

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

Criminal  
Case No. 23/979 SC/CRML

PUBLIC PROSECUTOR

v

RONA WAKO

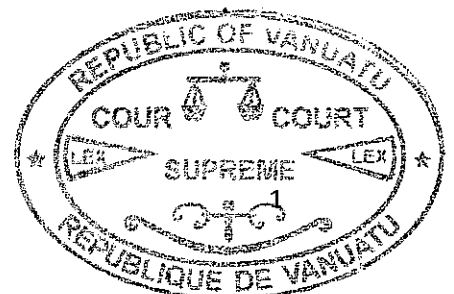
Date: 26 March 2025  
Before: Justice V.M. Trief  
In Attendance: Public Prosecutor – Ms R. Siri, for Mr L. Young  
Defendant – Mrs K. Karu

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**DECISION AS TO APPLICATION TO ACTIVATE SUSPENDED SENTENCES**

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1. Mr Rona Wako has also been previously named as “Ronah Wako” and in Criminal Case No 3515 of 2024 (“CRC 24/3515”), as “Rona Woka”.
2. On 17 January 2025, Mr Wako was sentenced in the present matter to the following concurrent sentences of imprisonment, which were suspended for 18 months: Public Prosecutor v Wako [2025] VUSC 1:
  - i) Unlawful entry of dwelling house (Charge 1) 1 year 3 months 2 weeks imprisonment; and
  - ii) Theft (Charge 2) 1 year imprisonment.
3. On 31 January Mr Wako was sentenced in CRC 24/3515 to the following concurrent sentences of imprisonment, back-dated to commence from 17 January 2025: Public Prosecutor v Woka [2025] VUSC 12 per MacKenzie J:
  - i) Unlawful entry of dwelling house 3 years imprisonment; and



ii) Threat to kill a person 2 years imprisonment.

4. Paragraph 57(1)(c) of the Penal Code [CAP. 135] provides as follows:

57. (1) *The execution of any sentence imposed for an offence against any Act, Regulation, Rule or Order may, by decision of the court having jurisdiction in the matter, be suspended subject to the following conditions:*

(a) *if the court which has convicted a person of an offence considers that:*

- (i) *in view of the circumstances; and*
- (ii) *in particular the nature of the crime; and*
- (iii) *the character of the offender,*

*it is not appropriate to make him or her suffer an immediate imprisonment, it may in its discretion order the suspension of the execution of imprisonment sentence it has imposed upon him or her, on the condition that the person sentenced commits no further offence against any Act, Regulation, Rule or Order within a period fixed by the court, which must not exceed 3 years; and*

(b) *if, at the end of such period, the person the execution of whose sentence has been suspended in accordance with this section has not been convicted of any further offence against any Act, Regulation, Rule or Order, the sentence is deemed to have expired; and*

(c) *if, before the end of such period, the person the execution of whose sentence has been suspended in accordance with this section is further convicted of any offence against any Act, Regulation, Rule or Order, the court shall order that the suspended sentence shall take effect for the period specified in the order made under paragraph (1) (a) of this section unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the circumstances of any further offending, in no case concurrently with any subsequent sentence.*

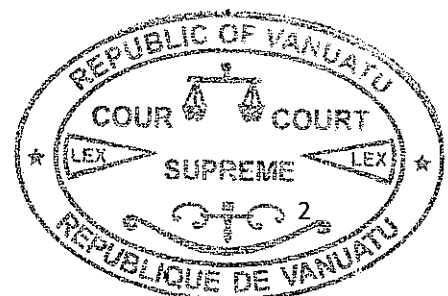
(d) *Where a court decides under paragraph (1) (c) that a suspended sentence is not to take effect for the period specified in the order, then, subject to this Act, the court must either:*

(i) *order that the suspended sentence:*

(ia) *take effect with the substitution of a lesser term of imprisonment; or*

(ib) *be cancelled and replaced any non-custodial sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the suspended sentence was imposed; or*

(ic) *be cancelled; or*

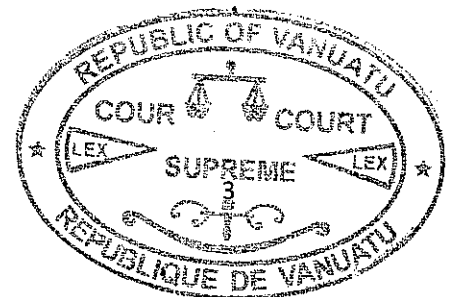


(ii) *decline to make any order referred to in subparagraph (i) concerning the suspended sentence.*

(2) *The court must, when ordering the suspension of the execution of the sentence of imprisonment, explain clearly to the person sentenced the nature of the Order and must ascertain that he or she has understood its meaning.*

5. On 3 February 2025, the Prosecution filed Application to Activate Prison Sentence pursuant to para. 57(1)(c) of the *Penal Code*. The Defendant filed submissions in response the following day. Counsel assisted me with further submissions at the hearing.
6. Paragraph 57(1)(c) of the *Penal Code* provides that where a person's sentence of imprisonment has been suspended but before the end of the period of suspension, if the person is further convicted of any offence, that "*the court shall order that the suspended effect shall take effect for the period specified in the order...*"
7. On 17 January 2025, the Supreme Court sentenced Mr Wako to two sentences of imprisonment which were suspended for 18 months. Two weeks into that 18-month period, he was further convicted by the Supreme Court.
8. Paragraph 57(1)(c) of the *Penal Code* is apposite hence the Court must order that the suspended sentences be re-activated for the period specified in the order in which the sentences were imposed unless the following proviso applies:

*... unless it is of the opinion that it would be unjust to do so in view of all the circumstance which have arisen since the suspended sentence was imposed, including the circumstances of any further offending, in no case concurrently with any subsequent sentence.*
9. I understand the closing words of para. 57(1)(c) of the *Penal Code* to mean that the re-activated sentence is to apply cumulatively with the imprisonment sentence(s) for the further conviction(s).
10. Mrs Karu cited the Court of Appeal judgment in *Siply v Public Prosecutor* [2016] VUCA 22. In that matter, following Mr Siply's further conviction, Saksak J re-activated his suspended sentence. I note that both Saksak J in the Supreme Court and the Court of Appeal dealt with the re-activated sentence cumulatively to the subsequent sentence of imprisonment, in accordance with para. 57(1)(c) of the *Penal Code*.
11. Ms Siri submitted that the Court take into account the circumstances which have arisen since the suspended sentences were imposed on Mr Wako. She submitted that Mr Wako committed the offending the subject of CRC 24/3515 in the period in which he failed to attend the Court for plea in the present matter. Further, that Mr Wako's offending has progressively worsened where in the present case, he



unlawfully entered a dwelling house and stole property but 2 years later, in the offending the subject of CRC 24/3515, he unlawfully entered a dwelling house and threatened to kill the occupants.

12. Mrs Karu accepted the circumstances of the further offending and submitted, citing *Siply v Public Prosecutor* [2016] VUCA 22, that fairness and a totality approach required the Court to order that the suspended sentence in the present matter take effect with the substitution of a lesser term of imprisonment in accordance with para. 57(1)(d) of the *Penal Code*. She submitted that the lesser term of imprisonment should be 1 year imprisonment in respect of Count 1 (in substitution for the sentence imposed of 1 year 3 months 2 weeks imprisonment).
13. Ms Siri agreed with those submissions.
14. I accept that the circumstances which have arisen since the suspended sentences were imposed on Mr Wako include a worsening in his offending. I also accept, however, that fairness and the totality principle require that the Court impose a sentence that will not have a crushing effect on him.
15. Accordingly, I **ordered** that the sentences suspended on 17 January 2025 are to take effect with the substitution of a lesser term of imprisonment in respect of Count 1 in accordance with paras 57(1)(c) and (d)(i)(ia) of the *Penal Code*.
16. Accordingly, the end sentences in the present matter are now as follows:
  - i) Unlawful entry of dwelling house (Charge 1) 1 year imprisonment; and
  - ii) Theft (Charge 2) 1 year imprisonment.
17. These sentences of imprisonment are to run **cumulatively** to the sentences imposed in CRC 24/3515 on 31 January 2025.
18. Mr Wako has 14 days to appeal this activation of sentences.

DATED at Port Vila this 26<sup>th</sup> day of March 2025  
BY THE COURT

  
Justice Viran Molisa Trief

