



**IN THE CENTRAL MAGISTRATES' COURT  
OF SOLOMON ISLANDS**

CRIMINAL JURISDICTION

CMC-CRC No. 514 of 2019

**OLIVERA**

**V**

**REGINA**

Date of Strike Out Application: August, 23 2019

Date of Ruling: August, 26 2019

*Mr Gray for the Accused Person*

*No Prosecutions available*

**STRIKE OUT RULING**

1. The Applicant, Mr Alpheus Olivera, through his Lawyer applied to strike out his matter for want of prosecutions pursuant to section 192 of the *Criminal Procedure Code*. He is charged with Careless Driving contrary to section 40 (1) of the *Road Transport Act* [Cap 131].
2. From the record there were six hearings within two months, July and August of 2019. The Applicant pleaded not guilty to the charge on 30<sup>th</sup> July 2019. On 23<sup>rd</sup> August 2019, it was set for Pre Trial Conference (PTC) at 9am in the morning.
3. In the afternoon of 22<sup>nd</sup> August 2019, Criminal Clerk, Mr Pohe called that Mr Gray (Applicant's Lawyer) requested a change of the time for PTC to 1.30pm in the afternoon as he will be occupied at the High Court in the morning of 23<sup>rd</sup> August 2019. The court agreed and advised parties to appear on 1.30pm. An email was circulated to parties accordingly.
4. On 23<sup>rd</sup> August 2019 at 1.30pm, the hearing begun. Only the Applicant and his lawyer were in court. There was no prosecutor. No notice of a call and message of any form was received by the court of why the Prosecutions is not in court.
5. As a result, the Applicant made his application to strike out the matter for want of prosecutions. It is in accordance to section 192(1) of the *Criminal Procedure Code (CPC)*. It provides:

## “Non-appearance of parties after adjournment

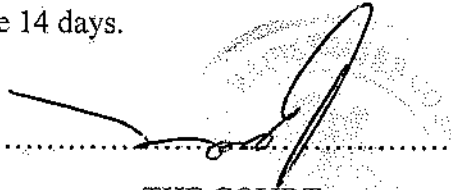
*192. - (1) If at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court which has made the order of adjournment, such court may, unless the accused person is charged with felony, proceed with the hearing or further hearing as if the accused were present, and if the complainant does not appear the court may dismiss the charge with or without costs as the court shall think fit.” (my emphasis)*

6. As it appears, literally, on the law, the prosecutions appearance is what matters is really. If he is absent then along with the Complainant, then a matter can be struck upon the discretion of the court. This was the direction followed in the *R v Belo*<sup>1</sup>.
7. Mr Pohe gave evidence that he sent an email to the Constable Riwa for the Prosecutions on 22<sup>nd</sup> August 2019 about the change of time from 9am to 1.30pm. He also handed up copies of the email to the Court.
8. Mr Gray submitted that he had talked with Constable Tebakota in finalizing the PTC documents and it was represented to Mr Tebakota that the matter will be heard on 1.30pm than as it was initially set for 9am.
9. It is clear that the Prosecutions have sufficient notice of the change of time for the PTC but did not turn up to continue the prosecutions of the matter in the form of PTC.
10. This court has the power to decide on the application as it has the jurisdiction to hear matters of careless Driving Offence. Careless driving has the maximum penalty of \$5,000 (for first instance) or six months imprisonment or both.
11. I have noted that this is not the first time for prosecutions (particularly) police prosecutions to not appear before this court to prosecute. This is the third time. I have considered the need the country to see the results of such prevalent matters but I cannot allow the trend of Prosecutions to be absent to dictate the court. There needs to be a stop. The stop is now. To effect it, I must strike out the matter and acquit the Accused forthwith.
12. Orders are:

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<sup>1</sup> [1999] SBHC 106

- i. The matter is struck out for want of prosecutions;
- ii. No costs ordered;
- iii. Right of appeal available 14 days.



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THE COURT

Ishmael Kekou – Magistrate First Class