

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

**Criminal  
Case No. 21/638 SC/CRML**

**BETWEEN: Public Prosecutor**  
*Respondent*

**AND: Walter Malau**  
*Accused/ Applicant*

**Date of HEARING OF APPLICATION:** *10th day of June, 2021 at 11:00 AM*

**Before:** *Justice Oliver Saksak*  
**In Attendance:** *Mr Less John Napuati for Applicant*  
*Mr Paul Sarai and Gregory Simion for Respondent*

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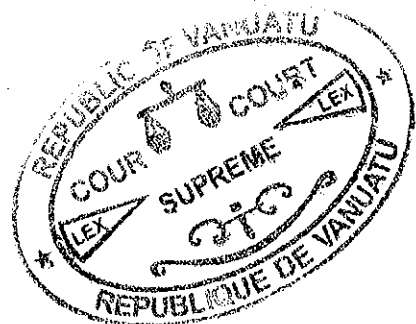
**DECISION**

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1. The application for bail pending the determination of the appellant's appeal is allowed. The appellant is to be released forthwith with conditions.

**Background**

2. The applicant was convicted for one charge of domestic violence on 4<sup>th</sup> June 2021 and sentenced to 7 months imprisonment without suspension. A warrant of commitment was issued on the same date.
3. He has appealed against the sentence. The appeal is to be heard by the Court of Appeal in the July Session.
4. The applicant seeks an order for release from custody or a suspension of sentence pending appeal. The application is made pursuant to section 209 (1) of the Criminal Procedure Code Act [CAP 136].



## The Law

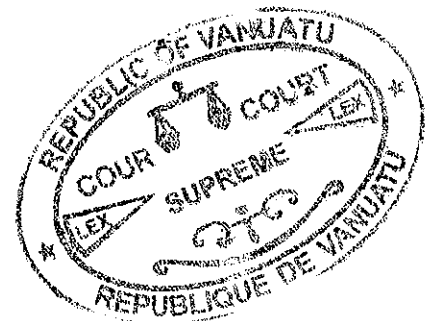
### 5. Section 209 provides:-

*“209. (1) After the entering of an appeal by a person entitled to appeal, the trial court which convicted or sentenced such person may order that he be released from custody on bail subject to such conditions as the court may consider fit.*

*(2) An application for release from custody on bail under this section may be heard in chambers. In the Supreme Court such application shall be by motion served on the Public Prosecutor. ....”*

## Discussion

6. The application was opposed by Mr Sarai who made oral submissions. He submitted the sentence was assessed on the facts and circumstances of the case which revealed the applicant was a former senior police officer of some 20 years standing. He had breached previous bail conditions and continued to threaten his wife during the period the case was being dealt with by the Court.
7. Mr Napuati submitted on the basis PP v Walker [2007] VUSC 73 that there is strength in the appeal that the appeal will succeed. Counsel emphasized two factors namely (a) that the sentencing judge should have awarded the full 1/3 reduction for guilty plea instead of 25% as granted, and (b) that the sentence of 7 months should have been suspended.
8. Mr Napuati made comparisons between the cases of Stephen Kalo v PP [2020] VUCA 39 and PP v Sine [2020] VUSC 229 which were more serious cases and yet offenders were given suspended sentences.
9. I accept Mr Napuati’s submissions that there is strength in the appeal that it might succeed.



10. I note from Prosecution's sentencing submissions filed on 10<sup>th</sup> May 2021 before the sentencing judge in paragraph 7 that an end sentence between 6-10 months imprisonment would suffice, and that the sentence be suspended for 2 years.
11. The sentencing judge did not adopt that submission.
12. The applicant was advised of his right to appeal against his sentence within 14 days. He has lodged an appeal pursuant to that right. He has stated the reasons and grounds of his application.
13. In my opinion section 209 (1) of the CPC Act grants him that right. And the Court has jurisdiction to either grant or refuse the application. Here it is not so much for the reason stated in support but rather, it is the strength of his appeal that it is likely to succeed.

**Conclusion**

14. It is for that reason that this application is allowed and the orders sought are accordingly granted.

**DATED at Port Vila this 10<sup>th</sup> day of June, 2021.**

**BY THE COURT**

.....  
Oliver Saksak  
Judge

