

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

**Preliminary Investigation
Case No. 18/1378 MC/PRIN**

BETWEEN: PUBLIC PROSECUTOR

AND: KALO SEULE

Date of hearing: *29 October 2018 at 9.00am*
Before: *A.L. Bolen*
In Attendance: *Public Prosecutor – Mr. Blessing*
 Defendant – Mr. Laumae

RULING ON INTERLOCUTORY APPLICATION TO VACATE PLEAS OF GUILTY

The Defendant Kalo Seule applies to vacate pleas of guilty that he entered on 04 September 2018 to 64 charges of failure and refusal to furnish and return of information contrary to section 51 (1) (b) of the *Value Added Tax Act [Cap. 247]* (the Act).

This case was on track for a sentencing hearing but was diverted to deal with the application sought by the present Counsel for Defendant, Mr. Laumae.

Mr. Laumae submitted that the Defendant entered his pleas of guilty without adequate or insufficient legal advice from his former legal Counsel, Mr. Loughman as to the purpose of the Act. As a result, the pleas of guilty must be vacated by this Court. Counsel submits that the two principles stated in **PP v Varasmaite** [2011] VUSC 277 should be applied in this case. However, there is no evidence as to what advice the Defendant did receive. Nothing is mentioned in the Defendant's sworn statement dated 29 October 2018 to say otherwise. The application to vacate the pleas of guilty was opposed by the Public Prosecutor and submitted that this application should not be allowed as a matter of course. On 04 September 2018, the Defendant had engaged

a legal representation and was provided adequate advice from a solicitor at the time he made the decision to enter a plea of guilty. It would be a waste of the resources of the State, for the Defendant to be allowed to vacate a plea that he entered freely and with the benefit of adequate legal advice. There is no proper bases upon which he could defend the charge. The points raised by the prosecution defeats the application in respect of the first and second principle in **PP v Varasmaite**.

Furthermore, Mr. Laumae submitted that this Court has no jurisdiction to hear and determine charges or claim of monetary value exceeding VT1, 000, 000. Counsel submitted charges laid in this Court is an abuse of process since section 53 (1) of the Act clearly stated that all offences under the Act shall be prosecuted in the Supreme Court. Thus, the matter should be committed to the Supreme Court for determination. Prosecution acknowledges section 53 (1) of the Act. The Supreme Court is the proper Court to deal with offences under the Act. However, in **PP v Alfred Loli CRC18/1576 SC/CRML**, the Defendant in this matter was charged with similar offence under section 51 (1) (b) of the Act. The Magistrates Court committed the matter to the Supreme Court for determination. On 03 July 2018, the Chief Justice Lunabek issued an order to transfer the matter back to the Magistrates Court pursuant to Section 27 (1) of the Criminal Procedure Code Act [Cap. 136]. The directive issued by the Supreme Court in **PP v Alfred Loli** above is applicable to all offences under Section 51 (1) (b) of the Act. The Court is of the view that the prosecution's argument on jurisdiction is proper.

Lastly, Defence submitted that the Magistrates Court has no jurisdiction to issue an order for Defendant to pay VT35, 950, 504 being for unpaid tax. Unpaid tax becomes a debt due to the State. The mode of recovery would be in a civil claim. Section 213 of the Criminal Procedure Code Act [Cap. 136] should not be applied in this case since the offence falls under the Value Added Tax Act [Cap. 247] and not the Penal Code Act [Cap. 135]. Order of a civil claim under section 213 of the Criminal Procedure Code Act [Cap. 136] is an abuse of process. The Court should not grant a civil order sought by prosecution. It is an abuse of process to seek a civil order under section 213 of Criminal Procedure Code Act [Cap. 136]. In response to this submission, prosecution submitted that Criminal Procedure Code Act [Cap. 136] is applicable in this matter or any other offence under any other legislation. Section 213 of the Criminal Procedure Code Act is clear. A civil order can be issued against a defendant. In **PP v Alfred Loli CRC18/1378 MC/CRML**, the Magistrates Court issued an order in accordance with section 213 of the Criminal Procedure Code Act [Cap. 136]. This approach must be applied in this case. However, I had read **Alfred Loli -v- Public Prosecutor CAC18/2620 SC/CRMA**, where an appeal was made against a decision of the Magistrates Court for issuing a civil order under section 213 of the Criminal Procedure Code Act [Cap. 136]. The Defendant was charged with similar offence under section 51 (1) (b) of the Value Added Tax Act [Cap. 247]. The Supreme Court allowed the appeal on the basis that offences under section 51 (1) (b) of the Value Added Tax Act [Cap. 247] do not allow prosecution to invoke section 213 of the Criminal Procedure Code Act [Cap. 136]. The

only approach is for the State to proceed by a civil claim for debts owed to the State. Thus, the Court accepts the submission made by Mr. Laumae.

Accordingly, the Court makes the following orders:

1. The Court dismisses the Defence's application to vacate the pleas of guilty.
2. The Court has the jurisdiction to determine this offence.
3. The prosecution shall not invoke section 213 of the Criminal Procedure Code Act [Cap. 136] in this matter.
4. The Defence shall file a closing submission on sentencing within 7 days.
5. Matter is listed for sentence on 06 November 2018 at 3.00pm in the afternoon.

DATED at Port Vila this 29th day of October 2018.

BY THE COURT

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A.L. Bolen

Acting Chief Magistrate

