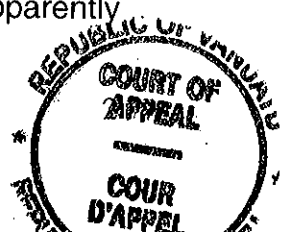


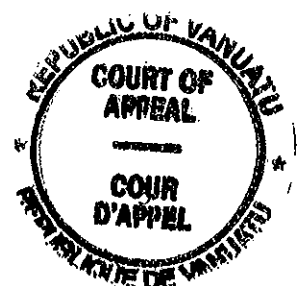
injuries which he subsequently sustained the Court had to defer the appeal against sentence.

5. There were various hearings before the Court in July 2009. For reasons outlined in the annexed Interim Judgment of the Chief Justice, Justice Robertson, Justice von Doussa and Justice Saksak dated the 16th day of July 2009 marked "A" the Court again had to adjourn the sentence appeal. There is a further interim Judgment of this Court comprising the Chief Justice, Justice Saksak, Justice Mansfield and Justice O'Regan dated 30th October 2009 which is annexed marked "B".
6. When the matter was called before us in this current session we were told that there have been a settlement of his Constitutional Petition but no advice was available with regard to its terms. There was no up to date medical report as to the long term prognosis of this man as a result of the first attack on him. Mr Koilo indicated that he wished to give evidence in support of his appeal with regard to the assaults which he endured when he was taken to the police station in August 2009.
7. We accordingly adjourned to the 27th April 2010 and gave notice to the Director of Correctional Services, the Commissioner of Police and the officer in charge of Vanuatu Mobile Force that Mr Koilo would give evidence and they could be present and participate if they wished.
8. They all duly appeared in Court on 27th April and heard Mr Koilo give evidence in which he described how he was removed by 5 police officers from the Correctional Service, taken to the police station where he was again assaulted before being returned to the prison.
9. The Court specifically asked under what authority he had been removed and what steps have been taken to ensure that if the Appellant were to remain in custody would be secure and safe as is his entitlement.
10. We were informed there had been an enquiry at Correctional Services as to what had occurred. We were not shown a copy of the report. It apparently



included the fact that as a request had been by the police, the Correctional Services had to co-operate.

11. The Court made clear that was not the case. A person is detained in custody on order of the Court and may not be removed from that custody without the Court's approval.
12. When we enquired as to the steps which have been taken with regard to the assaults on Mr Koilo in August 2009 we were told because Mr Koilo had not made a formal complaint, nothing could occur. We note that he had complained publicly in this Court in October of last year and is factious for the police to suggest that without a formal written complaint they are not under an obligation to investigate and determine what occurred and whether criminal activity was involved. The suggestion that the police did not know who the police officers were, added to the Court's apprehension about the future safety of this Appellant. If the authorities do not know what their own members are doing at relevant times and in circumstances like this, it suggests indiscipline.
13. To ensure that there could be no suggestion that the offices of State were not given full opportunity to present their side of the matter, we stood the appeal down for two days and returned to it on 29th April 2010.
14. On that occasion we were provided with an up to date medical report which confirms the risk of early ongoing osteoarthritis as a result of the injuries which he has sustained and is consistent with the report provided in July 2009.
15. We received from the Department of Correctional Services copy of the National Instructions issued on 29th April 2010 dealing with police removal of detainees, reports with regard to interviews by CID issued on 1st and 2nd September 2009 and indications of matters which are contained in the Correctional Centres Operational and Administration Manuals.



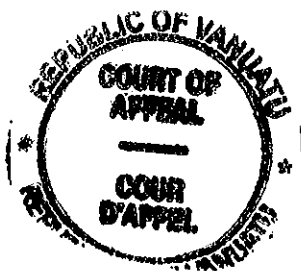
16. We also received a copy of an instructional Order 01/2010 dated 29th April 2010 from the Commissioner of Police with regard to the provisions of the section 6 of the Police Act and section 39 of the Correctional Services Act.
17. The Court also received a submission in the name of the Attorney General contending that where there was a settlement between parties which was confidential there was no reason in law or policy why the Court should go behind that label.
18. The presiding judge acknowledged the important information which have been provided to the Court at this further hearing which dealt with some of our concerns. For the avoidance of doubt he made a statement about this appeal and its conduct. He reviewed the history of the matter. A transcript of what he said is annexed and marked "C".
19. Accordingly we indicated our intention to adjourn the matter to the next session of the Court of Appeal. It is unique in the history of this Republic for a criminal appeal not to have been resolved for so long a period but there is no injustice to Mr Koilo. He is properly subject to a lengthy term of imprisonment in respect of which it is difficult to see, apart from the impact of events subsequent to the sentencing, that any successful challenge could be mounted.
20. The Court in July will receive such other or further information as any party may wish to tender. If the Attorney General wishes to maintain his argument that the court is not entitled to know of the terms of the settlement, nor is the public entitled to know, then he should be ready to argue that matter before the Court in that Session.


DATED at Port-Vila this 30th day of April 2010

BY THE COURT

.....
Vincent LUNABEK CJ

.....
J. Bruce ROBERTSON J




John von DOUSSA J


Oliver SAKSAK J

