

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

**Criminal
Case No. 24/2695 SC/CRML**

BETWEEN: Public Prosecutor

**AND: Able Joel
Defendant**

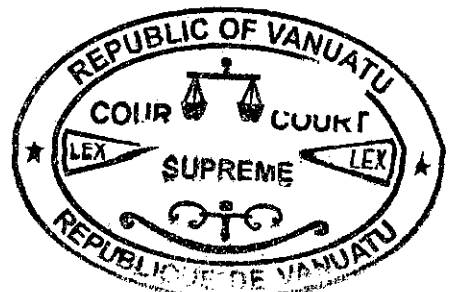
Coram: Justice Dudley Aru

**Counsel: Mr. L. Young Public Prosecutor
Mr. K. Tari for Defendant**

JUDGMENT

1. The defendant was charged with two counts of sexual intercourse without consent contrary to s91 and 90 b) (iii) of the Penal Code [CAP 135] under an information that was filed with a Summary of Facts on 27 September 2024.
2. On the 11 October 2024 he pleaded not guilty to both charges and the matter was set down for one-and-a-half-day trial starting today. On 22 October 2024, the Public Prosecutor amended the charges and filed and amended information with a single charge of sexual intercourse without consent.
3. Before the defendant could be re-arraigned on the amended information, Mr Young informed the Court that the Prosecution was entering a nolle prosequi and will not be continuing with the proceedings. He referred to his discussions with the complainant who was also present in Court and who informed him she was withdrawing her complaint as she agreed to have sex with the defendant.
4. Mr Young handed a copy of a letter dated 19 October 2024 written by the complainant confirming her intentions. At paragraph 2 she says: -

"Of sexual activity between mitufala mi bin fully agree wetem mo mi bin enjoyem tu lo semtaem."
5. I enquired of the complainant who confirmed she had agreed to have sex with the defendant and did not wish to continue with the case against him. She also confirmed she had written the letter of her own free will to withdraw her complaint. Mr Young indicated that the only issue for the trial was whether the complainant consented to the sex. Given the complainant's admissions that she consented, the prosecution could not proceed with the case against the defendant.



6. Section 29 of the Criminal Procedure Code [CAP 136] provides: -

"Nolle Prosequi

29. Nolle prosequi

(1) In any criminal case and at any stage thereof before verdict or judgment, the Public Prosecutor may enter a nolle prosequi by informing the court that he intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released; such discharge of an accused person shall operate as a bar to any subsequent proceedings against him on account of the same facts and he shall be treated in all respects as though he had been acquitted.

(2) If the accused shall not be before the court when a nolle prosequi is entered, the registrar of such court shall forthwith cause notice in writing of the entry of such nolle prosequi to be given to the keeper of the prison in which the accused may be detained."

7. Following confirmation with the complainant of her intentions, I informed the defendant that pursuant to s 29 above, the Public Prosecutor has entered a nolle prosequi not to continue with the proceedings against him therefore he was discharged on all the charge(s).

DATED at Port Vila this 24th day of October, 2024.

BY THE COURT

Dudley Aru
Judge

