

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

Criminal Appeal
Case No. 21/722 SC/CRMA

BETWEEN: Public Prosecutor
Appellant

AND: Ati James
Respondent

Date of Hearing: 26 August 2021
Before: Justice V.M. Trief
In Attendance: Appellant – Mr D. Boe, via video link from Luganville Court House
Respondent – Mr R. Willie, via video link from Luganville Court House
Date of Decision: 26 August 2021

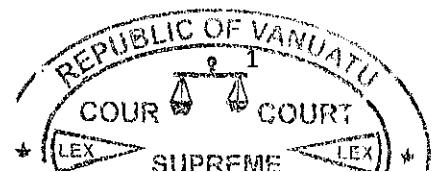
JUDGMENT

A. Introduction

1. The Appellant Public Prosecutor appeals against the Magistrates' Court's dismissal of the case Criminal Case No. 21/228 brought against the Respondent Ati James.

B. Background

2. On 3 March 2021, Mr James pleaded guilty in the Magistrates' Court to a charge of domestic violence. The matter was adjourned to 11 March 2021 for sentencing submissions.
3. On 11 March 2021, the prosecutor was absent. The Magistrates' Court dismissed the case pursuant to s. 131 of the *Criminal Procedure Code* [CAP 136] (the 'CPC'), citing the prosecutor's absence without notice or excuse (the 'dismissal order').
4. The dismissal order is appealed on the grounds first, that the Magistrates' Court erred in dismissing the case under s. 131 of the CPC and secondly, that the Magistrates' Court erred in acquitting Mr James when he is a serial offender.



5. Mr Willie conceded that the Magistrates' Court erred in dismissing the case pursuant to s. 131 of the CPC. He properly did so for the following reasons.
6. The Magistrates' Court has the power to dismiss charges pursuant to s. 131 of the CPC which provides as follows:

131. *If at the time and place to which a hearing or further hearing has been adjourned, the accused person does not appear before the court which made the order of adjournment the court may issue a warrant for the arrest of the accused and cause him to be brought before the court. If the complainant does not appear the court may dismiss the charge with or without costs as it may consider fit.*

(my emphasis)

7. Section 131 appears in Part 6 of the CPC, which part is headed, "Procedure in Trials before the Magistrates' Court".
8. Mr James had already pleaded guilty to the charge against him. The listing on 11 March 2021 was for sentencing submissions to be made. It was not for the hearing of a trial.
9. Section 131 provides that the Magistrates' Court may dismiss the charge if the complainant does not appear. However, the stated reason for the dismissal on 11 March 2021 was not the complainant's failure to appear, but the prosecutor's. Section 131 does not include the prosecutor's absence in the circumstances in which the Magistrates' Court may dismiss charges.
10. For the reasons given, the Magistrates' Court erred in its dismissal order on 11 March 2021 to dismiss the case pursuant to s. 131 of the CPC.
11. The appeal having been conceded, I need not give further consideration to the other ground of appeal in relation to Mr James being a serial offender. I make no comment as to that ground.

C. Result

12. The appeal is **allowed**. The Magistrates' Court Dismissal Order dated 11 March 2021 is set aside, and the charge against the Respondent is reinstated.
13. It is ordered that the matter Criminal Case No. 228 of 2021 be relisted in the Magistrates' Court for the sentencing of the Respondent.

DATED at Port Vila this 26th day of August 2021
BY THE COURT

UM Trief
Viran Molisa Trief
Judge

