

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

**Criminal  
Case No. 23/471 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Robert Miljkovic  
Defendant**

**Coram:** Justice Dudley Aru

**Counsel:** Ms. M Melteburi and S Sewen for the Public Prosecutor  
Mr. N. Morrison for the Defendant

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**REASONS FOR ORAL VERIDCT  
(ACQUITTAL)**

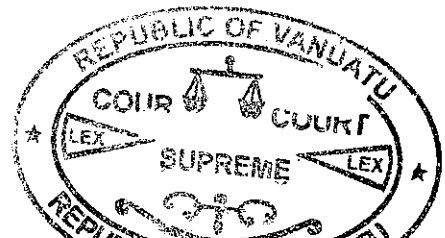
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**Introduction**

1. The accused was charged with three (3) counts of acts of indecency with a young person (counts 1, 5 and 6) and three (3) counts of domestic violence (counts 2, 3 and 4). The trial was heard over a period of four days from 16 to 20 September 2024 as the Prosecution witnesses all gave evidence via video link from Belgrade, Serbia.
2. At the end of the trial, the parties requested time to file written closing submissions and be allowed time to speak to address those submissions before a decision is given.
3. Following my consideration of those submissions and the evidence called at trial, I announced my verdict orally on 31 October 2024 acquitting the accused on all the charges. I now provide my reasons below.

**Background**

4. Before the trial began, the parties agreed that the names of the two child witnesses will be suppressed and that they be identified as "DP" and "MP". DP is the eldest and she is the complainant. MP is her younger sister. It was also agreed that their evidence will be heard in a closed Court with the accused appropriately seated behind a screen to avoid any direct eye contact with the two child witnesses.
5. The only other Prosecution witness was the mother of the two children, Zorica Popovic. Upon her divorce from the girls' biological father, one Predrag Popovic she re-married the accused. He is the girls step father. They lived in Serbia for some time before moving to Vanuatu in 2019 where the offending is alleged to have occurred.



6. DP and MP returned to Serbia around February this year under the interim custody of their biological father. Zorica had applied to this Court for sole custody of the two girls which was opposed by her former husband on the basis that the Serbian Courts had fully deprived her of parental rights over DP and MP. In **Civil Case No 23/284 Zorica Popovic v Predrag Popovic** Hastings J when deciding that the Courts in Serbia the appropriate Courts to determine issues of custody and access rights over the girls directed amongst other things that DP and MP be returned to Serbia. Zorica returned a few months later around July of this year and resides separately from the children.

### Charges

7. The accused pleaded not guilty to all the charges and the matter was set down for trial in September. By this time DP, MP and their mother had all returned to Serbia.

#### Count 1

8. The charge is an act of indecency with a young person contrary to s98A of the Penal Code [CAP 135]. The particulars are that sometime between November 2019 and January 2020 Mr Miljkovic showed pictures of a naked woman and an old man to DP who at that time was 8 years old.

#### Count 2

9. The charge is domestic violence contrary to s 4 (1) (e) and s10 of the Family Protection Act No 28 of 2008. The particulars are that sometime between November 2019 and January 2020 Mr Miljkovic constantly showed indecent pictures of naked woman and old men to DP.

#### Count 3

10. The charge is domestic violence contrary to s 4 (1) (a) and 10 of the Family Protection Act. The particulars are that between November 2019 and January 2020 Mr Miljkovic pushed DP into the water twice because he was angry with her.

#### Count 4

11. The charge is domestic violence contrary to s4 (1) (a) and 10 of the Family Protection Act. The particulars are that between November 2019 and January 2020 Mr Miljkovic assaulted DP by hitting her face with his fist.

#### Count 5

12. The charge is act of indecency with a young person contrary to s98A of the Penal Code. The particulars are that around October 2020 Mr Miljkovic forcefully kissed DP on the lips when she was 9 years old.

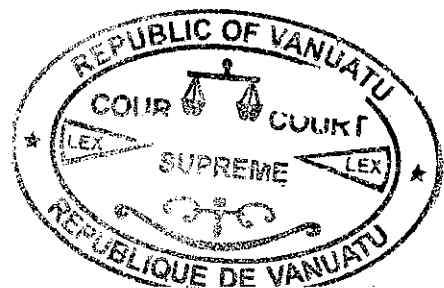
#### Count 6

13. The charge is act of indecency with a young person contrary to s98A of the Penal Code. The particulars are that between October 2020 and December 2020 Mr Miljkovic touched DP's vagina when she was 9 years old.

### Elements of the offence

14. In relation to the charges of act of indecency with a young person (Counts 1, 5 and 6) the Prosecution must prove the following elements:

- a. Mr Miljkovic committed an indecent act;



- b. Upon or in the presence of another person; and
  - c. That person was under the age of 15 years.
15. In relation to the charges of domestic violence (counts 2, 3 and 4) the prosecution must prove the following elements:
- a. Mr Miljkovic.
  - b. Intentionally committed an act of domestic violence.
  - c. Against a member of his family

### **Burden and Standard of proof**

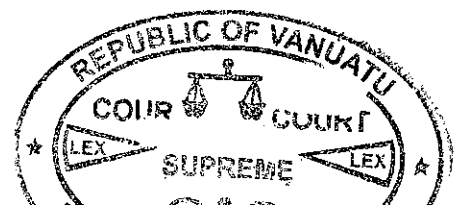
16. This is a criminal proceeding; the prosecution has the burden of proof. It must prove each element of each charge beyond reasonable doubt in order to establish a finding of guilt on each charge. Mr Miljkovic is presumed innocent until his guilt is proved beyond reasonable doubt. If some doubt exists as to his guilt then I must acquit him. He is not required to prove his innocence.
17. Before the Prosecution opened its case, s81 of the Criminal Procedure Code [CAP 136] was read out and explained to Mr Miljkovic.

### **The Evidence**

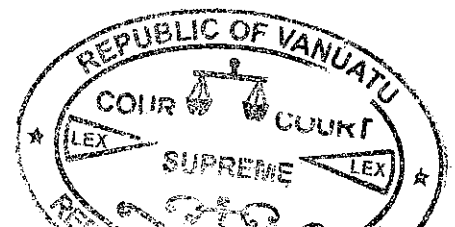
18. The prosecution called as their witnesses DP, MP and their mother Zorica. All gave evidence by video link from Belgrade, Serbia.

#### **DP**

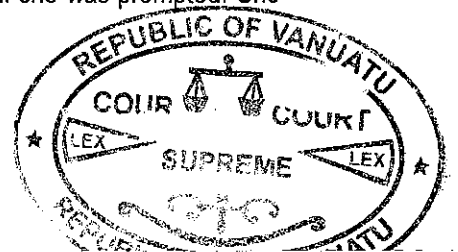
19. She is now 13 years old. In 2019 she was living in Vanuatu with her sister, Mother and step father. Her Mother's husband. She had known him for around a year before they came to Vanuatu. In Serbia he was very nice, respectful and kind to her and her sister and she liked him at first. In March 2019 they moved to Vanuatu. Life was good at first. Later her step father changed his behaviour. He became rude, selfish and was always yelling at her and her sister. This affected their relationship and she did not like him. Soon after arriving in Vanuatu, they did not attend any school and most times were spent home with their step father or with the full family. She played games with her sister most times as their step father did not allow them to play with other kids. In November 2019 they moved to their second house at Belview.
20. First incident. On a weekend in November, she did not attend school and went to her stepfather's office to ask for some papers. He was sitting in a black recliner chair and handed her his phone a black Samsung SC 21. On the phone was a picture of a woman standing up but naked. She handed the phone back to her step father. That same day he gave her back the phone and told her to look at the picture. It was the same picture of the woman standing up but naked. She asked her step father why he showed her the picture. He got angry and took the phone back. She got up and left. Her sister and mother were both out of the house.
21. Second incident. On the next occasion her step father called her into his office and told her to sit down and showed her another picture on his phone. The picture was of an old man lying naked with a young girl. The old man had his hand in between the girl's legs. She gave the phone back to him and he got angry and told her to look at the picture. She did not tell anyone as her step father told her if she did, something bad will happen to that person.



22. Third incident. On another weekend her mother and sister had gone shopping and her step father wanted to go to the beach. They rode a quad bike to a secluded beach with no one around and her step father went for a swim while she was getting ready. She wore a top and a bikini. He wore black shorts. When she joined him in the water, he told her to swim to him and he grabbed her buttocks. She moved away from him and told him that if he did it again, she will tell her mother. He then grabbed her by the neck and pushed her under water twice and told her he will drown her if she says anything. Then they both got out of the water and went home. She was afraid and did not tell anyone.
23. Fourth incident. On another weekend her sister and mother had gone to see the neighbours when they were still living at Belview. Her step father told her to sweep the verandah and she did as she was told. He was angry with her and told her to sweep the verandah again. When she entered the house her step father punched her in the face and hit her nose. The blow knocked her out and when she woke up there was blood on the floor. She did not tell anyone about the incident because she was scared. Before her mother and sister came back from the neighbours, her step father grabbed her by her hair and took her to the bathroom and washed her face then put her in her room to change her clothes because her mother was on her way back to the house.
24. Fifth incident. In October 2020 they were living at the Elluk plateau. She was already in school by that time and the whole family including her, mother and stepfather had moved residence to Elluk plateau. On one occasion her mother had gone to town and her sister was outside. Her step father gave her his mobile phone and showed the same picture of the old man and girl. She did not look at the picture but he put his hand inside her shorts and placed it on her underwear and touched her private part. She got up and he became angry and told her to go back but she went to her room. They were the only ones in the office at that time. She did not tell anyone about what happened. It was the first time her step father did that to her and it happened again on many occasions but she did not tell her mother or sister. He told her it was normal.
25. Sixth incident. On another occasion when her mother and sister were in town, her step father called her into his office. He was watching movies on his computer. She sat down on a chair and he asked her whether she knew how to kiss like they do in movies. She said No and he told her to move closer and grabbed her head and kissed her on her lips. She then moved away.
26. Early in the morning either in 2020 or early 2021 her sister woke up first. That morning, she was crying because she had had enough of how she was treated by her step father and told her sister what happened. Her sister went and told their mother. She did not say anything to her mother. Her mother woke her step father and asked him about what her sister said but he did not say anything and her mother told him to pack his things and leave. He went and stayed in a nearby house they were building for themselves. Her step father never came back to live with them. A year later she told her mother everything and a few days later they went to the Police station to report the incident. After she told her mother she never saw her step father again in the house.
27. She was cross examined. First, she was shown a number of photos and asked to identify where each was taken, who was in the photo and who took the photo. She confirmed as follows:



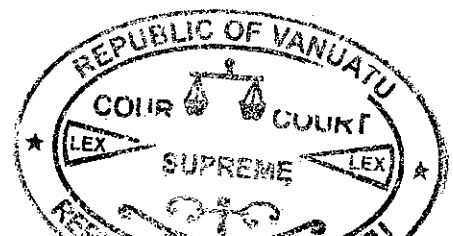
28. **Exhibit "D1"** – was a photo of herself, her sister and their step father. The photo was taken by her mother maybe at Elluk.
29. **Exhibit "D2"** - was a photo of herself sitting on her stepfather's lap watching a video screen. The photo was taken by her mother as her legs appear in the photo.
30. **Exhibit "D3"** – was a photo of her step father in the background with her and her sister at a swimming place in Port Vila.
31. **Exhibit "D4"** – was a photo of herself massaging her step father's leg. The photo was taken by her mother.
32. She agreed the photo at the beach was a common event and agreed they would go there by car. She denied there was no helmet for the quad and maintained she did go to the beach by quad with her stepfather. She could not recall the date when she and her sister told their mother about the incident as it was some 3 to 4 years ago and it was difficult to recall the dates.
33. She agreed that after she and her sister spoke to their mother, a year later they went to the Police. She also agreed that some incidents reported to the Police occurred more than a year before she told her mother. Before telling her mother, she did not make a written record of what happened. Before she and her sister told their mother and before reporting the matter to the police she did not make or keep any notes or diary of what happened.
34. She was relying on her memory alone when she told the Police in December 2022. She agreed the other case before the Court involved an application by her biological father to have her returned to Serbia. She denied her mother ran away with them despite warrants for their arrest. She said the warrants were issued after they had arrived in Vanuatu. Her mother did not tell her but she read it in the papers. She agreed she read Justice Hastings judgment but did not recall everything he said. She agreed that what the judge said was different to what she was telling the Court as two different countries and are involved with two different systems. Her mother had sole custody before it was revoked.
35. She agreed she left Serbia in 2019 and recalled what Justice Hastings said in his judgment that shortly before they left, the Court in Serbia wanted her mother for cross examination. She said her mother had the right to take her away as she had sole custody, she denied the Interpol got it wrong and denied she was brain washed by her mother. She agreed that when she gave evidence before Justice Hastings, she supported her mother to keep her in Vanuatu because her biological father badly treated her. Her step mother also treated her badly because she pulled her hair. She agreed she now lives with her biological father and his wife and their young daughter.
36. She said she had not lived with her mother since February this year (2024) and agreed she did not like her mother's parents before and has since improved their relationship.
37. Coming to Vanuatu was traumatic for her and she was not a happy child. She was lonely after she started school and as she did not speak English she was isolated with her mother, sister and stepfather. When she started first going to school near the hospital in Vanuatu the kids were different. She was nervous and bit her fingernails all the time. It was put to her that Justice Hastings observed that she used legal terms like an adult would as if she was prompted. She agreed that she can read the papers.



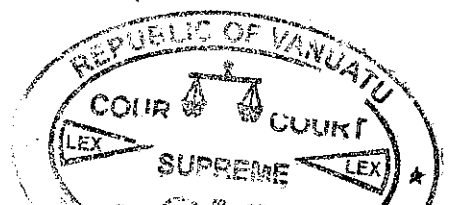
38. She denied that she was prompted by an adult with information about her stepfather's phone because she was only 8 years old when the first incident happened. She said she had the same phone. She disagreed that what she was telling the Court was prompted by her mother.
39. She did not know whose idea it was to go to the Police in 2022 and said maybe it was her mother's idea. She did not know that her step father had stopped payments to her mother two days before they reported the matter to the Police.
40. Concerning her swimming skills, she learned to swim after arriving in Vanuatu and after a while she could swim but not in deep water. She recalled an incident where her stepfather saved her once after she got into deep water.
41. She denied that her stepfather did not kiss her on the lips. And said her stepfather intentionally showed her pictures of naked people. She agreed her stepfather punched her on the face when she was around 10 years old. She denied that her mother could see what happened after she wiped off the blood and changed her clothing and agreed her mother did not take her to see a doctor as she did not see any bleeding.
42. She maintained that her stepfather punched her and denied that what she told the Court was prompted to her by her mother because of how things unfolded.
43. She was re-examined by the Prosecution.
44. She agreed it took one year to tell her mother and after that they reported the matter to the Police. She went to the Police station with her mother and sister. When she gave her statement, she recalled that her mother was in another room but she was not sure. Regarding the beach incident she confirmed that there were other times they went to the beach as a family. On another occasion she went with her step father.

**MP**

45. She is now 12 years old and was born in Belgrade, Serbia where she now lives.
46. From November 2019 to January 2020, she lived in Vanuatu having arrived in 2019. She came to Vanuatu with her mother her sister DP and their stepfather. She first met her stepfather in Belgrade in 2016 and only knew him a few years before they came to Vanuatu. While in Serbia their stepfather was nice to her and after they came to Vanuatu that changed because he started making rules which were unreasonable for them not to talk or not to play or how much they can eat.
47. She always followed those rules because she was afraid to break them otherwise, they will be punished by their stepfather who controls what they can do. The rules apply to her and her sister and mother as well.
48. She had friends at school when she was in Vanuatu and she was happy but not when her step father was around. He controlled her and her sister and mother unlike when they were in Serbia. The rules he made were followed by everyone including her sister. Their stepfather would punish both of them. Their mother was aware of this but at times she was not aware as their step father would tell them not to tell her or he will punish them.



49. When they came to Vanuatu, she noticed changes in DP's behaviour as she was always anxious and sad. She tried asking her but DP would get upset all the time and remain quiet. She knew nothing until DP told her. The first time DP told her everything that happened was until 2 years later.
50. DP told her that their stepfather was touching her and that she should not tell anyone else. DP did not say exactly where he was touching her but she (MP) knew exactly what DP meant. DP was crying about 5 minutes because she was upset before she calmed down and told her what happened. It was the first time she really looked upset. She told DP that everything will be okay. She was shocked and could not keep it to herself so she told their mother so she could help them and she did. About a year and a half later they went to the Police.
51. The punishments given by their stepfather were because he was sometimes jealous and changed his attitude. She and DP would do house chores like cleaning the house and this would be repeated if their step father was angry with them. Sometimes he would get physical. On one occasion, he punched DP on her face and she fell with her nose bleeding. She did not tell their mother as their stepfather told her something bad will happen if she said anything. That was the first time she saw their stepfather hitting DP.
52. Under cross examination, she said she was 6 years when she left Serbia. Before they left Belgrade she was told they were going to Vanuatu but did not know where it was and did not tell her father Pedrag where they were going and did not say good bye to him. She agreed she had a step mother with a new baby sister and grandparents from father and mother's side were left behind when they left Belgrade. Before they left, she was in day care or pre-school as a 6-year-old. She agreed she had a lot families and friends in Serbia but did not say good bye to any before they left. At that time, she only spoke Serbian and a little English. After arrival in Vanuatu, they stayed at Malapoa at first. She was enrolled in school and got on very quickly with the assistance of her teachers.
53. There was a lot of stress between her mother and their step father before they left Serbia and that increased when they arrived in Vanuatu. She agreed that after leaving Malapoa they went to Belview then at two different places. At one place there were 4 bedrooms and 1 office and the other there were 2 bedrooms and 1 office. When their step father was working online, he did not leave the house and he was strict and did not want any noises in the house. Their mom was also strict but not like their step father. He was strict with what they ate. They ate bread and vegemite while he would eat steak and mash potatoes.
54. Now they are back in Serbia she had not seen their mother. Their father told them it was against the law to see their mother. She agreed their mother was arrested when she returned to Serbia in July. She agreed when they were still in Vanuatu her sister DP told her something which she reported to their mother. This caused their step father to leave the house.
55. She agreed it was more than a year later when they went to the Police station to report the matter. Before reporting the matter to the Police, she did not make any written notes of what DP told her. Their mother gave her statement first to the Police. She and her sister DP made their statements at home but not the same day with their mother. Later they took their statements to the Police. She agreed her sister DP did the same but before her.
56. She agreed there were a number of allegations against their step father but she did not see their step father kiss DP on the lips because he calld her into the office. She did not see the pictures

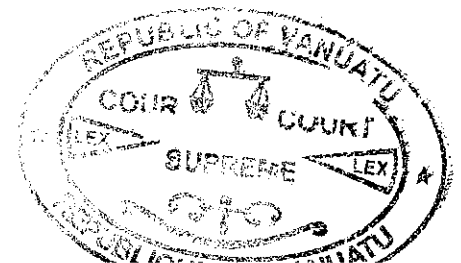


of naked women and others shown by their step father to DP and she did not see their step father push DP's head under water because she did not follow them. He did not see their step father punching DP on the face but heard the impact and saw their step father dragging DP with a bloody face. That happened at Eluk. She agreed she did not see their step father strike DP and did not see him touch DP's private part.

57. She was shown the photo tendered as **Exhibit D 1-** and agreed it was herself, DP and their step father in the picture and the photo was taken by their mother at the first place they stayed at Eluk.
58. She disagreed when it was finally put to her that much of what she said and what DP said was what their mother told them.
59. She was re-examined and asked to say why she made her statement at home a few days later. She said she had some questions to answer so she prepared her statement at home.
60. She explained that their mother was strict with them but not as strict as their step father and she described the impact of what she heard when their step father punched MP on the face as similar to a slap or hit.

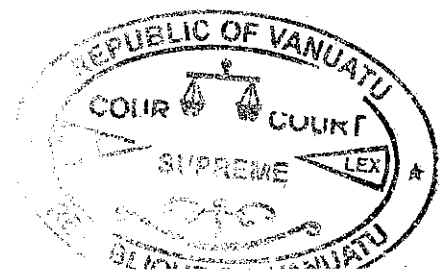
**Zoricka Popovich**

61. She confirmed she is 38 years old and married. Her children from her previous marriage are DP and MP. She is from Serbia and on 29 March 2019 she arrived in Port Vila, Vanuatu. In 2019 in Serbia she was already married to the accused (Robert). She met him in Belgrade in 2017 and they got married on 18 December 2017. DP and MP are her daughters from her previous marriage and have always been with her since her marriage.
62. She came to Vanuatu with Robert, DP and MP. Before they came to Vanuatu Robert was kind to her and DP and MP and had a good relationship with all of them. them in Serbia before they came to Vanuatu. Her parents are still alive and before they left Serbia she had a very rocky relationship with them.
63. Before moving to Vanuatu, she did not know about Vanuatu. Robert told her they will be moving to Vanuatu. The reason for her to move to Vanuatu was she had a lot of problems with her former husband concerning their children and Robert did not like it. Robert paid for their trip and he travelled to Vanuatu a month before her and the two girls. They arrived on 29 March and stayed at a hotel before moving to a house at Malapoa where they stayed for 4 months before moving to Belview. They stayed in a house with 3 bedrooms and an office and kitchen. Robert had his office next to their bedroom as he was working online from home and he paid for everything as she had no money.
64. Her daughters started school five days after arriving in Vanuatu. Robert paid for their school fees and she paid a contribution when they attended Port Vila International School. Her former husband was not aware that she took the children to Vanuatu. Her reason being she had a lot of problems with him and she also had sole custody of the children. She was not aware she was doing anything wrong by taking them to Vanuatu. Her lawyer told her not to tell anybody that they were moving to Vanuatu.

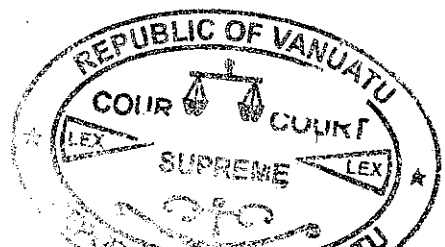




65. After arriving in Vanuatu, Robert's behaviour towards the children changed and became more strict on what they can or cannot do or the food they eat. He was not friendly with the children and did not allow them talk. They were not allowed to use computers or laptop. If they did talk, he would get angry.
66. The changes in his behaviour was that he started making inappropriate comments about their bodies. He did not do this when they were in Serbia.
67. She learnt about the incident on 17 October 2021 when they were living at Eluk. In the morning she went to open the door to the girl's bedroom and MP told her Robert was touching DP's private part. DP was sitting on the bed crying and could not speak. Robert was still asleep. MP told her Robert told her not to tell anyone or something bad will happen to them.
68. She yelled at Robert to wake him up and slapped him on the face. He then locked himself in his office. She texted Daniel (Robert's brother) and told him what happened and asked him to tell their parents in Australia. Robert was crying saying he will kill himself and telling her not to tell the Police and he will seek therapy. After that he packed his clothes and moved out of the house and told her to see him the next day at the coffee shop.
69. After a month, in November she and the girls moved to Tassiriki with a friend where they lived for around 1 year and 8 months. In December 2022 they moved out of Tassiriki. Whilst there all the expenses and rent was paid by Robert including school fees. Robert remained at Eluk for a few months in the garage next to the main house they lived in together before moving to Ocean View Apartments.
70. She went to the Police to report Robert after 1 year 8 months when Robert said he will stop making payments to her and her children. When he told her he will stop the payments, she contacted a lawyer to tell Robert to honour his spousal support to her as they were still married. The defendant told her lawyer he was not willing to continue the payments. At this stage they wanted to return to Serbia and DP told her everything.
71. The next morning being a Saturday they went to the Police station to report the matter. She gave a verbal statement and the Police gave her statement forms to take home and for her, DP and MP to complete and return to the Police station on Monday. After the incident was reported a Ni Vanuatu friend of hers supported her and the children and they moved to his house at Bukura Devil's point road and later they returned to Serbia and she has not seen Robert since then.
72. She was cross examined. She was aware of the hearing before Hastings J and read his judgment. She was asked to read paragraph 68 and it was put to her that she lied when she said she delayed filing a complaint as she was gathering more evidence. She did not agree. She recalled her conversation with Ms Mahuk on 25 October but denied she told Ms Mahuk that she did not report Robert because here in Vanuatu the Court will not punish him.
73. She agreed she told Ms Mahuk that once they get to Serbia she will report Robert. She further agreed she decided on behalf of DP that without the full specific details of the incident she will not go to the Police. She agreed on 28 October 2022 the Public Solicitor wrote on her behalf for the defendant to continue to pay her family maintenance but Ms Mahuk responded on 3 November 2022 that no more payments will be made.

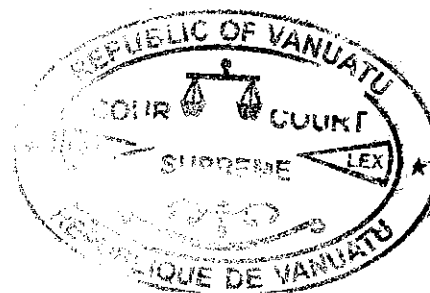


74. She was asked about her current job in Serbia but could not disclose it. She denied she was under house arrest but agreed she was waiting to be called to be sentenced after 3 to 9 months. She agreed she returned to Serbia on 26 July 2024 and was taken into custody and held for a month.
75. After Robert had left the house to live in the garage, she agreed that she still fed him three meals a day and communicating with him on a daily basis because she felt sorry for him and baked him birthday cakes on his birthday and they had lunch together from time to time. She agreed she had a red alert on her but travelled freely and was only arrested when she arrived in Serbia. She agreed she said the girls did not want to go back to Serbia but denied it was her idea rather than the girls.
76. She denied that she did not tell the children's father about Robert's actions and was not aware she is being charged with fraud and blackmail in Serbia. She was not aware of the implications of the Hague Convention but now understands that the convention requires the children to be returned to their home country. The idea of moving to Vanuatu was to avoid the application of the convention. In the proceedings in Serbia Robert engaged a lawyer to act for her.
77. She agreed that in December 2022 she made her statement first then DP after a few days then several days later MP. She said DP gave her statement but due to hacking of the Government system the Police told her to go home and write the statement. That the Police told them they will send her a questionnaire for DP to complete and they waited for the questionnaire from the Police.
78. She was then asked to comment on paragraph 46, 50 52, 53, and 68 of Hasting J's judgment and denied when it was put to her that it was more than a coincidence that the complaint was made after Robert ceased to provide financial assistance to her. She denied that she would not have reported if the funding had continued and went further to say that she is not a liar.
79. Since returning to Serbia she has only spoken to the children by phone and everything she says is recorded by the father.
80. She was re-examined and said the necessary help that Robert required was a psycho analyst from Australia specialising in sexual behaviour and behavioural issues. On returning to Serbia she was held until she signed an agreement with the Public Prosecutor for leaving Serbia with the children. She confirmed that when she went to the Police to report the matter there was no money coming from the defendant to support them.
81. When she returned to Serbia her interaction was closely supervised by the Social Services and the girl's father.
82. When the prosecution rested its case, I made a ruling under s164 of the Criminal Procedure Code [CAP 136] (CPC) that there was a prima facie case made out and called the defendant to make his defence.
83. The defendant was informed of his rights under s 88 of the CPC but opted to give evidence himself in his defence.



**Robert Miljkovic**

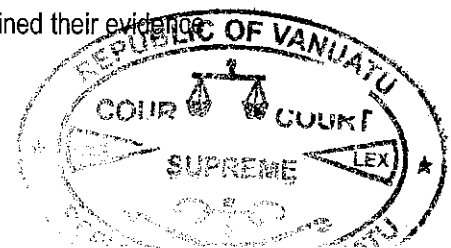
84. His evidence in chief is he met Zoricka in April 2017 in Belgrade Serbia on line. A weeks later he met the girls DP and MP. They met in Zoricka's apartment where she lived with the girls. At all times they were told by their mother to be quiet. The father was no longer with them. He married Zoricka on 18 December 2018 in Costa Rica. After that they stayed in Serbia until they left in March 2019. Following their marriage their life was stressful as Zoricka would get upset with him when he spoke to other women. In 2018 DP was 7 years old and MP was 6.
85. He was aware of the proceedings in Serbia. After her divorce Zoricka sought sole custody of the girls. In March 2019, they decided to move to Vanuatu. After she was advised by her lawyers that she would be issued with temporary orders for the children to be placed in full time care of their father. Zoricka decided to leave with the girls to a non-Hague Convention country to lie low until things quieten down and Vanuatu was chosen as the destination. They left Serbia without telling anybody. Zoricka maintained contact with Serbia through her lawyers.
86. Upon arriving in Vanuatu, they stayed at Malapoa temporarily for 4 months then moved to Belview for 1 year before moving to a 2-bedroom house at Elluk for 6 months then moving again to a 4-bedroom house where they settled as a family. The arguing between them continued. As he was working from home online most times, and during the covid outbreak, the girls were home most of the time so he applied discipline so as not to be disturbed when he was having online meetings.
87. The comments he made about the two girls was out of concern as a step father for their own safety when settling in Vanuatu. Around March or April 2020, the Serbian Embassy in Canberra contacted him about the two children and their mother and in May 2020 the Police told him about an interpol red alert for him. In April 2021 Zoricka became aware that there was an interpol red alert for her as well.
88. From 2020 to 2021 Zoricka would use this red alert to black mail him if she wanted something done her way. On 17 October 2021 Zoricka accused him of the incident with DP. That morning Zoricka kicked him to wake him up and started accusing him of molesting DP. He denied the accusations but Zoricka slapped his face. He denied he begged for forgiveness and left the house within 1 hour of waking up. He denied meeting Zoricka at a café the next day. After he left, he continued to provided financial assistance to Zoricka and her children until his lawyer told him to stop. This amounted to VT 7,055,000. He made the payments as he was threatened by Zoricka that he will report him for molesting DP if he stopped the payments. He confirmed that **Exhibit D8** is the BSB record of the funds transferred to Zoricka.
89. In October 2022 when he ceased communication with Zoricka she went to see him at Coco beach and threatened him as to why he ceased communication and refused to sign any agreement to continue the payments until the children were 18 years. The threats continued in 2022. He became aware of the complaint when the Police approached him at the resort around the first or second week of November.
90. After that he did not have any further contact with Zoricka until friends overseas informed him that Zoricka had returned to Serbia. He has filed criminal proceedings against Zoricka in Serbia and has instructed a lawyer to represent him. **Exhibit D10** is a copy of his lawyers' submissions in those proceedings.



91. As to the charges counts 1 and 2 he said he never intentionally showed pictures of naked women to DP that maybe there were pictures on his phone which he never intended for the girls to see. He denied going alone to the beach with DP. Anytime they went was as a family. He taught the girls how to swim and saved twice from drowning as they did not know how to swim. He denied punching DP on the face with his fist or forcefully kissing DP on the lips. Lastly, he denied touching DP's vagina between October and December 2020. He said the girls were always in their under wear around the house due to the heat and there maybe accidental touch but nothing was intended as suggested.
92. He was cross examined. They were married a year before they moved to Vanuatu. He developed a happy relationship with the children. They saw their father every second weekend and every Wednesday but Zoricka made every attempt to alienate the children from their father. He was aware of the dispute over custody of the children between Zoricka and the children's father. As a result, Zoricka took the decision to leave Serbia and her lawyer's gave advice as to what country would be suitable. He was aware of the consequences but followed what Zoricka told him and he paid for the trip.
93. He had been in Vanuatu before as a tourist. After searching suitable destinations with Zoricka of which countries were not signatories of the Hague Convention Vanuatu was chosen. His family knew he was travelling to Vanuatu. He was prevented by Zoricka from telling people he was coming to Vanuatu and also lying to people in Vanuatu about their status. He did not want to come to Vanuatu but to go to Austria. Zoricka insisted on Vanuatu.
94. On arrival in Vanuatu they stayed at Malapoa then moved to Belview in 2019. After Belview they moved to Elluk. He was paying the rent as he was the only one earning income to support the family. The monthly family expense was around VT600,000 including school fees, shopping for food and social activities. As he was working from home, during work hours he told the children not to run around the house and to behave themselves. If the children were to be punished this was to be jointly decided by him and Zoricka.
95. He denied punching DP on the face with his fist as punishment or controlling the food the children ate. He would play with the children from time to time but nothing sexual. He denied touching DP's vagina or that he kissed her on the lips or that he showed her pictures of naked women. He agreed he took his family to the beach for a swim at times in the car. He denied taking DP to the beach by themselves on the quad bike and denied pushing her under water because he was angry with her.
96. He agreed on 17 October 2021 Zoricka woke him up and started accusing him of molesting DP. After that he moved out of the house and Zoricka wanted him to pay the VT 600,000 monthly budget or she will report him. She wanted the money to continue living in Vanuatu or return to Serbia and have the children removed from her. He started making payments in November 2021 until October 2022. In April 2020 he became aware of the interpol red alert when he went to get his Police clearance and was informed by the Police.
97. He was not re-examined.

### Submissions

98. The prosecution referred to the evidence of DP, MP and Zoricka in chief and also when cross examined. They also referred to the evidence of the defendant in chief and under cross examination. It was submitted that the witnesses for the prosecution maintained their evidence



under cross examination and the inconsistencies were due to the fact that the incident occurred some 4 years ago. That the prosecution witnesses were credible as they were consistent in their evidence in chief and under cross examination.

99. It was submitted that there is no requirement for corroboration in relation to counts 1, 5 and 6 and the evidence of DP alone is credible and proves the elements of these charges. It was submitted that the evidence of the other witnesses supports DP's evidence.
100. It was further submitted that weight should not be given to the defendant's evidence for reasons that the defendant is attempting to shift the blame onto the complainant's mother. Instead, the prosecution submitted that the elements of the offence of acts of indecency with a young person and domestic violence have been satisfied and the elements of each offence have been proved beyond reasonable doubt.
101. On the other hand, the defence submitted that the case was delayed in progressing to trial. That the offending occurred some 3 years ago and was first reported to the sister MP and mother in October 2021 more than a year later. That no medical evidence was tendered despite the indication by the prosecution in the opening address.
102. Mr. Morrison submitted that discussion must revolve around the potential reliability of the prosecution witnesses and the prosecution case. That the prosecution failed to present evidence in support of count 6 that the defendant touched DP's vagina. In respect of the remaining 5 charges, it was submitted that they are denied and that the court should consider the competing evidence and reliability of individual witnesses as the prosecution must prove each element beyond reasonable doubt.
103. It was submitted that the mother Zoricka is the dominant force in the prosecution case, she controlled her daughters for over 9 years before the alleged offending and if she was considered an unreliable witness then the prosecution case must fail. It was submitted that she was unreliable, dishonest and knowingly reckless making false statements on oath. That she had a money train until the accusations were made.
104. In summary it was submitted that the accused should be acquitted on all charges. That this is not a case where allegations were made, then reported and medical evidence or corroboration was sought and the matter was prosecuted. It was submitted that this was not such a case. Secondly the case must be considered in light of the mother's psychological dominance over the children for many years therefore the prosecution cannot meet the required burden of proof.

## **Discussion**

105. The background to the allegations in this case is that the alleged offending occurred around November 2019 when DP was 8 years old and her sister MP was around 7 years old. DP told her sister MP about what she alleged their step father did to her and MP reported the matter to their mother in around October 2021. The allegations were not reported to the Police until November 2022.
106. The trial started on 16 September 2024 and took four days finishing on 20 September 2024. At that time Zoricka, DP and MP had all returned to Belgrade, Serbia so they gave evidence from Serbia by video link. DP is now 13 years old and her sister MP is 12 years old.

107. This is a matter which was delayed for a number of years before the trial started. In **Public Prosecutor v Cyreal** [2006] VUSC 75 Justice Tuohy said this about delays in a criminal proceeding:

*"...the end result of the delay is that witnesses are giving evidence about events which happened more than three years ago now and that is unsatisfactory. Furthermore, many of the reasons relating to the public interest for criminal prosecutions to be brought had gone, don't exist any longer because so much time has passed. The whole point of the criminal justice system is to deal with situations when they arise justly, not try and deal with them three years later."*

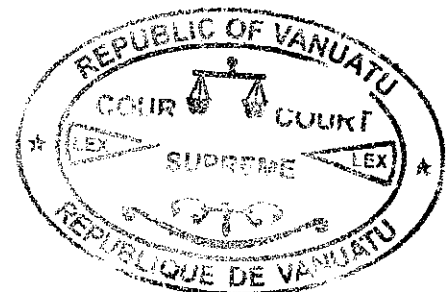
108. In this case, five years have lapsed from the making of the allegations against the accused to the actual trial which is highly unsatisfactory. This case turns on the credibility and reliability of the prosecution witnesses. Before leaving Serbia to travel to Vanuatu, Zoricka (Mother) had divorced the children's father Pedrag and there was a custody battle going on before the Serbian Courts as to who should have custody of the two girls DP and MP, the young children of the marriage. Through those proceedings it became apparent that the mother had been a controlling figure over the children's lives. This was noted by Hastings J in **Popovic v Popovic** [2023] VUSC 233 where he had to decide which Court was the appropriate Court to decide custody and access rights of the father and mother over the two children.

109. At paragraph 26 to 31 he says:-

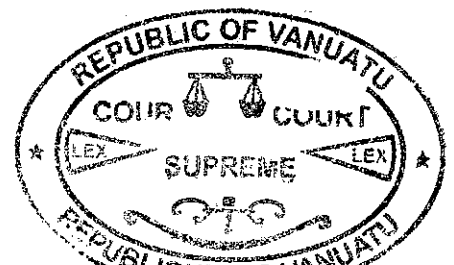
26. *The First Basic Court of Belgrade merged the proceedings brought by the mother and the father on 4 December 2018, "for the purpose of mutual discussion and making decision".*

27. *Following the observations made by the social workers, on 25 March 2019, the City Centre for Soci Sjral in Belgrade, New Belgrade Department reported that*

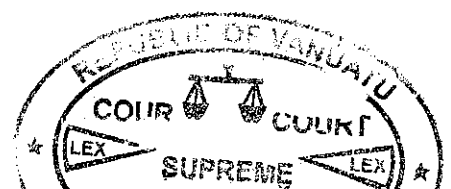
- a. during the field visit, "no usual personal and family items were observed in the [mother's] apartment, which would indicate the expected dynamics of the family (pictures, keys, mobile phones, things that have no special purpose but represent decoration in the space or a memory of some situation";*
- b. the father reported that the mother had "an extramarital union with a person who is not a citizen of Serbia, but from Mexico, and that during this period he also submitted a complaint that the mother was not adequately taking care of the children, with the suspicion that she was physically punishing them;"*
- c. the maternal grandparents complained about a change in the mother's behaviour since she began her relationship with Robert Miljkovic;*
- d. the father was concerned that the mother would emigrate with the children;*
- e. the mother brought proceedings to deprive the father of parental rights in order to move abroad "even though the children have had continuous contact with the father since the divorce;"*



- f. *the mother said if the Court decided to entrust the children to their father, she would not leave Serbia;*
- g. *the girls mention their father negatively in their mother's presence, but when they are with their father, "they behave with a greater degree of spontaneity, express both happiness and displeasure, seek physical contact with their father, address him with 'Dad', they state the plans they have for the time they will be with him ...".*
- h. *there were "no indicators of resistance to the relationship [with the father], no impatience and no contact rejection."*
28. The same report records that the maternal grandparents filed a complaint: Zorica's parents filed a complaint about the change in the mother's behaviour in terms of alienation from the family of origin, and consequently alienation of minor children from relatives, stating that everything started happening since their daughter was in a relationship with Robert Miljkovic. They state that they often and continuously looked after the children until that period, for example, so full 3 months during the period that the mother served military service in the Armed Forces. Contacts with granddaughters weaken during the beginning of 2018, and are interrupted in the second half of 2018. They point out that they are not able to communicate with their daughter, that they are worried about her functioning and that is why they asked the court to regulate their personal relations with their granddaughters. They state that they started seeing each other briefly during the periods when they are with their father, and that the former son-in-law mediates these contacts.
29. As a result of these and other observations, the social services report stated "it is necessary to carry out a forensic medical examination of the parents and their relationship with [the] children" in order to consider "the best interests of the children" in proceedings brought by the father to change the 2013 order and to obtain custody of the children. Specifically, the questions the City Centre for Soci Sijral in Belgrade, New Belgrade Department, wanted answered were:-
- *- "does the mother psychologically alienate the children from the father and if this is present, to what extent is the psychological alienation of the children from the father expressed and reflects on the current emotional functioning of the children and other close persons ...";*
  - *- whether and to what extent the capacity of parents to exercise parental rights has been reduced especially with the mother because she persists in the request to deprive the father of parental rights because of the plan for emigration and a complete change in the living circumstances of children, and how it affects the care of children (understanding of their needs, development, and the special need to preserve the continuity of relations with close and significant persons).*
  - *- do the parents have the capacity to change in regard to the above in order to preserve the continuity of the children's functioning so far and ensure the stability of the family and wider environment."*
30. The mother and the children left Serbia without the knowledge and consent of the father three days before the date of this report, in the middle of the school year, on 22 March 2019.



31. On 23 April 2019, Olivera Bulatovic, psychologist and case manager in the City Centre for Social Work in Belgrade, at Judge Milenija Petricevic's request, filed a report with the First Basic Court in Belgrade. The report recorded that the father reported that Zorica, Dunja and Mila "have disappeared." In the case manager's opinion, "the mother implemented her plan to move out without notice, without preparation, suddenly, without consent and consultation with the children's father, since the children had regular contact with Predrag Popovic and other members of the extended family until that moment." The case manager said "In this way the mother severed all family and peer ties, which represents a trauma for the children, and thus grossly neglected her duties as part of parental rights." The case manager said, "We are of the opinion that the conditions have now been created for changing the decision on custody and we suggest that the court temporarily entrust the children to the father ...".
110. And at paragraph 34 to 36 the judge noted that:-
34. The Court reviewed the extensive reports of the social service agencies and found: *"... it was established without any doubt that [the mother], by taking children from Serbia without consent of other parent, in spite of ongoing court proceedings, harshly neglected duties from the content of parental right and abused the trust of children and in such manner by her own initiative deprived father of all his rights from the content of parental rights and deprived children of contact with other parent and other close persons, which is interrupted for almost two years now, right to grow up with other parent and wider family, i.e. right to keep personal relations with family members, friends and peers."*
35. The Court concluded, "it is in the best interest of the children that mother is deprived of the parental right."
36. Several conclusions can be drawn from the Serbian reports and judgments. There can be no doubt that the Serbian social service reports are thorough, comprehensive and based on first-hand observations over significant periods of time. They are prepared by qualified experts whose objective was to ascertain the best interests of the children. Judge Milenija Petricevic of the First Basic Court of Belgrade referred to the contents of the reports as "reliable evidence" in her 2019 judgment. Between 2013 and 2021, these reports and judgments shifted parental and custodial rights from the mother to the father, culminating in Judge Jovana Obucina of the same Court awarding the father full custody in the best interests of the children, on the basis of these reports."
111. Zoricka as the mother of the two girls has been shown to be a controlling figure in the children's lives isolating them from interactions with others including their own family. Despite ongoing proceedings in Serbia over custody of the girls, she willingly and secretly intended to remove the girls from the Serbian Courts jurisdiction without informing anyone. This is confirmed by MP under cross examination. Zoricka also under cross examination said the idea of coming to Vanuatu was to avoid the application of the Hague Convention which would require her to return the girls to Serbia.
112. When applying for Vanuatu permanent residency she lied in her statutory declaration **Exhibit D7** that everything she said was completely truthful and correct when she gave answers in the negative to question 20 (whether there was a *parenting order giving responsibility over the children*) and question 28 e), f) and g) (whether she was aware of *any proceedings pending*

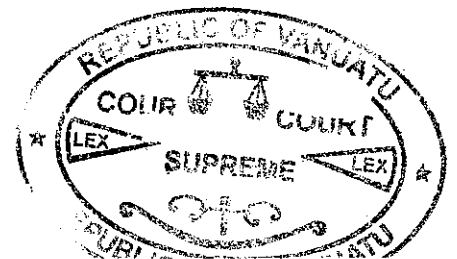




*against her overseas, whether she has been involved in any activity relating to the illegal movement of people to any country including Vanuatu and whether she has been charged any offence overseas awaiting legal action).*

113. MP did not keep any notes of what DP told her when she informed their mother of the allegations. Upon being informed Zoricka woke the accused who was asleep and started accusing him. After a while he decided it was best he left the house. Immediately thereafter Zoricka did nothing either to report the matter instantly to the Police or to take DP for medical examination. There is no evidence DP was ever medically examined. The complaint was not made until a year later immediately after the accused ceased all monthly payments to Zoricka.
114. In the record of her discussions with Ms Mahuk who was then acting for the accused, **Exhibit D9**, Zoricka told Ms Mahuk that the accused had promised to pay a monthly allowance for the children until they were 18 and she relied on this promise and wanted to remain in Vanuatu. Zoricka also informed Ms Mahuk that if she gets to Serbia she will report the accused for molesting her 9-year-old and she refused to make the report in Vanuatu as she felt the laws will not punish an offender appropriately. This clearly indicated that Zoricka was blackmailing the accused.
115. Ms Mahuk informed the accused by email on 25 October 2022 and on 28 October 2022 as shown in **Exhibit D5** the Public Solicitor on behalf of Zoricka informed the accused that the agreed amount of financial support per month will be VT 600,000 and that should he default, she will seek the Court's assistance. On 3 November 2022 Ms Mahuk responded to the Public Solicitor rejecting any obligation to pay the funds. (**Exhibit D6**)
116. On the 5 November 2022 Zoricka filed her complaint statement with the Police concerning DP's allegations. In the hearing before Hastings J in *Popovic v Popovic*, Zoricka told justice Hastings she reported the matter a year later as she was gathering evidence. That was an outright lie. The evidence shows she had backmailed the accused and benefited from it. She did not report and continued to receive money until the payments were stopped. **Exhibit D8** shows the transfers of funds from the accused to Zoricka starting 5 November 2021 and ending on 10 October 2022. The evidence shows that the complaint was only filed after the payments were stopped by the accused.
117. When making the complaint to the Police, Zoricka made her statement at the Police station but not the complainant. DP and MP under cross examination confirmed that they made their statements at home in the company of their mother before giving the statements to the Police. This was also confirmed by Zoricka in her evidence in chief. Given Zoricka's history of control over the children's lives, this puts into question the veracity of DP and MP's evidence.
118. Justice Hastings in *Popovic v Popovic* at Paragraph 80 after hearing DP giving evidence concluded that she was using words and terms provided to her by her mother. The preparations of the statements at home in the presence of their mother must cast some doubt on the consistency and reliability of DP and MP's evidence.
119. Furthermore, when the accused gave evidence, he tendered the following ten exhibits, namely:

- 1) **Exhibits D1 to D4** were family photos taken the children's mother of the accused and his step daughters enjoying each other's company;



- 2) **Exhibits D5 and D6** were documents clearly showing the proximity of Zoricka's money being stopped by the accused and the complaint being made immediately
  - 3) **Exhibit D7** Zorick's statutory declaration with knowingly dishonest answers;
  - 4) **Exhibit D8** is the statement of large amounts of money paid by the accused to Zoricka which when ceased was followed with the filing of the complaint.
  - 5) **Exhibit D9** the record of lawyer Ms Mahuk's conversation with Zoricka further showing Zoricka's dishonesty under oath
  - 6) **Exhibit D10** was the accused submission through his Serbian Lawyer to the Courts in Serbia. It sets out allegations of blackmail by Zoricka and the background to that;
120. There was no cross examination by the prosecution upon any of the documents tendered by the accused. Therefore, they must be accepted as unchallenged evidence.
121. The facts established by these uncontested evidence are that from the photos the accused had a loving relationship with his step daughters as seen in the photos taken by their mother .In **Exhibit D1** DP and MP are asleep on a bed with the accused, DP is seen embracing with the accused and is entirely happy in his company and again in **Exhibit D2** DP is sitting on the accused lap happily watching a computer screen in an office and in **Exhibit D4** DP is seen putting cream on the accused leg while he is lying on a bed. In **Exhibit D3** they are seen at the beach. The photos do not show any ill feeling against the accused. DP in cross examination confirmed these photos were taken by her mother. MP under cross examination confirmed **Exhibits D1** was a photo of her DP and their step father and their mother took the picture.
122. At the outset, there were no other eye witnesses to the alleged offending other than DP saying it happened, which the accused denies. No evidence was produced of the nude pictures allegedly shown to DP and no evidence was shown of any medical examination of DP by a doctor.

## Result

123. Having considered the evidence referred to I was not satisfied that the prosecution had proved its case beyond reasonable doubt. For these reasons the accused was found not guilty on all the charges and acquitted

DATED at Port Vila this 25<sup>th</sup> day of April, 2025  
BY THE COURT

Dudley Aru  
Judge

