

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

**Criminal**  
**Case No. 25/926 SC/CRML**

**BETWEEN: JOHN KALTONGA**  
Defendant

**AND: PUBLIC PROSECUTOR**

Date of Bail Hearing: 13 August 2025  
Before: Justice M A MacKenzie  
Counsel: Mr E Molbaleh for the Accused  
Mr T Karae for the Public Prosecutor

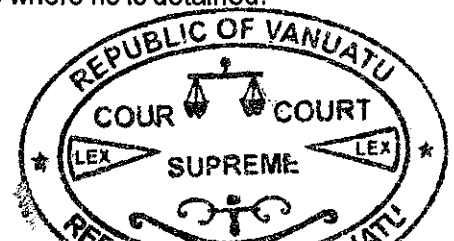
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### **DECISION AS TO BAIL**

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#### **The Application**

1. Mr Kaltonga makes a second application for bail. Mr Kaltonga has pleaded not guilty to a charge of rape and a trial is listed for 1 December 2025.
2. On 16 May 2025, Mr Kaltonga was declined bail by Justice Naigulevu. In declining bail, Justice Naigulevu held that Mr Kaltonga's family circumstances and the need to care for a baby did not amount to special and good reasons. And further that even with the presumption of innocence, the balance did not weigh in favour of granting bail.
3. The grounds advanced today for bail are the same as advanced before Justice Naigulevu, being that:
  - a. His defacto partner needs Mr Kaltonga to help with the baby.
  - b. Concerns regarding the safety of the Correctional Centre where he is detained.



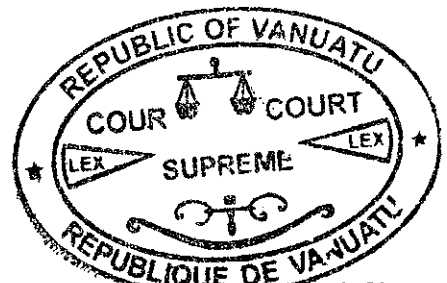
- c. Mr Kaltonga is the sole breadwinner and has a kava business.
4. During the bail hearing, Mr Molbaleh accepted that the fresh application was based on the initial application, and the same bail proposal was put forward.
5. I considered that Mr Kaltonga was required to demonstrate a material change of circumstance to advance a further bail application, for reasons which I will explain. There was no change of circumstance, and accordingly, bail was refused. I said I would give written reasons. These are my reasons.

### The issue

6. As there is no right of appeal in relation to a bail decision made by the Supreme Court, a defendant must be entitled to bring further applications for bail in the event in that bail is declined. The right to liberty is a fundamental right enshrined in Article 5(1)(b) of the Constitution.
7. However, the issue for the Court is whether another Judge can embark on what would be a reconsideration of the refused bail decision, or whether an applicant for bail needs to demonstrate a material change of circumstance to be able to bring a second or subsequent bail application?

### Discussion

8. The Criminal Procedure Code ("CPC") governs bail. I accept that there is no express requirement in the CPC for there to be a material change of circumstance before a new bail application is made. However, the issue of whether a change of circumstance is required to be demonstrated before the Court will consider another bail application has been considered in other jurisdictions, including New Zealand, Australia, the United Kingdom and Northern Ireland. As I will explain, the position in these jurisdictions is that there needs to be a material change of circumstance before a further bail application can be considered.
9. In New Zealand, this is a well settled legal principle, as was held in *R v Warren* [2019] NZHC 3414. Relevantly, the High Court said:

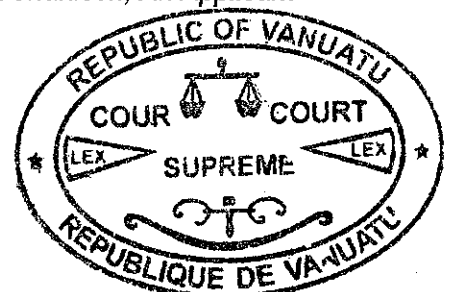


[25]. There is no express requirement in the Bail Act for there to be a change of circumstance before a new bail application is made. However, as submitted by Ms Pollett, in a number of decisions this Court has held there must be a relevant change in circumstance for a fresh application to be brought.<sup>9</sup> Lang J described the principle as “well established” in 2011.<sup>10</sup> There are good policy reasons that this should be the case, as explained by Downs J in Campbell v Police:<sup>11</sup>

“A defendant who is refused bail—or a variation of bail conditions—may either appeal to a higher Court or lodge a fresh application in the same Court. But, the latter is not permissible unless circumstances have materially changed since the earlier hearing. The principle exists for obvious reasons: a defendant could otherwise ‘Judge-shop’ until he or she obtained a favourable outcome, thereby undermining public confidence in the administration of criminal justice, all while burdening finite judicial resources.”

[26] What amounts to a material change of circumstance is fact specific. For example, if bail were declined because of concerns about the occupants of an address, a fresh application for bail at a different address may well be a material change of circumstance.”

10. The policy reason why a change of circumstance is needed was put in a different way in another New Zealand case, *K v Police* [2024] NZHC 2386, at [22], where it was noted that seeking a change to a bail decision where there has been no change of circumstance is in effect asking the judge to overturn a previous decision of the same court.
11. That a change of circumstance is required is well settled also in the United Kingdom and Northern Ireland. In *R v Nottingham Justices, ex parte Davies* [1981] 1 QB 38, the defendant had been refused bail on an earlier occasion by the Justices and brought a fresh application for bail. The Justices refused to consider the application unless there had been a change of circumstance. Once bail was refused, it was res judicata or analogous to, and that accordingly, Justices considering a renewed application for bail had no duty to reconsider matters already considered but should confine themselves to circumstances which had since occurred or to matters not brought to the attention of the Court on the previous occasion.
12. *R v Nottingham Justices, ex parte Davies* was cited with approval in a decision of the High Court of Northern Ireland, In the matter of *Dennis Donaldson, An Applicant for Bail* [2002] NIQB 68.



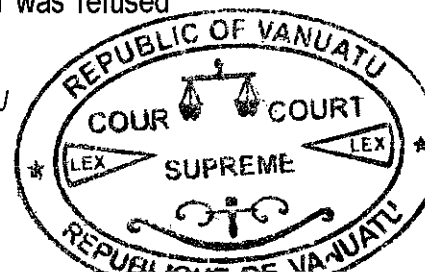
13. In *Donaldson*, the Court relied on an earlier authority, where Hutton LCJ at page 3 said:<sup>1</sup>

*"I consider that there is a clear rule of law established by a number of authorities that, where there has been no material change in circumstances, a judge cannot disregard an earlier refusal of bail but is bound by it and shall not embark on a fresh hearing into the merits. It is therefore clear that the practice followed by judges in this jurisdiction is not a matter of policy but is grounded on a firm and valid principle of law which should be followed."*

14. In a decision of the Supreme Court of Queensland, *Ex parte Edwards*, McPherson J, 3 June 1988, the Court held that it was possible for a second bail application to be made after an earlier application had been refused, but such application would ordinarily prove "fruitless" unless some additional facts have arisen or have been discovered. The Court noted that the mere fact of committal for trial was not a change of circumstances.
15. In light of the authorities I have discussed, I consider that while there must be a right to bring second and subsequent bail applications, after bail has been refused, a defendant must demonstrate a material change of circumstance. As I set out at paragraph 16, there are good reasons to approach the issue in this manner.
16. Drawing the threads together:
- The cases from other jurisdictions demonstrate that a Judge cannot disregard an earlier refusal of bail but are bound by it and should not embark on a fresh hearing into the merits of the earlier bail decision, unless there is a material change of circumstance.
  - There are good reasons for this policy, including the risk of Judge-shopping which undermines the effective administration of justice. Another reason is that that it is tantamount to asking a Judge to overturn a decision of the same Court.
  - When dealing with a second or subsequent bail application, a Judge should only investigate whether the situation has changed materially since bail was refused. That is to say, Judges should ask themselves whether there has been a material change of circumstance? Reconsideration of the merits when bail was first considered should not occur.
  - What amounts to a material change of circumstance is fact specific and may depend on why bail was refused initially. For example, if bail was refused

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<sup>1</sup> In the matter of an Application by *Michael Hugh Beck and Others*, 25 January 1993, Hutton LCJ



because the Judge considered that the applicant did not have a suitable address, then an address being available could constitute a material change in circumstances. The Court is able to take into account matters that were not drawn to the Court attention when bail was first considered.

- e. A defendant should not bring a second or subsequent bail application unless there is a material change of circumstance.
- f. Ideally, if a second or subsequent bail application is made it should be deal with by the Judge who refused bail in the first place. Counsel should advise the Court when filing a subsequent bail application of that fact, and who the Judge was who dealt with the earlier application.

### Summary

- 17. As I have said, this is Mr Kaltonga's second application for bail. It is advanced on exactly the same grounds as his first application, and with the same bail proposal. There is no change of circumstance, let alone a material change of circumstance. The application is without any merit. Justice Naigulevu thoroughly considered all relevant legal and factual matters and refused bail. In accordance with the principles discussed above, I refused to embark on a fresh hearing into the merits, given there was no material change of circumstance.

DATED at Port Vila this 21st day of August 2025  
BY THE COURT

*name*

Justice M A MacKenzie

