

**BETWEEN:** Public Prosecutor  
Appellant

**AND:** Alfred Loli  
Respondent

*Date:* 11 February 2019  
*Before:* Justice J.W. Hansen  
Justice G.A. Andrée Wiltens  
Justice S. Felix  
*In Attendance:* Mr S. Blessing for the Appellant  
Mr C. Leo for the Respondent  
*Decision:* 22 February 2019

---

**JUDGMENT**

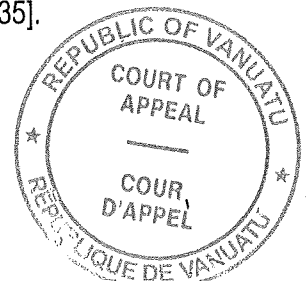
---

A. Introduction

1. Mr Leo made concessions such as to concede the appeal. Accordingly we allowed the appeal, indicating that reasons would be produced subsequently. These are our reasons.

B. Background

2. This is a case involving VAT. Mr Loli runs a construction company. For many years he has neglected to file and pay VAT, and eventually he was prosecuted to achieve compliance. At sentencing in the Magistrate's Court following guilty pleas, the learned Magistrate ordered Mr Loli *inter alia* to file his outstanding VAT returns and pay the VAT owing within 21 days – on the basis that there was jurisdiction to do so under section 213 of the Criminal Procedure Code [Cap 135].



3. That order was successfully challenged by way of appeal to the Supreme Court on the basis that jurisdiction was lacking.
4. The Public Prosecutor then sought to challenge that ruling by way of appeal on a point of law.
5. At the commencement of the hearing Mr Blessing was granted leave on his oral application for leave to appeal, there being no opposition; and Mr Leo abandoned all aspects of his cross-appeal.

C. The Decision

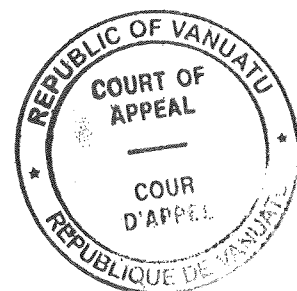
6. The Supreme Court determined that the learned Magistrate's hands were tied by the wording of section 51(b) of the Value Added Tax Act [Cap 247] ("VAT Act") – namely that the only sanction available was to impose a pecuniary penalty. The decision went on to hold that section 32 of the VAT Act meant that the only mode of recovery of outstanding VAT was by way of pursuing a civil debt.
7. The primary Judge expressly excluded the possibility of the civil debt being pursued by utilising section 213 of the Criminal Procedure Code as the proceedings before the learned Magistrate were not criminal offences committed under the Penal Code Act.

D. Appeal

8. Ms Blessing pointed out the three aspects of section 213 of the Criminal Procedure Code that needed to be complied with; namely that (i) the defendant was required to be charged with a criminal offence, (ii) there had to be a clear nexus between the criminal offence and the civil debt, and (iii) that no prior civil claim had been commenced.
9. Mr Blessing's argument related solely to the first aspect, it being accepted that no civil claim had been commenced and that the civil debt were inextricably tied to the charges. He submitted that the matter dealt with by the learned Magistrate was clearly criminal in nature, even though the charges were laid under the provisions of the VAT Act. He submitted that the wording of section 213 did not have the added qualifier, seemingly adopted by the primary Judge, of the offences requiring to be laid under any particular statutory provision.
10. Mr Leo conceded that the charges laid under the VAT Act were criminal in nature.
11. Mr Leo also conceded that the primary Judge's interpretation went beyond the plain words of the statute, which was unnecessary and an error of law.
12. Mr Leo's concessions ended all argument.

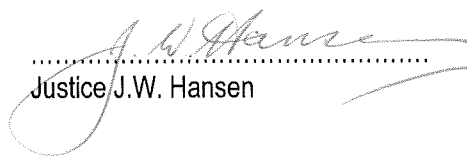
E. Decision

13. The appeal was allowed.



14. The Public Prosecutor is entitled to costs for this appeal and the appeal in the Supreme Court below. We fix those costs at VT 75,000. They are to be paid within 14 days.
15. In the course of argument, Mr Leo advised that Mr Loli has paid the fines imposed; but that he has yet to comply with the learned Magistrate's further order. That order, by dint of this decision, has been reinstated, and Mr Loli should comply with it forthwith.

Dated at Port Vila this 22nd day of February 2019  
BY THE COURT

  
Justice J.W. Hansen

