

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

**Criminal
Case No. 16/2745 SC/CRML**

PUBLIC PROSECUTOR

V

**VIRANLEO JOHN JAMES, EDJELL LINI, VIRA MAURI,
LEONARD LILI TARILIBE, WILKINS TARILABE, MANUHI
HANI LONGONVANUA, LINGTONG LINI TARISIBA,
VANUA LINI, JEFFERY BANI and BULE HANI**

***Before: Justice Chetwynd
Hearings on 18th and 20th October 2016
Counsel: Simcha Blessing for the Prosecution
Bryan Livo for the Defendants***

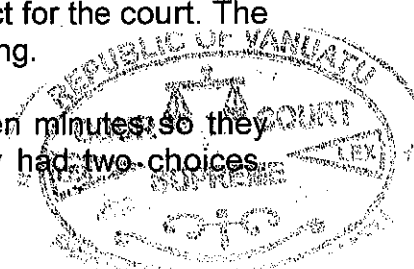
DECISION ON CONTEMPT

1. On 6th September the defendants appeared on arraignment so they could enter pleas to a number of serious charges including riot, arson, threats to kill, intentional assault and malicious damage to property. They were represented by Mr Livo at the hearing. The defendants were not ready to enter their pleas and so the case was adjourned to 18th October. The reason for the delay was that I was due to tour to Santo for two weeks from 3rd October. The defendants were all bailed to appear on 18th October.

2. On 18th October the defendants appeared in court. They were dressed in custom dress. I asked why they were dressed the way they were. Viranleo John James spoke for all the defendants. He said under custom they had the right to wear traditional dress. I agreed but said perhaps not in court unless there was some good reason. I asked if the defendants normally wore traditional clothing whilst in Port Vila. I was told they did. I pointed out that Mr Viranleo had not thought it necessary to wear custom clothing when he was photographed as he addressed an audience at the Maliudu nakamal on Constitution Day. Surely that was an important event. I reminded the defendants that they did not appear in custom dress on 6th September. I indicated that it was not appropriate to dress in traditional clothing in a court of law if the reason for doing so was to make some kind of statement.

3. The reply was the defendants could dress the way they were because custom law was part of the law of Vanuatu and they would not accept that they were subject to the criminal law or the authority of the Supreme Court. I asked the specific question as to whether the defendants were wearing custom dress to make a statement that they did not accept the authority of the Supreme Court or have any respect for the court. The answer was yes that was why they had chosen to wear custom clothing.

4. The defendants were told that the court would adjourn for ten minutes so they could take advice and consider their position. They were told they had two choices.



They could either dress normally or they could give good reasons why they should be allowed to wear traditional dress and if they could not they would face contempt proceedings.

5. When the court resumed sitting the defendants said they were not prepared to change clothes because custom said they could dress the way they were. They were reminded that they had not appeared in traditional clothing before. Mr Viranleo told the court that custom was part of the Constitution and he would not accept the Supreme Court was also "part of his Constitution". He did not accept that the court was entitled to be treated with respect and that when people appeared before the Court they should dress appropriately and in accordance with accepted criteria.

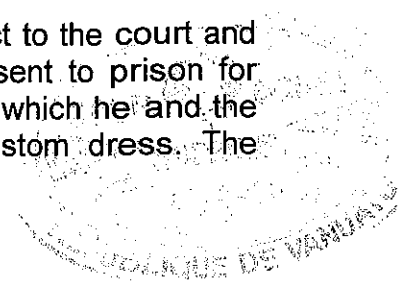
6. The defendants were told that the Court would not take any plea from them whilst they appeared to be in contempt. They were told to wait at the back of the Court whilst other cases and defendants were dealt with. At one time they attempted to leave the court and had to be reminded they would be in breach of their bail conditions if they did so.

7. After the other cases were dealt with the defendants were told that they had not put forward any good reason or reasons for wearing their traditional dress. The only reason so far put forward was that they could do so and did not have to comply with the normal and accepted standards of dress of the Supreme Court. They appeared to be saying to the Court that they were only bound by custom law and that the Supreme Court had no authority over them. The defendants had earlier told the Court they did not want to be represented and because Mr Livo had left the defendants were again told that the reasons put forward so far were not genuine or proper reasons as to why they could wear traditional dress. They had shown their intention in wearing it was to denigrate the dignity of the court and directly challenge its authority. They were given a last opportunity to say why they were not in contempt and why they should not be punished for their open disrespect of the Court. They repeated they were entitled to wear traditional clothing.

8. As the defendants were not prepared to dress appropriately and were not prepared to accept the authority of the Court they were sentenced to 72 hours imprisonment. The case was adjourned to 20th October. Three of the defendants were clearly under 16 years of age and they were bailed to 20th October.

9. On 20th October all the defendants appeared in custom dress. Ms Hilda Lini was in court and asked if she could speak on the defendants' behalf. She was informed that the court was not inclined to hear her and was thinking that she should even be refused access to the court room. She was told her that if all that had been reported in the press that day was an accurate reporting of what she had said to the newspaper then she had lied. If she lied about the court to the press why should she be permitted access to the court? Ms Lini responded by saying she had been misrepresented in the newspaper reports. She implied that if she was prevented from speaking it would be an attack on the freedom of the press. It was pointed out to her that the press was always welcome in my court and was free to publish accurate reports of proceedings. It was she who was now saying they had not reported her comments accurately.

10. Mr Viranleo spoke and said that he had intended no disrespect to the court and that he was puzzled why he and the other defendants had been sent to prison for wearing custom dress. It was explained to him that the contempt for which he and the other defendants had been punished was not the wearing of custom dress. The



contempt was their clearly expressed purpose in wearing custom dress to demonstrate the court had no authority over them and that they were only subject to custom law. They did not wear custom dress, as Mr Viranleo now tried to say, out of respect for the court, they were intent on making a statement that they were not subject to the Supreme Court's jurisdiction and authority. They did not dress traditionally to show respect, quite the contrary.

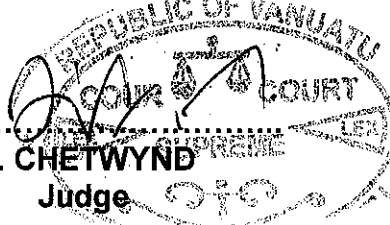
11. The defendants were told that as they were wearing custom dress again they were still in contempt. Ms Lini then attempted to explain to the court that this was the fault of the Correctional Services authorities. She seemed to say the authorities had been obstructive in allowing the defendants access to "western clothes". I regret to say I did not believe her. I have always found the Correctional Services staff to be willing to assist if they are asked. I don't believe they were even approached about obtaining a change of clothing for the defendants.

12. The defendants were asked individually whether they wanted to continue wearing custom dress. They replied (in language) that they did. They were informed that there were several ways the Court could proceed from hereon in. The Court could deal with them on each occasion for contempt. In other words punish them for contempt each time they appeared in court wearing custom dress with the intention of openly showing disrespect for or disobeying the Court. That would delay proceedings indefinitely. Alternatively I could proceed by, in effect, dealing with their plea as if they were absent. I would enter not guilty pleas on their behalf. The case would then be adjourned for trial. As the defendants were in contempt of court I would have to find that they were in breach of their bail conditions and remand them in custody until trial. I could not be sure but thought the trial would likely be listed for hearing in February or March 2017.

13. The defendants were told that they would be given one final opportunity of considering their position. The case would be adjourned to 25th October at 9 am. Because it had been suggested they had been prevented from obtaining "western clothes" by being sent to prison I would release them on bail. That way the choice of how they wanted to proceed on 25th October would be entirely their own choice. It was suggested to them that if they wanted to wear custom dress for some genuine reason then a request should be made to the Chief Justice through the Chief Registrar. The request should explain in detail why they considered it necessary to wear traditional clothing. If the defendants ignore the suggestion and simply turned up in custom dress they knew what to expect.

DATED at Port Vila this 20th day of October, 2016.

BY THE COURT


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D. CHETWYND
Judge

[Foot note- When I left the Dumba court complex to drive back to Chambers I could not help but notice that several of the defendants had, after leaving the court room, donned tee-shirts over their custom dress.]