

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

Criminal Appeal Case No. 1463 of 2017

**BETWEEN:** CAIN RONGO  
Appellant

**AND:** PUBLIC PROSECUTOR  
Respondent

Hearing: 11<sup>th</sup> September 2017  
Before: Justice Chetwynd  
Counsel: Mr Massing for the Respondent  
No appearance or attendance for the Appellant

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**JUDGMENT**

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1. This is an appeal from a decision of the Magistrate's Court. It is a case involving maintenance for a deserted wife. The appellant is the former husband and he was charged with failing to maintain his family pursuant to the Maintenance of Family Act [Cap.42]. The provisions of that section of the Act are straight forward:

***FAILURE TO MAINTAIN FAMILY***

1. Any -

(a) man who for a period exceeding 1 month fails to make adequate provision for the maintenance of the woman to whom he is legally married or his legitimate children being under the age of 18 years; or

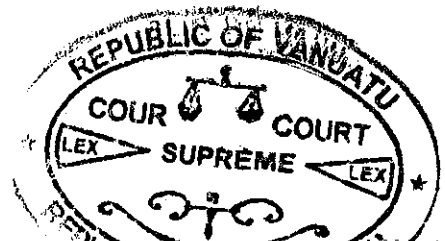
(b) mother who for a period exceeding 1 month deserts her children being under the age of 18 years;

shall be guilty of an offence and on conviction thereof shall be liable to a fine not exceeding VT20,000 or to a period of imprisonment not exceeding 3 months or to both such fine and imprisonment:

Provided that no offence shall be committed under paragraph (a) by a person who is rendered financially incapable of making such provision by reason of -

- (i) illness or injury;
- (ii) incarceration in prison; or
- (iii) any other circumstances beyond his control.

According to the Magistrate's note the appellant pleaded guilty and was ordered to pay a fine of VT 5,000, maintenance to the family of VT 5,000 per month and VT 1,000 costs. That was on 15<sup>th</sup> April 2015.



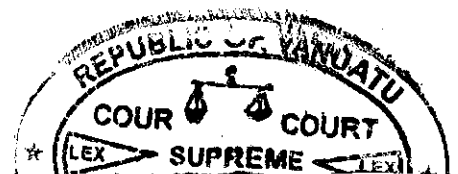
2. On the 8<sup>th</sup> June 2017, 2 years later, the appellant lodged a notice and memorandum of appeal. On 28<sup>th</sup> June the matter came up before the Chief Justice in Luganville. The appeal was not ready and so it was adjourned to the next Santo tour. Judge Geoghegan held a video conference on 14<sup>th</sup> August in preparation for a hearing before him in Luganville. On 21<sup>st</sup> August during the judge's tour to Santo the appeal was called on. It became clear the appeal could not proceed at that time and His Lordship gave directions for the disposal of the matter. The Minute he published made it clear that the appellant had to take certain steps before the appeal could be heard.

3. In particular Judge Geoghegan directed the appellant to lodge an application for leave to appeal out of time. This was an essential step for the appellant to take given the appeal was lodged 2 years after the decision and was obviously well out of time. The application for leave was to be filed with supporting documents on or before 4<sup>th</sup> September 2017. No such application was filed and no supporting documentation either. Nor was any appeal book lodged in court or served on the respondent. That was another essential step the Court required the appellant to take.

4. Judge Geoghegan adjourned the appeal to 11<sup>th</sup> September to be heard by me in Luganville. Despite Mr Bal having been present before Geoghegan J on 21<sup>st</sup> August and presumably therefore well aware of today's hearing there was no attendance by either the appellant or counsel today. As there is no application for leave before me the appeal cannot proceed. Alternatively, if I accept an application for leave was made orally before Geoghegan J on 21<sup>st</sup> August I now refuse to grant leave and dismiss the appeal.

5. Whilst I am conscious of not hearing any argument or submissions by the putative appellant I would have to say the grounds of appeal are very far from convincing in any event. What Mr Rongo says is the Magistrate did not put equal weight on the evidence. The suggestion is the Magistrate ignored payments of VT 1,000,000 said to have been paid by Mr Rongo. As noted by Geoghegan J in his Minute of 21<sup>st</sup> August there is no specific mention of Vt1,000,000 in the Magistrate's notes but the Magistrate does acknowledge some payments had been made for school fees. It is also noteworthy that Mr Rongo accepted the prosecution submissions before the Magistrate. The offence as set out in section 1 of the Maintenance of Family Act is only concerned with recent maintenance payments and if no provision has been made for a month or more an offence is committed. As I say, I have not heard submissions on these points but even if Mr Rongo had not fallen at the first hurdle (by failing to apply for leave) it is difficult to see how his appeal could have succeeded.

6. As stated earlier Mr Rongo does not have leave to appeal out of time because he has not, on the face of it applied for leave to appeal out of time. Even if it could be said there was an oral application for such leave before the Court, Mr Rongo has not lodged formal application in writing or any supporting documentation which




assists the court and there is really no alternative today but to refuse leave. As a consequence the appeal must be dismissed.

7. The only remaining issue is in relation to costs. Fortunately for Mr Rongo I am not being asked to make any order for costs by the respondent. Had an application been made I would have ordered costs against the appellant.

DATED at Luganville this 11<sup>th</sup> day of September 2017.

BY THE COURT

  
D. CHETWYND  
Judge

