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

Criminal
Case No. 21/2727 SC/CRML

PUBLIC PROSECUTOR

v

JOE NAES LOUGHMAN

Date of Trial:	21 October 2021
Before:	Justice V.M. Trief
In Attendance:	Public Prosecutor – Mr C. Shem
	Defendant – Mrs K. Karu

REASONS FOR RULING THAT THERE IS A CASE TO ANSWER

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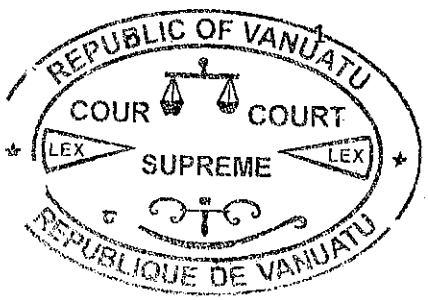
1. After Mr Shem closed the Prosecution case, Mrs Karu submitted that there was no case to answer pursuant to subs. 164(1) of the *Criminal Procedure Code* [CAP. 136] (the 'CPC'). She cited *Public Prosecutor v Kilman* and *Public Prosecutor v Maralau* [2018] VUSC 181. Having heard the opposing submissions, I ruled that there was a case to answer. These are my reasons for doing so.

2. Section 164 of the CPC provides:

> *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 in *Public Prosecutor v Suaki* [2018] VUCA 23 stated the following 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 admissable 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.*

(*my emphasis*)

4. Section 115 of the Penal Code provides for the offence of threats to kill person as follows:

> *115. No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.*

5. Ms Taiki cited *Public Prosecutor v Maralau* [2018] VUSC 181 at [13] and Mr Shem cited *Public Prosecutor v Jimmy* [2020] VUSC 195 at [8] for the elements of the offence of threats to kill.

6. Having considered both judgments, I consider that the elements of the offence that the Prosecution must prove beyond a reasonable doubt are:

   a. The defendant indirectly caused the complainant to receive an oral threat to kill her;

   b. The defendant intended the complainant to receive the threat; and

   c. The defendant intended that the threat would be taken seriously by the complainant.

7. The Prosecution called 3 witnesses: Abel Riri, his wife Ruth Riri and their daughter the complainant Vanessa Riri. The evidence introduced as to each of the elements included the following:

   a. The defendant indirectly caused the complainant to receive an oral threat to kill her – Mr Riri evidenced that Mr Loughman spoke directly to him and made a verbal threat to kill the complainant. Mrs Riri evidenced that Mr Loughman

spoke harshly to her and told her to shut up, after which she did not speak to him further but heard him make the verbal threat to kill the complainant. Mr Loughman also threatened to kill her partner from Ambae ('man Ambae blo hem ia') and to burn their house down. They were immediately frightened by the threats made and told the complainant on her return home. They all left that same night to stay at their house at Bladiniere Estate;

b. The defendant intended the complainant to receive the threat – the threat was made to the complainant's elderly parents in circumstances where Mr Loughman was under the influence of alcohol and smelt of alcohol, and this was the first time for them to meet each other. Mr and Mr Riri were immediately frightened by the threat. Mr Loughman clearly intended that they would take the threat seriously and relay the threat to the complainant;

c. The defendant intended that the threat would be taken seriously by the complainant – Mr Loughman clearly knew the contents of his threat and by making it to the complainant's elderly parents, intended that it should be taken seriously by the complainant.

8. Applying the test in Suaki at [10], on a prima facie assessment of the evidence, I considered therefore that there is a case, in the sense that sufficient evidence has been introduced, on which, if accepted, a reasonable tribunal could convict the accused.

9. Accordingly, I rejected the "no case to answer" submission and called on Mr Loughman for his defence.

DATED at Port Vila this 25th day of October 2021
BY THE COURT

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Justice Viran Molisa Trief

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