

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

Criminal
Case No. 21/3018 SC/CRML

BETWEEN: Public Prosecutor

AND: Jian Wang
Defendant

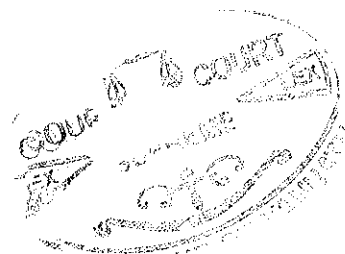
Before: Justice Oliver A. Saksak
Counsel: Mr Lenry Young for Public Prosecutor
Mr Andrew Bal for the Defendant/ Accused

Date of Trial: 8th and 9th April 2024
Date of Judgment: 15th April 2024

JUDGMENT ON NO CASE SUBMISSION

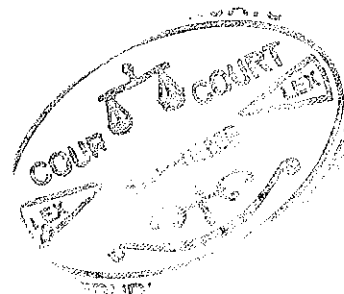
Introduction

1. At the closing of the Prosecution case on 9th April 2024, Mr Bal sought leave of the Court to make a no case submission.
2. Leave was granted and directions were issued requiring written submissions from Mr Bal by close of business on 10th April 2024, and for the Prosecution submissions in response by close of business on 11th April 2024.
3. Mr Bal filed submissions at 4pm on 10th April and Mr Young filed written submissions in response at 3:30pm on 11th April 2024. I am grateful to Counsel for the extensive and timely submissions filed in relatively short period of time as allowed by the Court.
4. I have read and considered those submissions in determining the no-case application.



Discussion

5. Although Mr Bal has not specified the specific sections of the Criminal Procedure Code he is relying on, Mr Young helpfully identified them with the relevant case authorities applicable.
6. Two sections are to be relevantly considered in a no case submission. First in section 135 of the Criminal Procedure Code Act [the CPC Act) which states:
135. Acquittal of accused person when no case to answer
If at the close of the evidence in support of the charge, it appears to the court that a prima facie case is not made out against the accused person so as to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.
7. Secondly there is section 164 of the CPC Act which states:
"164. Procedure after close of prosecution
(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"*
8. The test to be applied when determining a no case application is helpfully set out by the Court of Appeal in PP v Suaki CRMA 18/39, paragraph 10 and 11 and further in the recent Supreme Court Case of PP v Esrom Loughmani 22/96.
9. In the case Prosecutions had closed their case on 9th April 2024. Without an application or indication of intention to make a no case submission, the judge is entitled to make a ruling on his or her own motion under section 164 of the CPC Act that as a matter of law there is no evidence on which to convict the accused, and thereafter pronounce a verdict of not guilty.
10. However here there was indication by Mr Bal to make a no case submission therefore section 135 of the CPC Act becomes relevant for consideration. Under this provision I have only to be satisfied that the evidence thus far produced by Prosecutions establish a prima facie case against the defendant requiring him to make a defence. The burden of proof required is not proof beyond reasonable doubt.



11. Mr Bal appeared to have a mixed application. Whilst on its face it is an application for a no case to answer under section 135 of the CPC Act, Counsel goes further to submit on the whole evidence adduced by the prosecution, without the defendant being given the opportunity to make a defence . With respect to Mr Bal, this is not the correct approach.
12. Returning to the application for no-case submission, I ask myself the question whether the Prosecution has established a prima facie case against the accused on the evidence produced thus far?
13. The answer to the question is "Yes"
14. The evidence by the Prosecution shows a memorandum of cooperation or agreement dated 6th February 2019. It was prosecution's evidence that the accused came up with the idea of starting a joint venture business with the others who appeared to be friends initially. The accused came up with the agreement and they all signed it in good faith. The agreement specified how much money each of them had to contribute to entitle them to a share in the company to be formed, the date of payment and formation of the company. There was evidence that moneys were paid to the accused before and after the signing of the agreement and that all moneys paid were to start a business.
15. It was the evidence that two signatories of the agreement paid their contributions but the accused person did not. And the business never got off the ground. There was evidence the accused received moneys in cash and through WeChat, by telephone. Despite receiving those moneys, the defendant never formed a company to start the joint venture business. And he has refused to refund monies in accordance with the terms of the agreement despite several approaches were made by one of the complainants with a Senior Police Officer, Inspector Morris Seule.
15. From those evidence, Prosecution had made out prima facie case against the defendant which requires him to put up or make a defence. Without those evidence at all against him the Court would have made a ruling under section 164 to acquit him. But that was not the position.
17. I am persuaded by the submissions of the Mr Young.



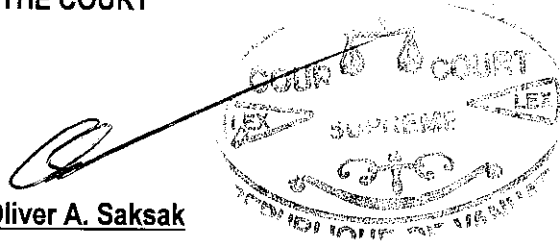
Conclusion

18. With all that said, I conclude that Prosecutions have established a prima facie case against the defendant requiring him to make a defence.

19. I therefore dismiss the no-case application and give the defendant an opportunity to make a defence.

DATED at Port Vila this 15th day of April 2024

BY THE COURT

A handwritten signature in black ink, appearing to be 'O. Saksak', is written over a circular official seal. The seal contains the text 'SUPREME COURT' at the top, 'LEX SUPREMACIA' in the center, and 'TERRA IUSTITIAE' at the bottom. The seal also features decorative flourishes and a central emblem.

Hon. Oliver A. Saksak

Judge