

IN THE SUPREME COURT OF VANUATU  
HELD AT LAKOTORO

Crim Case  
Case No. 18/49/CRML

**BETWEEN: Public Prosecutor**

**AND: Akapito Werssets**

Date of Hearing: 24 October 2019  
Court: G.A Andrée Wiltens  
Counsel: Mr L. Young for the Public Prosecutor  
Mr H. Rantes for the Defendant

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**JUDGMENT**

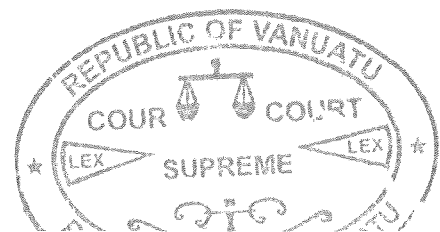
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A. Introduction

1. This was a criminal trial scheduled to be heard during the current Malampa tour.
2. The trial could not proceed due to the absence of the complainant.

B. Application

3. On 3 October 2019, Mr Young advised at a pre-trial conference that he was still to summons the complainant and her husband to give evidence – they reside in Santo.
4. Mr Young sought an adjournment on the morning of 21 October 2019, as the complainant could not be located and served. Ms Bakokoto, then acting for the defendant, opposed the application on the basis that there had been too many adjournments of this case for the same reason. The Court file shows 4 previous trials have had to be vacated.
5. I allowed the adjournment on the basis that the police could have one more attempt to locate the complainant and bring her to Malekula for the trial later in the week. But, I also indicated that this was to be the final adjournment on this basis. The case was to be called again at 9am on 24 October 2019.



6. When the case was called again at 9am on 24 October 2019, Mr Young advised the complainant had not been located.

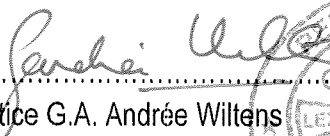
C. Discussion

7. The charge is a serious matter, and one which is usually in the public interest to pursue. However, to try an alleged 2017 offence some 2.5 years after the event does impact on the public interest aspect of the prosecution.
8. There is real concern as to when the trial could realistically occur. The next Malampa tour will be held in 2020, at a time/date yet to be determined. The fact that the complainant might be available at that time is therefore of little consequence.
9. As a matter of fairness, the prosecution is not able to continually seek adjournments and leave serious criminal charges hanging over the head of the defendant. Some adjournments are unavoidable and are granted for good cause. However, there has to be a cut-off date by when the charge is heard – to allow perpetual deferment is wrong and contrary to an individual's right to have a fair hearing within a reasonable time, as provided for in the Constitution. As numerous authorities have made clear, the longer the delay between an event and the trial the greater the unfairness to the defendant.

D. Result

10. The charge against Mr Werssets is dismissed for want of prosecution. He is now free of this allegation at last, and is free to go.

Dated this 24th day of October 2019 at Lakatoro Supreme Court

  
Justice G.A. Andrée Wiltens

