

BETWEEN: ALFRED LOLI

Appellant

AND: PUBLIC PROSECUTOR

Respondent

Coram: *Justice Oliver A. Saksak*

Counsel: *Colin B. Leo for the Appellant*
Simcha Blessing for the Respondent

Date of Hearing: *2 October 2018*

Date of Judgment: *11 October 2018*

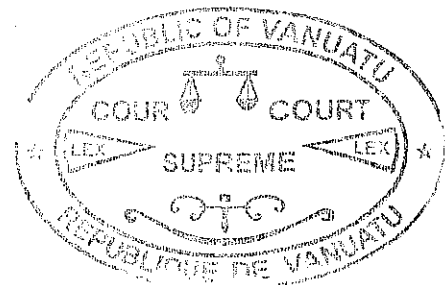
JUDGMENT

1. This is a short appeal against the Sentence imposed on the appellant by the Magistrate Court on 10 September 2018.
2. The appeal is basically against the Order at paragraph 8 of the Sentencing Order which states –

“You shall also file your returns to disclose your taxable income and expenses and pay the value added tax within 21 calendar days of the verdict of your Sentence.”

3. The appellant was charged under Section 51 (b) of the Value Added Tax Act [Cap. 247] with 26 Counts of failing and refusing to furnish returns or information.

Section 51(b) states –



“Every person commits an offence against this Act who –

(a) Refuses or fails to furnish any return or information as and when required by this Act, or any regulations made under this Act or by the Director, or.....”

4. The appellant pleaded guilty to all 26 counts. The Magistrate Court sentenced him to a fine of VT480.000 pursuant to section 51(3) of the Act which states –

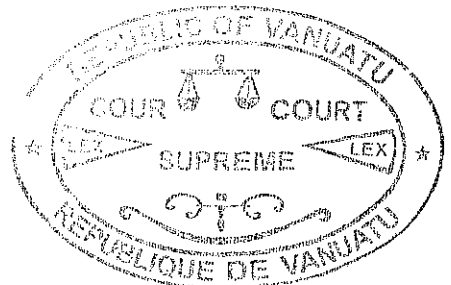
“Every person who commits an offence under paragraph (b) of subsection 1 will be liable to a fine not exceeding VT40,000 for each month of the default for the first time upon which the person is convicted of such an offence and for a fine not exceeding VT75,000 for each month of default for the second and subsequent occasions on which the person is convicted of such an offence.”

5. In addition the Magistrate ordered the Appellant to file his returns to disclose his taxable incomes and expenses and pay the Value Added Tax within 21 calendar days.

6. The appellant is aggrieved by that Order. Mr Leo argued and submitted that the Court’s hands are tied to section 51(3) which does not give any powers to the Court to make such an order. He submitted that in doing so the Magistrate had fell into error. Mr Leo further submitted that if the appellant were to fail to comply with the order within the 21 days required, he would be at risk of being charged again for the same offence which would tantamount to double jeopardy and which would be a breach of Article 5(1) (h) of the Constitution which states –

“no person who has been pardoned, or tried and convicted or acquitted shall be tried for the same offence or any other offence of which he could have been convicted at his trial.”

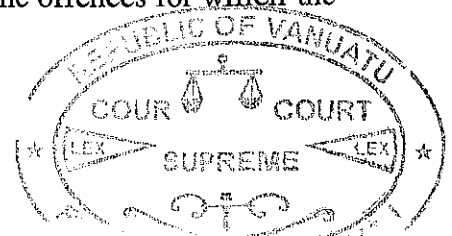
7. Mr Leo submitted that the Order at paragraph 8 should be quashed.



8. Mr Blessing made oral submissions in opposition to the appeal. He explained that VAT is a self-assessed tax which means the obligation is on the tax-payer to ensure they file their returns and pay the appropriate taxes. He explained the obligations of VAT which is ultimately the verification of information provided by tax-payers. He explained the process involved and the periods required for notices, reminders and final warning letters. He explained that in the appellant's case there were numerous failures by the appellant. The period was 6 years from 2006 to 2012. Under the circumstances it was a fair exercise of discretion by the Magistrate to order under disclosure paragraph 8.
9. In response to the double jeopardy argument Mr Blessing said there would be no prosecution if the appellant complied with the order. He argued further that the Court below had determined the issue in accordance with substantial justice and in the public interest.
10. Counsel further submitted that he had informed the Magistrate that if there were failures of payment, Prosecution would institute civil claims against the appellant for recovery under section 213(1) of the Criminal Procedure Code Act, Part 12.
11. I have considered all those submissions and come to the conclusion that Mr Leo is correct in submitting the Magistrate Court's hands are tied to section 51 (b) of the Act.
12. The purpose of the VAT Act is clearly stated in Section 1 which states –

“An Act to impose value added tax and provide for its collection.”
13. Any unpaid tax becomes a debt due to the State. The mode of its recovery is provided in section 32 of the VAT Tax Act which states –

“Tax payable by any person will be recoverable as a debt due to the State.” (Emphasis added).
14. The respondent could not proceed with a civil debt against the appellant under section 213 of the Criminal Procedure Code Act. The offences for which the




appellant was charged and found guilty were not criminal offences committed under the Penal Code Act for which the Prosecution could invoke the Court's power in section 213 of the CPC Act [CAP. 136].

15. Clearly the appellant has taxes recoverable from 2006 to 2012. These could only be recovered by using the mode in section 32 of the Act and not otherwise in the way the Prosecution tried to do in the case of the appellant. A proper civil claim or proceeding should have been filed by the State in order to give the appellant the opportunity to file responses and defences.
16. For the reasons given, the appeal is allowed. Order 8 of the Sentence of the Magistrates Court dated 10th September 2018 is hereby quashed.

DATED at Port Vila this 11th day of October, 2018.

BY THE COURT


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OLIVER A. SAKSAK
Judge

