

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

**Criminal**  
**Case No. 22/96 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Esrom Loughmani**

*Defendant*

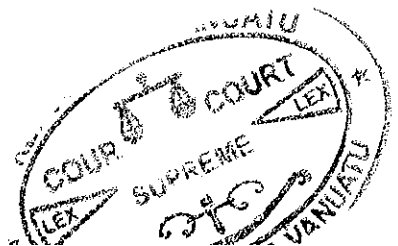
**Date of Trial:** *5<sup>th</sup> day of June 2023*  
**Date of Written Decision:** *5<sup>th</sup> day of June 2023*  
**Before:** *Justice Oliver Saksak*  
**In Attendance:** *Mr Tristan Karae for Public Prosecutor*  
*Mr Eric Molbaleh for Accused*

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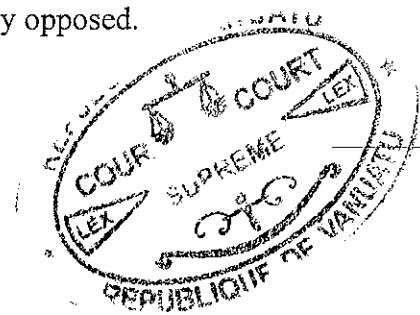
**DECISION**

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1. This case was initially fixed for trial for the week of 11<sup>th</sup> -14<sup>th</sup> April 2023.
2. However by Minute dated 11<sup>th</sup> April 2023, the trial was adjourned due to Court room availability and trial was vacated and adjourned to 5<sup>th</sup> June 2023 at 9 O'clock am.
3. On 12<sup>th</sup> April 2023 the Court issued a Notice of Trial returnable on 5<sup>th</sup> June 2023 at 9:00am.
4. Today at about 9:15am when the case was called, Mr Karae advised the Court that Prosecution was ready for trial but that witnesses from the Immigration Office were not immediately available, but were on their way.
5. Mr Molbaleh indicated also that defence was ready for trial.
6. The Court decided that trial should commence. Thereafter section 81 of the Criminal Procedure Code Act [ CAP 136] was read in English and explained in Bislama to the accused.
7. Subsequently the Court invited Mr Karae to make his opening address which Counsel did.
8. By about 9:30am when he called the first prosecution witness, who was to be the Director of Immigration, the witness was not available in the vicinity of the Court.
9. Mr Karae then sought a short adjournment to make contacts. The Court adjourned at about 9:35am for that purpose.



10. When the Court resumed at about 9:45am Mr Karae informed the Court that neither the Director nor the other witnesses were available as he had called them but were not responding. Subsequently Mr Karae requested an adjournment to 1:30 or 2:00pm.
11. Mr Molbaleh objected strongly to any adjournment of trial on the basis of delay and the effect the case is having on the accused, who is currently on suspension. Mr Molbaleh asked the Court to dismiss the case for want of prosecution.
12. In the course of the hearing Mr Karae received an incoming telephone call and sought leave to answer. Leave was granted and Mr Karae left the court room to answer the call. After about 3 minutes Mr Karae returned to the courtroom and informed that there still were no witnesses available to give evidence.
13. I gave an opportunity to Mr Karae to make a decision as to what should happen in the circumstances he was faced with as prosecuting counsel. However Mr Karae left it to the Court to decide on his application for an adjournment instead.
14. I therefore decided to allow Mr Molbaleh's objection and his request to dismiss the case for want of prosecution.
15. As it stands the accused is presumed innocent unless and until the prosecution has proved his guilty beyond reasonable doubt. That presumption is available in section 81 of the CPC as read to the accused at the commencement of trial.
16. Initially there were, as at November 2021, 4 charges laid against the accused and his accomplice.
17. When the case was called before me on 4<sup>th</sup> October 2022 the charges were reduced to only three, two against the accused and one against his accomplice. They both pleaded not guilty but Prosecution entered nolle prosequi in favour of Mrs Grace Malas. That left only 2 charges against the accused.
18. There were serious charges laid by Prosecution as a result of the complaint made by the Director on 10 May 2021.
19. Regrettably there has been no serious steps taken by the complainant of the case to ensure the complaint is presented. The unavailability of the Director and other witnesses in Court today when the case was called and trial had commenced clearly demonstrate the lack of seriousness on their part to assist the Prosecution with prosecuting the complaint.
20. Today Prosecution is faced with a difficult situation that they have no evidence to offer. But they seek an adjournment to which Mr Molbaleh strongly opposed.



21. The Minute of 11<sup>th</sup> April 2023 was clear as to the trial date. The Notice of Trial dated 12<sup>th</sup> April 2023 was clear as to the date. The summons issued on 3<sup>rd</sup> June 2023 were endorsed with the date 5<sup>th</sup> June 2023 at 9:00am as the trial date.
22. Mr Karae informed the Court the summonses were served on the witnesses.
23. There has been no courtesy made to the Prosecutor, defence counsel or to the Court by anyone by email or telephone advising of the difficulties, if any, of meeting the allocated date and time.
24. For those reasons, the request for adjournment is refused.
25. The case against the accused is therefore dismissed. The two charges are dismissed against him for want of prosecution. He is accordingly acquitted of the two charges.

**DATED at Port Vila this 5<sup>th</sup> day of June 2023**

**BY THE COURT**

  
**OLIVER A SAKSAK**

**Judge**

