

**PUBLIC PROSECUTOR v JAMES WILLIAM**

**Date of Trial:** 21 May 2025

**Before:** Hon. Chief Justice Vincent Lunabek

**Counsel:** J Aru for the Public Prosecutor  
C Dehinavanua for the Defendant

**Date of Verdict:** 21 May 2025

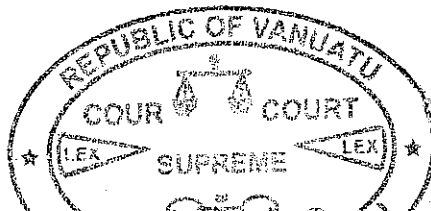
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**REASON FOR DISCHARGING THE ACCUSED**

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**I. Introduction**

1. This is the trial of the Accused James William. The accused James William was charged with one Count of sexual intercourse without consent, contrary to Sections 90(a) and 91 of the Penal Code Act [CAP. 135].
2. It is particularised that sometime on 7 November 2023 at Lumbukuti Village, Tongoa Island, the accused had sexual intercourse with the complainant by penetrating her vagina with his penis; and at that time, she was not consenting for him to have sexual intercourse with her; and at that time, the accused did not have any reasonable belief that the complainant consented to have sexual intercourse with him.
3. To this charge, the accused James William pleaded not guilty on 24 August 2024 and the case has come before me for trial. A number of attempts to conduct trial on the island of Tongoa in 2024 and early 2025 were unsuccessful. The new trial date is scheduled at Morua, Tongoa Island, on 19 and 20 May 2025. The trial took place on Morua, Tongoa, on 21 May 2025.
4. The only issue, here, is that of consent. The Public Prosecutor called the complainant and two other witnesses.
5. The charge of sexual intercourse without consent required proof beyond reasonable doubt. Proof beyond reasonable doubt simply means that the Court is left sure of guilt. It does not require proof



to an absolute certainty. It simply requires the Court to be brought to the point where a reasonable doubt does not exist.

6. The accused has to prove nothing at all. He was entitled (and this was explained to him as required) not to give evidence or call anybody else to give evidence. If the accused gave evidence, it does not of course mean that he changed the burden of proof which remained on the prosecution throughout the course of the trial.

## II. Elements of the offence

7. The elements of the offence are:

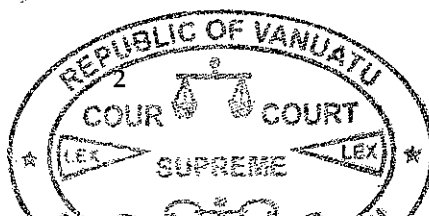
- (i) That the accused had sexual intercourse with the complainant in the night of 7 November 2023 at Lumbukuti Village, Tongoa Island;
- (ii) That the complainant did not consent to have sexual intercourse with the accused;
- (iii) That the accused did not have any reasonable belief that the complainant consented to have sexual intercourse with him.

## III. Evidence

8. The prosecution called the complainant and another witness.
9. The complainant was the first prosecution witness. She gave evidence to this effect. She was 16 years old at the time of the offending. She will be 18 years in 2025. She was born on 21 August 2007. She is from Lumbukuti Village. She was a student at Year 11 at Epi High School. The accused is James William. He is also from Lumbukuti Village on Tongoa Island. The accused was 20 years old at the time of offending. He is one of the cousins of the complainant.
10. She lived with her parents at their residence at Lumbukuti Village, Tongoa. On 07 November 2023, she said the accused went to her residence and called on her to open the door which she did. The accused went in; they both walked in a room of the house. The accused asked the complainant to have sex with him. She accepted and they had sexual intercourse. The effect of that evidence was that it was a consensual sexual intercourse.

## IV. Application under Section 29 of the Criminal Procedure Code Act [CAP. 136]

11. The prosecutor informed the Court that he shall not continue with the prosecution evidence and the case. The prosecutor applies for nolle prosequi under Section 29 of the Criminal Procedure Code Act [CAP. 136].


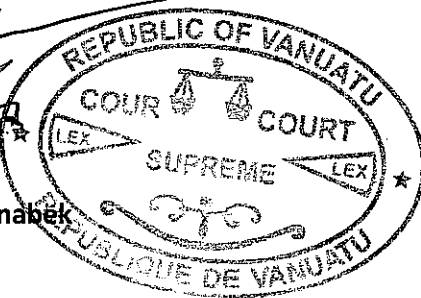


**V. Discharge of the Accused**

12. The Accused, James William is discharged of the offence of sexual intercourse without consent, contrary to Sections 90(a) and 91 of the Penal Code Act [CAP. 135] as charge in the Amended Information dated 10 March 2025.

**DATED at Morua, Tongoa, this 21<sup>st</sup> day of May, 2025.**

**BY THE COURT**

**Hon. Chief Justice Vincent Lunabe**