

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

Vs.

**BOELUM RODNEY
PAUL VIRA**

**Coram: Mr Justice Oliver A. Saksak
Mrs Anita Vinabit - Clerk**

**Ms Kayleen Tavoia, Public Prosecutor
Mr Hillary Toa, public Solicitor for the Defendants.**

28th March 2006, Ambore, West Ambore

RULING ON NO-CASE SUBMISSION

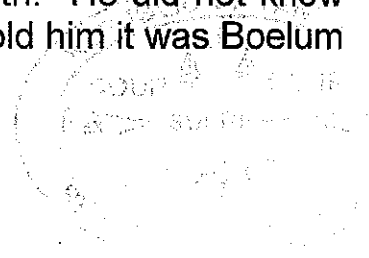
The two defendants stood trial on two counts of Incest Contrary to section 95 (1) (b) of the Penal Code Act CAP 135.

The Prosecutions led evidence from Leonie Vira, the complainant and from Biri Toko. At the close of the prosecution evidence Mr Toa applied under Section 135 of the Criminal Procedure Code Act CAP 136 that there was no prima facie case made out against the defendants from the evidence to require them to make a defence, and sought an order to dismiss the case and acquit the defendants.

Ms Tavoia opposed the application upon reliance on the case of Public Prosecutor v. Noel Tamata & Others. No copies of the case were made available to the Court for easy reference.

Boelum Rodney was charged that between June 2004 and February 2005 he had had sexual intercourse with his sister. In her evidence in chief, Leonie said the intercourse took place many times. But she was not able to say on which dates and where those incidents took place. The only incident that was seen was on 7th May 2004 behind the church at Halalulu. Biri Toko, the only witness saw a person with Leonie when he was on his way to have his bath. He did not know who it was and only after he asked that Leonie told him it was Boelum

RECEIVED
6 MAR 2006



Rodney. In cross-examination Biri Toko contradicted himself when he said he knew the person with Leonie was Boelum Rodney because he saw him. That inconsistency created a doubt in the mind of the judge.

Paul Vira was charged that between June 2004 and June 2005 he had had sexual with Leonie, his sister. In her evidence in chief, Leonie said the intercourse took place on may occasion but was not able to say where and when they occurred. There was no independent witness to corroborate the allegations.

If these offending took place in May and June 2004, they were not reported until about 12 months or a year had passed. Leonie Vira only reported the incidents to the police by her statement dated 28th June 2005. In her evidence she did so only when two police female officers went to inquire from her about rumours that she was having affairs with her brothers. Further in her evidence in cross-examination she admitted writing a letter to the police seeking to withdraw her complaints. She was unable to provide the reason(s) for her request to withdraw complaints.

All these place doubt on the truth of the allegations made by the complainant against her brothers. The evidence adduced was insufficient and it was doubtful as to the guilt of the defendants. In the view of the Court, the prosecutions has not made out a prima facie case against the defendants.

Accordingly the case is hereby dismissed and the defendants are acquitted of the charge.

PUBLISHED at Luganville this 31st day of March, 2006.

BY THE COURT



OLIVER A. SAKSAK

Judge

