

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

Criminal Appeal Case No. 110 of 2009

**GAETAN TEILEMB**  
**-V-**  
**PUBLIC PROSECUTOR**

*Mr. Kiel Loughman for the Appellant*  
*Mr. Lent Tevi for the State*

**REASONS FOR DECISION**

1. On the 19<sup>th</sup> November 2009 this Court allowed the appeal in this case and quashed the maintenance order granted in the Malekula Magistrate Court against the appellant. On that occasion the Court said it would provide reasons for its decision which it now does
2. This case arose out of a prosecution under the Maintenance of Family Act (Cap 42) in which the appellant was charged with the following offence:

**STATEMENT BLONG RONG**

Fail to maintain family agensem section 1 (a). Maintenance of Family Act (Cap 42)

**PARTICULAR BLONG RONG**

Gaetan Teilemb yu blong Vao village North East Malekula. Samtaem long manis November, 2008 yu bin lego waef blong yu Mrs. Gorette mo fourfala pikinini blong yutufala mo go maretem wan narafala woman.

3. I pause to observe that the particulars of the offence merely allege the desertion by the appellant of his family and his remarriage to another woman. No-where does it state that the appellant had "*failed to make adequate provision for the maintenance of his (family)*". In the circumstance no actual offence is alleged against the appellant as the particulars were quite inadequate. The charge was plainly defective and should have been amended.
4. Be that as it may, the appellant pleaded "*not guilty*" to the charge and the case proceeded to trial. The complainant testified and produced copies of her Kastom Mared Sitifikat and the birth certificates of their 4 children. The trial record indicates that the complainant was not cross-examined on her testimony. The appellant admitted in his sworn testimony that he was now married to and living with another woman from Santo.
5. The trial Magistrate having heard the evidence convicted the appellant and ordered that he pay a monthly sum of 4000VT maintenance for each child and 5000VT for the complainant to begin from August 2009. The maintenance was payable as long as the complainant did not remarry and so long as the children were under 18 years of age.
6. The appellant appeals against his conviction and the maintenance order on several grounds including that there had been a "*Breach of natural justice*" in his not being permitted to explain various relevant matters that he had submitted to the trial magistrate in point-form written on a piece of paper. In the absence of any reference to the paper or its contents in the trial Court record of proceedings, the appellant also filed an application to adduce fresh evidence supported by a comprehensive sworn statement which annexed a copy of the paper containing the points he wished to explain and which he claims he had given to the Magistrate at the Trial.

7. Given the comprehensive nature of the appellant's sworn statement, counsel for the respondent suggested that the case should be returned to the Malekula Magistrate Court to deal with the fresh evidence or the complainant be given time to respond to the sworn statement.
  
8. Section 1 (a) of the Maintenance of Family Act (Cap 42) relevantly provides:

"Any

  - (a) Man who for a period exceeding 1 month fails to make adequate provision for the maintenance of a woman to whom he is legally married or his legitimate children under the age of 18 years.

shall be guilty of an offence and on conviction there of shall be liable to a fine not exceeding VT20,000 or to period of imprisonment not exceeding 3 month or to be both such fine and imprisonment".
  
9. Given the nature and ingredients of the offence as set out above, counsel for the Public Prosecutor conceded that the particulars of offence provided in the charge against the appellant were defective in merely stating that the appellant had, in the month of November 2008, "*bin lego*" his wife and 4 children "*no go maretem wan nara woman*" No-where in the particulars, is there any mention made of the appellant failing to made adequate provision for his wife and children nor is the length or duration of the appellant's (undisclosed) failure to provide adequate maintenance identified with any clarity other than to say "*samtaem long manis November 2008*".
  
10. The trial Court record and the judgment also does not record what punishment or sentence (if any) was imposed on the appellant following his conviction as required in terms of Section 140 (3) of the Criminal Procedure Code (Cap.136). Furthermore it is unclear why the order of maintenance against the appellant was made to commence from the

month of August 2009 when the Court found that the appellant had deserted his family "since *manis* November 2008" (i.e. almost a year earlier).

11. In light of the above defects in the charge and in the judgment of the lower Court, the appellant's conviction under the Maintenance of Family Act (Cap 42) was considered unsafe. The appeal was accordingly allowed and the conviction quashed. The maintenance order was also set aside.
12. Any question of a retrial is best left to the Public Prosecutor to consider and determine what is best suited to achieving the ends of justice and in serving the public interest in this case. In doing so I have no doubt that careful consideration will be given to the appellant's comprehensive sworn statement filed in this appeal.

**DATED at Port Vila, this 7<sup>th</sup> day of December, 2009.**

