

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

Criminal Appeal
Case No. 20/2978 SC/CRMA

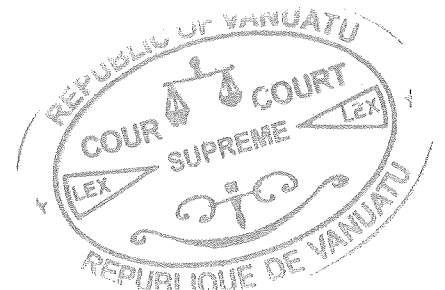
BETWEEN: The Public Prosecutor
Appellant

AND: Boe Uri Wala
Respondent

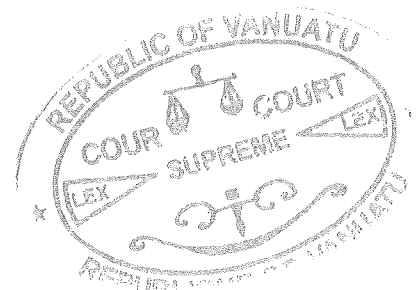
Date of HEARING: 10th day of March, 2021 at 8:30 AM
Before: Justice Oliver Saksak
In Attendance: Mr Damien Boe for Public Prosecutor (Appellant)
Mr Rollanson Willie for Respondent

JUDGMENT

1. The State appeals against the oral decision of the Magistrate's Court dated 8th October 2020 whereby the Learned Senior Magistrate after a contested trial acquitted the respondent of the charge of theft contrary to section 125 (a) of the Penal Code Act [CAP.135] (the Act).
2. The Court on 25th November 2020 directed that Prosecution file Appeal Books by 16/12/20 and responding submissions from the respondent by 6/1/21. The Court directed the Clerk of the Magistrate's Court to allow access to the Court file to the Prosecution to facilitate the preparation and filing of appeal books.
3. No appeal books were filed by Prosecution.
4. In absence thereof Prosecution based its oral submissions on the memorandum filed on 16/12/20 giving the reasons which are as summarized-
 - (a) Despite the Notes of the Magistrate, no formal judgment has been issued,
 - (b) As such no grounds of appeal and submissions could be perfected, and
 - (c) An extension of time is sought.



5. Mr Boe relied on section 170 of the Criminal Procedure Code Act to argue that the Court below had erred when it failed to give opportunity to counsel for the prosecution to make final addresses before handing down the verdict or decision to acquit the defendant.
6. Mr Willie for the respondent accepted that clearly there is no written verdict. Counsel argued that despite lack of a written verdict the Magistrate reached the correct conclusion based on evidence of the two prosecution witnesses including that of the defendant himself which was not discredited or rebutted in anyway by Prosecution.
7. Section 170 of the CPC Act provides for addresses at trials before the Supreme Court and not in the Magistrate Court. The section is therefore not relevant and applicable.
8. The real issue or complaint to me appears to be lack or omission in the Magistrate not providing her written decision.
9. In that circumstance the relevant provisions are sections 140 (1) and 141 of the CPC Act which state:
“THE DECISION
140. (1) When the evidence and the addresses, if any, have been completed the court shall record a conviction or acquittal on each count of the charge, except in cases to which section 97 applies.....”
10. *“141. DRAWING UP CONVICTION OR ORDER*
141. The conviction or order may, if required, be afterwards drawn up and shall be signed by the court making the conviction or order, or by the registrar, clerk or other officer of the court.”
 (my emphasis)
11. Solomon Asang’s evidence by sworn statement dated 25/11/20 at paragraph 28 shows Prosecution requested the written judgment from the Magistrate.



12. That request triggered section 141 of the CPC and the Magistrate was obliged to draw up the written order or decision and to have it signed. That did not occur and as such the Court below had erred.
13. Further, section 140(1) of the CPC Act requires the Court “*shall record a conviction or acquittal.....*”
14. I have had the opportunity of seeing the notes of the Magistrate. They end with the re-examination of the defendant. There is no record of the Magistrate’s decision of her verdict and the acquittal. That is also an error on the part of the Magistrate.
15. For those reasons the appeal is allowed.
16. I order the oral decision of the Magistrate dated 8th October 2020 be hereby quashed. I further order that the case be reinstated and remitted to the Magistrates Court for a retrial by another Magistrate.

DATED at Luganville this 10th day of March 2021.

BY THE COURT

OLIVER.A.SAKSAK

Judge

