

**BETWEEN:** Public Prosecutor  
Appellant

**AND:** Eme Tabi  
Respondent

**Date of Hearing:** 14 February 2022

**Before:** Chief Justice V. Lunabek  
Justice J. Hansen  
Justice R. White  
Justice O. Saksak  
Justice D. Aru  
Justice G. Andree Wiltens  
Justice E. Goldsbrough

**Counsel:** Appellant – Mr D. Boe  
Respondent – Mr E. Molbaleh

**Date of Decision:** 18 February 2022

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## JUDGMENT

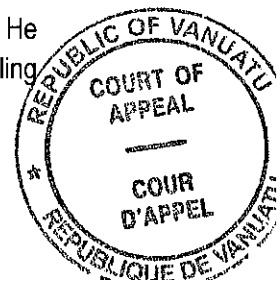
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### A. Introduction

1. This was an appeal by the Public Prosecutor challenging the leniency of a Supreme Court sentence imposed in a criminal matter.

### B. Pleadings

2. On 25 November 2021, Mr Tabi was sentenced following a plea of guilty.
3. On 20 December 2021, Mr Boe filed a Notice of Appeal with an accompanying Memorandum of Appeal setting out the grounds upon which the appeal was based.
4. Mr Boe's submissions in support of the appeal then followed and were filed on 31 January 2022.
5. Mr Molbaleh's submissions in opposition to the appeal were filed on 11 February 2022. He raised in his submissions that the appeal was out of time, and objected to this Court dealing with the matter due to the passing of time and lack of leave to file out of time.

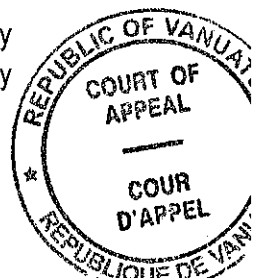


**C. Application**

6. Mr Boe sought to justify the delay in filing the appeal on the basis that it was only out of time by a short period, and he submitted that the merits of the appeal were such that it simply had to be heard regardless that it was late. His explanation for the delay was that he had been on tour at an outlying Island and away from his Office in Luganville; and he explained that it was accordingly problematic for him to file this appeal in time.
7. Mr Boe accepted that the appeal was out of time by some 11 days.
8. Section 201(1) of the Criminal Procedure Code [Cap 136] prescribes that appeals of this nature must be filed within 14 days.
9. Mr Boe belatedly made an oral application for leave to file the appeal out of time.
10. This Court has jurisdiction to consider such application pursuant to the provisions in Section 201 (6) of the Criminal Procedure Code. Mr Boe did not elaborate further on his reasons for the delay in filing; nor did he address his failure to make an earlier application for leave given that he indicated to the Court that he was at all times aware of the need for such.
11. Mr Molbaleh, although not a stranger himself to having to explain delay, objected to the application due to the belated nature of it, as well as the sheer effrontery of Mr Boe advancing the argument that because the appeal was very likely, in Mr Boe's view, to succeed, that was a proper basis on which to grant leave.
12. Mr Molbaleh strongly contended that the sentence imposed was appropriate and that the appeal would ultimately be dismissed.

**D. Discussion**

13. This Court considers that the Office of the Public Prosecutor, as an agency of the State, is to be held accountable as a model litigant. Accordingly, in the ordinary course, appeals by the Office of the Public Prosecutor must be filed in time, namely within 14 days.
14. What has occurred in this instance falls below that standard.
15. Exceptionally, and only for very good reasons, should an appeal be filed after the expiration of the 14-day period. Where that occurs, the Notice of Appeal should be filed together with an application for leave to file out of time, explaining in detail the reasons for the delay.
16. Oral applications, as occurred in this case, should be rare; and they will be carefully scrutinised. Oral applications, without very good substantiating explanations, are unlikely to be granted.



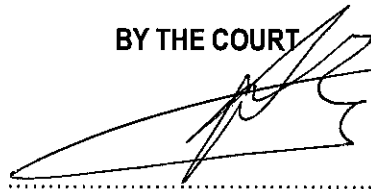
17. The granting of leave is not something to be taken for granted.
18. The establishing of time periods within which appeals, in particular prosecution appeals, may be filed is done to ensure fairness. Disrespecting the time periods set is unfair to individuals who have accepted the Court's determinations and are moving ahead with their lives accordingly. To disrupt their lives by the uncertainty created when a late appeal is filed, is a significant imposition and one that will be sparingly permitted.
19. This Court considered Mr Boe's reasons for applying for leave to file out of time unsatisfactory. We note that he has the assistance of fellow counsel and administrative officers in Luganville and in Port Vila. The reasons provided for the delay in filing are insufficient for this Court to grant the indulgence sought.

**D. Result**

20. The application for leave to file an appeal out of time is dismissed. Accordingly, the appeal will not be considered on the merits, and is dismissed.

**Dated at Port Vila this 18<sup>th</sup> day of February 2022**

**BY THE COURT**



**Chief Justice V. Lunabek**

