vietnamese Restaurant Port Vila intentionally assaulted Jackson Noal Katenga by squeezing his neck.

- Count 2 – [s148 b) Penal Code] Idle and Disorderly.

The particulars are:-



That Martine Mahe on the 4 April 2020 at Joe Vietnamese Restaurant in was drunk and acted in a disorderly manner in a public place in that he entered shirtless and was intoxicated with alcohol, hitting tables and chairs everywhere causing tables and a room divider to fall, assaulting Jackson Noal Katenga and attempting to force Madonna to get into his vehicle and causing diners to flee from the Restaurant.

- Count 3 – [s. 13 1) (a) and s 19 Leadership Code [CAP 240] Failure to comply with and observe the law

The particulars are:-

That Martine Mahe on 4 April 2020 as a Leader pursuant to section 5 (u) and (w) of the Leadership Code and Article 67 of the Constitution did commit the offence intentional assault contrary to section 107 a) of the Penal Code.

- Count 4 – [s13 1) (a) and s 19 of the Leadership Code] Failure to comply with and observe the law

The particulars are:-

That Martine Mahe on the 4 April 2020 at Port Vila as a Leader pursuant to section 5 (u) and (w) of the Leadership Code and Article 67 of the Constitution did commit the offence of idle and disorderly conduct contrary to section 148 b) of the Penal Code.

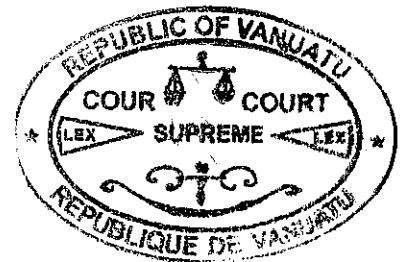
4. This is a criminal case. The burden of proof rests with the prosecution. It must prove the defendants' guilt beyond reasonable doubt.
5. The elements of each offence requiring proof beyond reasonable doubt are as follows.

- Count 1
 - a. Mr Mahe
 - b. Intentionally assaulted Mr Noal by squeezing his neck
 - c. Mr Noal did not suffer any injury

- Count 2
 - a. Mr Mahe
 - b. was idle, drunk and disorderly
 - c. in a public place

- Count 3
 - a. Mr Mahe
 - b. is a leader
 - c. and he breached s 107 a) of the Penal Code

- Count 4
 - a. Mr Mahe
 - b. is a leader

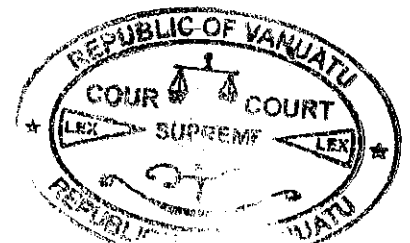


- c. and he breached s148 b) of the Penal Code
6. It was submitted by the prosecution that counts 3 and 4 are entirely dependent on the Courts findings in relation to Counts 1 and 2. And if the prosecution fails to prove all the elements of counts 1 and 2 then Mr Mahe is entitled to be acquitted on counts 3 and 4.
 7. The prosecution called six (6) witnesses namely Jackson Noal Katenga, Lisa Tran, Madonna Meltenoven, John Stephen, Andrew Kalman and James Bila.
 8. The defendant was informed of his rights pursuant s 81 and s 88 of the Criminal Procedure Code [CAP 136]. He elected to give evidence and in addition called Chrystina Gesa.

Evaluation of the evidence

Count 1

9. In relation to count 1, the main issue is whether the complainant was intentionally assaulted.
10. The complainant says he was having dinner in the restaurant with two Korean friends when Mr Mahe walked into the restaurant drunk and with no shirt. He says Mr Mahe was very drunk. When Mr Mahe saw him Mr Mahe walked towards him and put his arm around his neck and squeezed his neck pulling him down. Under cross examination he refused to answer questions relating to why Mrs Gesa was held in custody in Cell No 6. He told the Court that he will not answer those questions.
11. The security guard John Stephen said when he was called to assist the complainant Mr Mahe had his arm around the complainant's neck and was pulling him down.
12. Ms Meltenoven gave evidence that at the relevant time there were 6 people in the restaurant. The complainant and his two Korean friends having dinner and herself, Linda and Ketura. Around 6 pm they received a call from Donald Mr Mahe's driver ordering soup. Around 7pm Donald and Mr Mahe came to get the soup. Mr Mahe was drunk so she told Donald to take him home. When Mr Mahe entered the restaurant again she took his hand and led him to his car and told them to go home. She said Mr Mahe wore nylon shorts and no shirt.
13. Under cross examination, Ms Meltenoven said she was there in the restaurant when Mr Mahe entered, he was drunk but he did not assault the complainant. She maintained her evidence that there was no assault.
14. Ms Meltenoven gave her evidence confidently and without any hesitation. I accept her evidence as a witness of truth. She admitted under cross examination that the complainant and Mr Kalman attended her work place several times to get her to make a statement. She was concerned and got advice from Christina Gesa as her lawyer. She felt pressured to say something that did not happen. She filed a sworn statement to that effect in a related matter which was tendered as **Exhibit D4**. At paragraph 12 she deposed that:-



"12. I understood that he (Mr Kalman) wanted me to mention something which did not take place on that incident of 4 April 2020 and I did not want to lie".

15. Mr Kalman a Police officer in his evidence said he was tasked to investigate the matter and spoke to Ms Meltenoven a couple of times to get her statement on the events that occurred but nothing was signed. When cross examined about his notes of interview he said he had no notes of his interviews with Ms Meltenoven.
16. Mrs Christina Gesa in her evidence confirmed Ms Meltenoven sought her advice following visits by the complainant and Mr Kalman to her workplace to get her to make a statement. She confirmed she gave advice to Ms Meltenoven and wrote to the complainant and Mr Kalman to stop harassing her client. The letter was tendered as **Exhibit D3** and it reads as follows:-

"3 May 2020

*Jackson Noal
Assistant Commissioner of Police
Vanuatu Police Force*

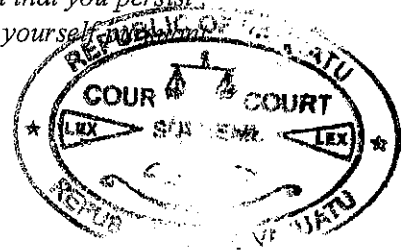
*Kalman Andrew
Officer in Charge
Uniform Investigation Branch
Vanuatu Police Force*

*Dear Sir
Re: intimidation of our client and abuse of power as senior police officers*

We refer to the above and confirm we have received complaints from our client Ms Madonna Meltenoven about the following:

- 1) Our client is an employee of Joe Vietnames restaurant*
- 2) You have both attended on numerous occasions our client's workplace between last week and this week with an intention to intimidate our client about an incident which took place on Saturday 4 April 2020 at around 7pm involving Mr Martine Mahe the current chairman of the Public Service Commission*
- 3) Your illegal intention is clearly to fish for information to complete an harassment case against Mr Mahe
Your actions as both the Assistant Commissioner of Police and the Officer in Charge of the Uniform Investigation Branch , Senior Police Officers clearly amounts to an abuse of power and an abuse of the process of lodging a complaint with the Police. We put you on notice that we have informed the Professional Standard Unit about your actions.*

May we kindly request that you refrain from such act or in the event that you persist, we will have no alternative but to issue restraining orders against yourself in accordance to our client's further instructions .



*Yours sincerely
(signed)*

*Christina Thyna Gesa
Cornerstone Lawyers"*

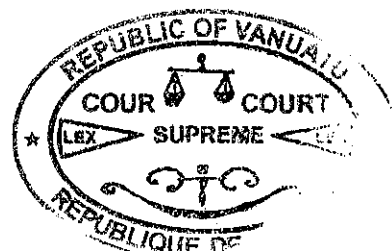
17. Subsequently Mrs Gesa was arrested and placed in cell 6 for a few hours. Upon her release she met the complainant outside the Police station and asked him why she was arrested. His response is at paragraph 26 of **Exhibit 8** is that:-

"Mi nao mi complainant lo kes blong yu ia. Yu mekem flas blo u taem u stap chairem ol kes blong mifala long disciplinary board. Naoia emi taem blong u. Yu wantem mekem flas blo u wetem smol letterhead blong yu ia. Mi save yu wetem man blong yu , yu no save kam luk mi no nom oblong yumitu discussem case ia ,u raetem wan leta I kam . Yu save se yu brekem law. Yu save se Natuman I lusum case blong hem wetem interference blo Police from wan leta nomo. Kes blo u I semak. Ba mi mekem case I mas complete agensem yu mo bae mi kam olsem wan witness agensem yu. Yu lucky ia mi sorry long mi lockem yu blong smol time nomo. "

18. Mr Mahe in his evidence said he knows the complainant very well so he went to greet him and tapped him on the shoulder with his right hand. He denied assaulting the complainant. He said he knows the complainant as the complainant came to see him in his office once. Asking him to process the employment of one of the complainant's uncle's employment at the Correctional Centre.
19. The second time was when the Police Service Commission gave the complainant forced leave with other officers following a complaint lodged by the complainant against the Police Commissioner. At that time he (Mr Mahe) and Mrs Gesa were members of the Police Service Commission.

Count 2

20. As to count 2, the complainant said when Mr Mahe walked into the restaurant he was drunk and disorderly and hitting chairs and tables in his way as he entered the restaurant.
21. Lisa Tran said Mr Mahe is one of her regular customers and would not do such a thing. Ms Meltenoven in her evidence in chief, said when Mr Mahe and Donald entered the restaurant they were talking and laughing. She agreed Mr Mahe was drunk but he was not disorderly or hitting chairs as alleged by the complainant.
22. Mr Mahe's evidence is he had about seven beers at the Salon bar then they ordered soup at Joe's Restaurant. When they came to pick it up he was hot so he took off his shirt and waited in the car as his driver went to check. After a while he followed the driver into the restaurant to check their order. He was not disorderly or pushing chairs and tables as alleged by the complainant.



23. When the Police arrived on the scene Mr Bila said he saw Mr Mahe and attended to him. The complainant told him to take Mr Mahe home as he was drunk and that he should remove his car keys.
24. Mr Bila said Mr Mahe although drunk was not driving and was not acting disorderly. Secondly he said he had no evidence to charge Mr Mahe so he drove Mr Mahe home. I accept his evidence.

Discussions

25. Mr Morrison submitted that there was no intentional assault but a mere hug to greet the complainant. Counsel referred to **Exhibit D2** and submitted that this was the basis of the fresh complainant made some three weeks after the incident and does not mention any assault. The report is a "to Whom it may Concern" signed by the complainant says:-

"Mi stap mekem smol report ia concernem wan incident we I happen lo Joe's Vietnamese Restaurant opposite Digicel in town Port Vila. Lo satede 4 April 2020 samwe araon 7pm lo night me been stap kakai lo restaurant time we wan blu car we chairman blo Public Service Commission emi drivem ikam stop. Chairman ino been drive be wan man Emae namely Donald I drivem mo tufala i stap under influence blo alcohol. Chairman emi no werem any shirt mo go stap hang lo female staff mo fosem wan woman blo folem em I go long truck.

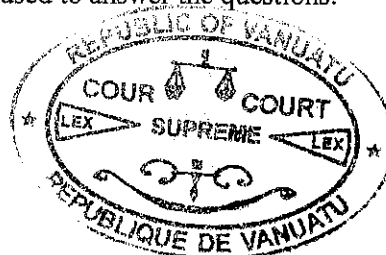
"Mi olsem wan senior police officer me no likem kind attitude we chairman emi mekem from emi lo wan public ples emi holem wan very important position lo government. Emi stap breachem blo ol Government worker ino drong lo government vehicles mo emi wan member tub lo Police Service Commission mo oli stap breachim abaot discipline plante lo mifala ol senior officers.

Emi wan total disgrace time emi act olsem mo mi wantem sipos actions blo em ya emi save fesem consequence blo em.

Thank you

*ACP Jackson Noal Katenga
Commander South"*

26. In his Police statement of the same date the complainant attaches the above report as his complaint. In an earlier statement made by the complainant dated 5 April 2020 the complainant says Mr Mahe squeezed his neck. The latter report does not mention Mr Mahe assaulting the complainant and it was signed by the complainant.
27. Ms Meltenoven's evidence contradicts the complainant. She said there was no assault. When she was pursued by the complainant and Mr Kalman to make a statement, she sought advice from Mrs Gesa. Apparently the complainant did not like it and had Mrs Gesa arrested and placed in cell No 6 for assisting Ms Meltenoven. When cross examined about why Mrs Gesa was arrested the complainant refused to answer the questions.



28. Mr Bila confirmed in his evidence that when he attended the scene he had no evidence to charge Mr Mahe and took him home. To date there was no complaint lodged by the owners of Joe Vietnamese restaurant that Mr. Mahe was drunk and disorderly.

Finding

29. Given the contradictions in the prosecution evidence, I find that the complainant was not assaulted by Mr. Mahe. Similarly Mr. Mahe was not drunk and disorderly. There was no complaint made by the owner of the restaurant about Mr Mahe's behaviour if any. Mr. Bila confirmed that there was no evidence to charge Mr. Mahe.

30. When considering the evidence in totality, I am not satisfied that the prosecution has proved its case to the requisite standard in relation to count 1 and 2. It therefore follows that Counts 3 and 4 also cannot be sustained.

Verdicts

31. I return the following verdicts:-

- Count 1 not guilty
- Count 2 not guilty
- Count 3 not guilty
- Count 4 not guilty

32. Mr. Mahe is therefore acquitted on all the charges.

DATED at Port Vila this 11th day of June, 2021

BY THE COURT

