

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

**Criminal  
Case No. 15/77 SC/CRML**

**BETWEEN: John Tari Mauiakan Lava**  
Applicant

**AND: Public Prosecutor**  
Respondent

*Date:* 15 April 2020  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Ms P. Malites for the Applicant  
Mr S. Blessing for the Respondent

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**Judgment**

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A. Introduction

1. Mr Lava faces a criminal prosecution alleging intentional homicide. He allegedly decapitated his father in April 2015. Mr Lava has been remanded in custody since then, but due to his mental health issues he has not been fit to plead or stand trial. He has simply languished in prison for over 5 years, contrary to his constitutional right to have a fair hearing within a reasonable time.
2. This is an application that Mr Lava be released from his current Guardianship Order imposed pursuant section 13 of the Penal Code under which he is detained by the Correctional Services Department.

B. Background

3. Mr Lava has been under constant care since his arrest, with monthly reports to the Correctional Services Director as to his mental health. Not only has time passed with Mr Lava inadequately housed in a prison setting rather a medical facility, but it appears his mental health is on the



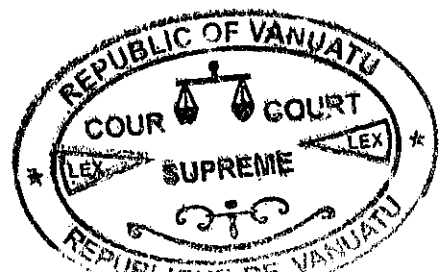
improve and becoming more stable. Accordingly, it is an apposite time to reconsider the basis on which he remains incarcerated.

C. Reports

4. Dr Miranda Paul, a Consultant Physician at Vila Central Hospital, has made certain recommendations regarding Mr Lava's future dietary needs due to his chronic liver disease.
5. Dr Kaiva Tulimanu, of the Port Vila Medical Centre, confirms Mr Lava's swollen legs are symptomatic of "very high" blood pressure, which requires careful treatment and monitoring – something that has apparently not been consistently administered.
6. Dr Obed Jimmy, the Psychiatric Registrar at Vila Central Hospital, has been involved with Mr Lava for a number of years. He prepared a report in respect of Mr Lava's medical condition for the Court in September 2015. He has prepared subsequent updates. He has very detailed knowledge of Mr Lava's issues and needs.
7. As of February 2020, Dr Obed is of the opinion that Mr Lava is still unfit to stand trial. However, he considers there has been an improvement in Mr Lava's illnesses of Epilepsy and Schizophrenia, as well as in his mental state. He reports that Mr Lava's mental state is currently stable, and likely to remain that way as long as he continues his current treatment.
8. Importantly, Dr Obed is of the opinion that Mr Lava can be released to the community under the supervision of his family, providing there is a primary carer who ensures he continues to take his medication and attends clinic appointments. Dr Obed has met with the family in order to investigate this possibility.

D. Discussion

9. There is one further matter of significance. With knowledge of all Mr Lava's known medical and mental issues, Mr Johnson Kai, who is Mr Lava's paternal uncle, is prepared to be the principal carer that Dr Obed considered essential if Mr Lava was to be released into the community. Mr Kai has convened a family meeting to discuss the proposal and advises the Court that he will not be alone. He advises that his home is ready to accommodate Mr Lava, and that no less than 8 named members of the family are prepared to support him in caring for Mr Lava. The family have dealt with their loss, allegedly caused by Mr Lava in 2015, and they are ready to welcome Mr Lava back into their community.
10. This is of course a balancing exercise. The important considerations that need to be taken into account are (i) catering for Mr Lava's personal medical and mental health needs, (ii) carefully assessing the likely safety of the community into which Mr Lava is looking to return, and finally (iii) there is the constitutional aspect.



11. It is a gross infringement of Mr Lava's constitutional rights for him to be held without trial for such a long period.
12. The fact that the only institution capable of housing him is a prison does not address his medical and mental health needs, and that is a further infringement of his rights.
13. The Court is advised that there is a Clinic in South Tanna, not far from Mr Lava's village where he can continue to get the treatment he requires.
14. Mr Kai, and the other members of his family, has the ability and desire to ensure that Mr Lava continues to take his medication so that his condition will not deteriorate. They are also now well aware of the dangers involved if Mr Lava's condition does regress; and they have the knowledge and ability to deal with the situation if that arises.
15. Most importantly, they have recovered from their loss and are ready to welcome Mr Lava back into their community. After 5 years of incarceration, the best place for Mr Lava is back home with his family, subject to certain restrictions.

E. Decision

16. It is appropriate, taking those matters into account, for the current Guardianship Order to be set aside. Henceforth Mr Johnson Kai is to be Mr Lava's legal Guardian, until further Order of this Court.
17. Mr Kai has the responsibility of ensuring Mr Lava attends the clinic visits arranged and takes his prescribed medication as recommended by the physicians in charge of Mr Lava's medical and mental health, including his dietary needs. Mr Kai also has the responsibility of immediately reporting to the appropriate authorities if any regression of Mr Lava's condition occurs. These are not obligations to be taken on lightly, given the background to this matter and the consequences to the community in terms of safety, if Mr Lava's behaviour deteriorates.
18. The Court understands that the Correctional Services department is able to assist the family with the transportation of Mr Lava to South Tanna. He is accordingly released from custody as soon as the necessary travel arrangements can be put in place.
19. Finally, Mr Lava is to be assessed, at least every 6 months, as to his mental health, to ensure there is no relapse on his part, but also with a view to ascertaining whether he is able to stand trial at some time in the future.

Dated at Port Vila this 15 day of April 2020  
BY THE COURT

*G.A. Andree Wiltens*  
Justice G.A. Andree Wiltens

