IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(Criminal Jurisdiction)

Criminal

Case No. 23/3376 SC/CRML

PUBLIC PROSECUTOR

v

DONALD RESTUETUNE

Date of Trial (part heard):	17 March 2026
Before:	Justice V.M. Trief
In Attendance:	Public Prosecutor – Ms J. Tete, via AVL from Dumbea Courtroom
	Defendant – Mr R. Willie; Defendant present

EX TEMPORE DECISION THAT THERE IS A CASE TO ANSWER

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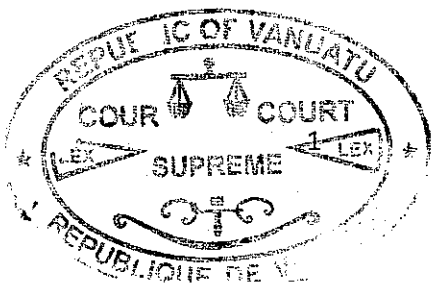
1. This is the ruling as to the Defendant Donald Restuetune's application pursuant to s. 164 of the *Criminal Procedure Code* [CAP. 136] ('CPC') that he does not have a case to answer.

2. Section 164 of the CPC provides as follows:

> *164. (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.*
>
> *(2) In any other case, the court shall call upon the accused person for his defence and shall comply with the requirements of section 88.*

3. The Court of Appeal set out the following test for a "no case to answer" assessment in *Public Prosecutor v Suaki* [2018] VUCA 23 at [10] and [11]:

> *10. ... we consider that the objective of a "no case to answer" assessment is to ascertain whether the Prosecution has led sufficient evidence to necessitate a defence case, failing which the accused is to be acquitted on one or more of the counts before commencing that stage of the trial. We therefore consider that the*



test to be applied for a 'no case to answer" determination is whether or not, on the basis of a prima facie assessment of the evidence , there is a case, in the sense of whether there is sufficient evidence introduced, on which, if accepted, a reasonable tribunal could convict the accused. The emphasis is on the word "could" and the exercise contemplated is thus not one which assesses the evidence to the standard for a conviction at the final stage of a trial.

11. *The determination of "no case to answer" motion does not entail an evaluation of the strength of the evidence presented, especially as regards exhaustive questions of credibility or reliability. Such matters are to be weighed in the final deliberations in light of the entirety of the evidence presented. In our view therefore, the question which the judge has to consider at the close of the prosecution case in a trial on the indictment on information is whether the prosecution has given admissible evidence of the matters in respect of which it has the burden to proof. It is for him as a matter of law to determine whether the evidence adduced has reached that standard of proof prescribed by law. The standard of proof required by law here is not proof beyond reasonable doubt which only comes after the conclusion of the whole case. It seems to us therefore that a consideration of a "no case to answer" by the judge's own motion or a submission of "no case to answer" ought to be upheld in trials on indictment if the judge is of the view that the evidence adduced will not reasonably satisfy a jury (judge of fact), and this we think will be the case firstly, when the prosecution has not led any evidence to prove an essential element or ingredient in the offence charged and secondly, where the evidence adduced in support of the prosecution's case had been so discredited as a result of cross-examination, or so contradictory, or is so manifestly unreliable that no reasonable tribunal or jury might safely convict upon it. In our view, such evidence can hardly be said to be supportive of the offence charged in the indictment on the information or any other offence of which he might be convicted upon.*

[*emphasis added*]

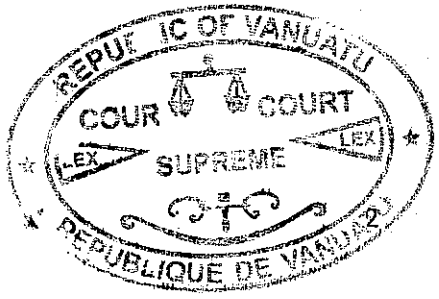
4. The Defendant is charged with misappropriation contrary to s. 123 and para. 125(b) of the *Penal Code* [CAP. 135]. Therefore, the Prosecution is required to prove the following elements of the charge beyond reasonable doubt:

   (i) The Defendant was entrusted with property capable of being taken;

   (ii) The property was entrusted to the Defendant for the purpose of a particular dealing; and

   (iii) The Defendant has converted the property entrusted to him, that is, he has used the property for a different purpose than its intended purpose.

5. As to the first two elements, Mr Willie submitted that there is no dispute that the school the Lister Adventist Training Institute ('LATI') gave money to the Defendant to obtain a leasehold property for LATI.



6. Indeed, the evidence of the Prosecution witnesses is to that effect. That is, that LATI remitted money to the Defendant in order to secure a lease title for LATI.

7. Accordingly, I am satisfied that the Prosecution has led evidence to prove the first and second elements of the charge of misappropriation.

8. The third element of the charge is that the Defendant has used the property entrusted to him for a different purpose than its intended purpose.

9. Mr Willie submitted that the evidence clearly shows that the Defendant used the money that he received from LATI for the purpose for which it was sent. He submitted that the two sets of proceedings *Bill v Restuetune*, CC 14 of 2013 and *Restuetune v Bill*, CAC 14 of 2015 show that the Defendant's sole purpose was to secure the land for LATI. That he received money from LATI, purchased lease 004, secured the registration of lease 004 and when challenged, continued to fight – at his own cost – till the Court of Appeal. Today, LATI has the land.

10. Mr Willie also submitted that a LATI meeting took place on 5 June 2008 attended by the Defendant, Prosecution witness Gibson Leeman, Prosecution witness Alistair Macgillivray and a Mr Amos Tasso in which it was approved for the Defendant to get a VT400,000 advance payment to purchase his own lease 002, which payment he would refund. He began refunding that money by cutting timber at Malekula for LATI. He submitted that Mr Macgillivray agreed with this in cross-examination, and also agreed that he (Mr Macgillivray) was the one who stopped the timber-cutting and got all the machines returned to LATI.

11. Mr Willie submitted that therefore the Prosecution evidence is clear that the Defendant was given money for both lease 004 for LATI as well as VT400,000 to purchase his own lease 002.

12. He submitted that the Prosecution has not led any evidence such that the Defendant is required to present his defence. He invited the Court to rule that the Defendant does not have a case to answer and acquit him.

13. In response, Ms Tete submitted that there *is* a case to answer because the Prosecution has led evidence on which the Defendant could be convicted.

14. She submitted that there is evidence from the complainant himself Mr Macgillivray that money was remitted to the Defendant on different occasions totalling VT1,600,000 but that he did not give them receipts. Later, when they went to the Department of Lands, they found out that no payments had been made for lease 004 but instead, the Defendant had made payments for lease 002. Therefore LATI

had to pay an additional VT962,000 to the Department of Lands for lease 004. She submitted that Mr Macgillivray's evidence was that they do not know what the Defendant did with the money LATI sent him, because LATI itself had to make the VT962,000 payment to the Department of Lands for lease 004.

15. Ms Tete submitted that there was a verbal agreement between them that the Defendant would secure a lease in his, Mr Leeman and Mr Tasso's names then after the lease was registered, transfer it to LATI. However, he did not because LATI itself had to pay VT962,000 to the Department of Lands for lease 004. She submitted that Mr Macgillivray's evidence was that they were double-crossed by the Defendant. She submitted that two proceedings CC 14 of 2013 and *Restuetune v Bill*, CAC 14 of 2015 were for the purpose of changing the registration of lease 004 from the Defendant's name to LATI's name, after LATI itself had paid the VT433,000 lease premium for lease 004 and then the VT962,000 required by the Department of Lands for that lease.

16. I agree with Ms Tete's summary of the evidence led by the Prosecution. I consider that the Prosecution has also led evidence to prove the third element of the charge of misappropriation.

17. Accordingly, I rule that as a matter of law, that there is evidence on which the Defendant could be convicted and call on him for his defence.

DATED at Luganville this 17th day of March, 2026
BY THE COURT

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Justice Viran Molisa Trief

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