



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

Criminal Appeal
Case No. 21/1488 SC/CRMA

PUBLIC PROSECUTOR

V

EUGENE DANIEL MIAL

Coram: *Justice O. Saksak*

Counsel: *Mr K. Massing for the State/Appellant – no appearance*
Mr T. J. Botleng for the Defendant

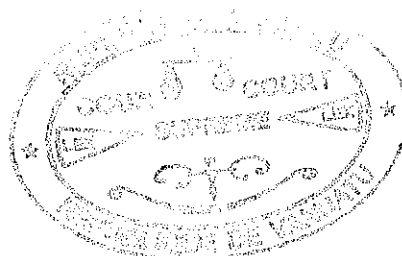
JUDGMENT

Introduction

1. This is a simple appeal against the order of the Magistrate issued on 7 April 2021, dismissing the case against the respondent as the accused.

Background

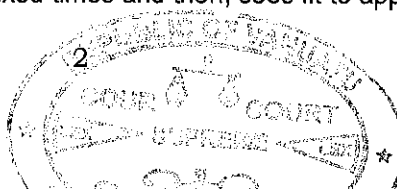
2. The Prosecution filed a Notice of Appeal dated 10 May 2021 on 11 May 2021. A separate document headed Memorandum of Appeal is dated 10 May 2021 but there is no filing stamp appearing on it.
3. On 25 June 2021 the Court issued a Notice of Conference returnable on 21 July 2021 at 9:45am;
4. On 21 July 2021 Mr Massing and Mr Botleng appeared. Mr Massing sought an adjournment for 21 days to serve the Notice and Grounds and to file Appeal Books, and for the Respondent to file responses. The Court issued appropriate directions and fixed the hearing for 30 August 2021 at 8:30am.



5. On 27 August 2021 Mr Massing filed the Appellant's written submissions but there appears to be no appeal books in compliance with directions orders of 21 July.
6. On 21 October 2021 Mr Botleng was reminded by Ms Donald through an email to file submissions.
7. On 1st October 2021 the Court issued a Notice of Hearing returnable on 3 November 2021 at 9:30am.
8. On 3 November 2021 Ms Tasso appeared in place of Mr Massing and sought an adjournment as she had no instructions and did not have carriage of the matter. Mr Botleng did not have any instructions either and asked for time to take instructions. The Court adjourned the case to 23 November 2021.
9. On 23 November when the case was called only Mr Botleng was present. Mr Massing did not appear and there was no correspondence explaining his absence or the reasons thereof.
10. Mr Botleng told the Court he had great difficulties in obtaining instructions and therefore advised he had ceased acting for the respondent. The Court granted leave and Mr Botleng was excused.

Discussion

11. The Court is left with one set of submissions but no material upon which the Court could usefully determine the issues or grounds raised in the purported Memorandum of Appeal. I say "*purported*" because the document is separate from the Notice and is not properly filed or at all.
12. Section 201 of the Criminal Procedure Code Act [CAP. 136] provides for the procedure to be followed when filing an appeal.
13. Subsection (1) requires the Notice of Appeal to be filed within 14 days after the date of the order appealed against. The order appealed is dated 7 April 2021. The Notice of Appeal was filed on 11 May 2021, well outside of the 14 days required. This provision has been violated.
14. Subsection (3) requires the filing of the Memorandum of Appeal within 14 days after the notice of appeal. Although the Memorandum of Appeal is dated 10 May 2021, it is not filed. It is in violation of this provision.
15. Furthermore the appellant simply ignored or failed to comply with the directions of the Court issued on 21 July 2021 requiring the appellant to file and serve an Appeal Book.
16. From these failures and/or omissions the Court is seeing the constant and consistent behavior of counsel who failed to attend Court at fixed times and then, sees fit to appeal to shift the blame onto



the Court and the system rather than accept his failure and improve on personal performances. That is not acceptable practice to be entertained by this Court.

17. For those reasons the appeal fails and is dismissed.

DATED at Port Vila, this 30th day of November, 2021

BY THE COURT


O. A Saksak
Judge

