

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

Criminal Appeal Case 3734 of 2016

MUNA ALBERT, JACKSON KILET, PARTLY LUK, ALVEN
BASIL, TOM OBETH, JEFF KALO, MAXON OBED, SILIO
JOHNMILA, JOHNMIL JUDHA, KENROS MASSING, BEVEN
OBED, KIPSON MASSING, LEO JOHNMILA, NEMMA ISUL,
PITU OKIS, ROGER SAM, JACKBEL JAMES, GRED BENUA,
KERNES KROVET, KAIROS MASSING, ROCHARD ITEY,
NOEL MASSING, TEO JOHNMILA, SAIROS MASSING,
KONAE JONAH, KELSAN ITEY, SAIKEM ITEY, SAIKEM ITEY,
TERRY JAMES, SELLA ALBERT, JOHNWEL JUDHA, PETER
OKIS, JOHN MORSEN JAMES, ANDRIANO BANI

V.

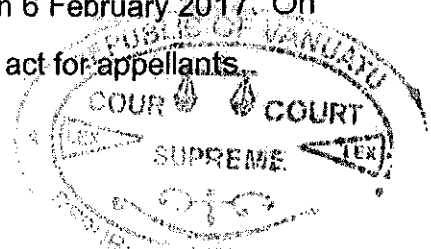
PUBLIC PROSECUTOR

Coram: Judge Aru

Counsels: Mr. T. J. Botteng for the Appellants
Mr. T. Karae for the Public Prosecutor

JUDGMENT

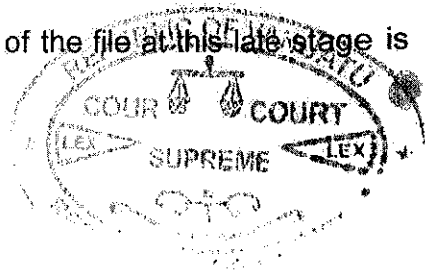
1. The appellants were tried and convicted by the Magistrate Court in Malekula. They now seek to appeal the verdict as well as the sentence. There's nothing in the file that records the offences charged nor the verdict or the sentence. A notice of appeal was filed by Mr. Toka on 9 November 2016 as counsel for the appellants indicating their intention to appeal. Having filed the notice of appeal, Mr. Toka then filed a notice of ceasing to act on 6 February 2017. On the same date, Mr Botteng filed a notice of beginning to act for appellants.



2. On 14 February, I fixed a conference to get the matter ready for hearing .At that conference there was no appearance on behalf of the Appellants. Ms. Bettina Ngwele appeared for the Public Prosecutor. The matter was then adjourned to 8 March. At that conference, apart from Mr Botleng, no one appeared for the Public Prosecutor. I then made directions for the appellants to file and serve their memorandum and grounds of appeal with their Appeal Book and written submissions by 22 March 2017. The prosecutions was directed to file their response by 5 April .A further conference was then fixed for 6 April.

3. Nothing was filed as directed and on 6 April a consent memorandum was filed by the parties for the same orders to be reissued and for the Appellants to pay wasted costs of VT 10, 000. The matter was then relisted for this morning. I was informed by the Prosecutor that none of the orders issued previously were complied with by the Appellants and the VT 10,000 costs were only paid this morning. It was further submitted that for those reasons the appeal should be dismissed. Mr Botleng on the other hand informed the court that the purpose of the appeal now is only theoretical as the sentence under appeal has now been served. It was further submitted that he was unable to file his documents as the Court file was on Malekula and he was unable to access it to get copies of documents. It was further submitted that he was advised that he would have to apply for the court to direct that the file be made available in Vila for inspection.

4. Having heard from Counsels, it appears that there is nothing before the court to deal with as first and foremost the sentence has been served in full and there is no longer a live issue for the court to deal with. Secondly the Appellants to date have not complied with the directions issued to file their appeal documents. To raise the non-availability of the file at this late stage is

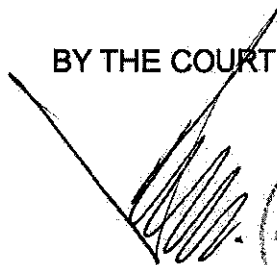


a bit far fetched as that should have been counsel's priority when instructed to appeal.

6. Nothing more needs to be said other than what I have said above and I agree with the Prosecution's submissions that the appeal be dismissed for those reasons.
7. The appeal is therefore hereby dismissed.

Dated at Port Vila this 16 of May 2017

BY THE COURT



D. Aru
Judge

